

PROPOSED LICENSING SCHEME FOR INDEPENDENT COUNSEL

- CONSULTATION PAPER

BACKGROUND

1. The growth of Singapore as a major legal and financial centre has resulted in increasingly substantial and complex commercial disputes. As the local bar is a small one, the pool of litigation lawyers available to deal with the rapidly growing number of such disputes is correspondingly limited. On 7 January 2011, at the Opening of the Legal Year, the Chief Justice alluded in his speech to the shortage of Senior Counsel who could provide advocacy services in commercial and financial disputes, and referred the matter to the Minister for Law for consultation with the Law Society.
2. This paper details for consultation a proposed scheme to licence a small number of independent counsel to confer on them rights of appearance in a Singapore court of law for a limited time. "Independent Counsel" refers to counsel who practise independently of law firms, as barristers or their equivalent in jurisdictions in which the legal profession is not fused. Examples are English Queen's Counsel, or Senior Counsel from Australia and Hong Kong. In this paper, the terms "Independent Counsel", "Senior Counsel" and "Queen's Counsel" will be used inter-changeably.
3. The addition of such Independent Counsel would add further depth and breadth to a vibrant legal scene, and provide wider choice to clients in the financial and commercial marketplace. The greater diversity of legal representation in important commercial and financial disputes would in turn maintain Singapore's eminence as a business and financial centre.
4. Amendments will need to be made to the Legal Profession Act to give effect to this proposal. In particular, it is envisaged that new provisions will be required to introduce this new licensing scheme; and the current section 15 of the Act which allows ad-hoc admission of Queen's Counsel, will be amended to allow ad-hoc admission for advocacy in the same areas of law as Independent Counsel licensed under the new scheme.

KEY ISSUES FOR CONSULTATION

Selection of licensed counsel

5. Applications should be made to the Selection Committee under the Legal Profession Act. This is the same Committee which appoints local Senior Counsel.

6. It is proposed that the eligibility and selection criteria for award of the licence should be based on the following:

6.1 The applicant should:

- (i) For an aggregate period of not less than 5 years have been a Senior Counsel or Queen's Counsel;
- (ii) Be working independently as a barrister or an advocate in jurisdictions where the profession is not fused;
- (iii) Not be employed by or affiliated with any particular law firm.
- (iv) Possess professional integrity, standing and a track record of excellence in relation to his ability as an advocate following his appointment as a Senior Counsel or Queen's Counsel in the jurisdiction(s) in which he practises;
- (v) Have strong and credible endorsements from referees based in Singapore or senior Judges in the foreign jurisdiction(s) in which he practises;
 - (i) Be in active practice involving substantial advocacy in the higher courts in the jurisdiction(s) in which he practises; and
 - (vi) Possess expertise or experience in the permitted areas of legal practice (see further below) and a successful practice in these areas.

6.2 An applicant seeking to be licensed must be willing and able to:

- (i) Contribute to the development of the legal industry and legal fraternity in Singapore; and
- (ii) State the minimum number of days he will be available for appearance in the Singapore courts each year, and be in a position to undertake to be so available for at least 20 days each year.

Number of Independent Counsel to be admitted & validity of licence

7. The proposed scheme envisages the granting of licence to between three and five Independent Counsel in the first instance.

8. With a view to try out and further review the scheme, the license period will be for a validity of three years.

Permitted areas of practice

9. The proposed licence will permit advocacy only in certain areas of law. The excluded areas will be drawn from the licence scheme for qualifying foreign legal practices under section 130A(1) of the Legal Profession Act (LPA) read with Rule 3(1) of the Legal Profession (International Services) Rules 2008: constitutional and administrative law, conveyancing, criminal law, family law, succession law and trust law. This will align the licensing scheme to the objective of making available the services of top counsel in commercial and financial disputes.

Conditions attached to the rights of appearance in Court

10. As stated earlier in the paper, one of the conditions should be that such licensed counsel work independently. They should not be employed by or affiliated with any particular firms such that they can only act for that particular firm. Otherwise, the issue of top counsel being immobilised due to the fact that they tend to be from large firms would recur. At the same time, this would give small and medium sized law firms the opportunity to use the services of senior counsel.
11. Another condition is that Independent Counsel can only be instructed through Singapore law firms and when so instructed, they are to select a Singapore-qualified lawyer to work with them as a junior.
12. To facilitate the monitoring and review of the scheme, Independent Counsel will also be required to submit an annual return of the cases handled and the number of days spent on attending hearings in Court.

Licensing, and regulatory & disciplinary framework

(i) Licensing

13. The Selection Committee will select the appointee and inform the Attorney-General who will issue the license. As the Independent Counsel will be a foreign lawyer, his licensing should come under the Attorney-General. The Independent Counsel's licence will cover both his practice of foreign law and Singapore law, and contain the conditions proposed above.

(ii) Regulatory & disciplinary framework

14. The regulatory and disciplinary framework for Independent Counsel will mirror the framework applicable to Singapore PC holders working in foreign entities as follows:
 - a. Misconduct relating to practice of foreign law: In terms of disciplinary process, where the misconduct relates to his practice of foreign law, the Attorney-General will be sole regulator and may deal with the complaint in accordance with his powers stipulated in section 130R of the LPA.
 - b. Misconduct relating to practice of Singapore law: Where the Independent Counsel's misconduct relates to his practice of Singapore law, a similar mechanism for dealing with complaints against such license holders modelled after the mechanism applicable to Singapore PC holders practising Singapore law in foreign entities currently set out in LPA section 130R(5) and section 85(3A) should be introduced.
15. As is the case for Singapore PC holders working in foreign entities, all complaints regarding Independent Counsel license holders will first be considered by the Attorney-General. Upon receiving the complaint (whether directly or by referral of the Law Society), the Attorney-General may:
 - (a) if he considers it appropriate, refer the complaint or information to the Law Society to be dealt with in accordance with the usual disciplinary process

applicable to Singapore PC holders (described further in paragraph 16 below); or

(b) if the Attorney-General decides that there is sufficient reason for him to proceed to deal with the complaint instead of referring it to the Law Society, in line with his current powers with regard to Singapore PC holders practising Singapore law in foreign entities, he will have powers to:

(i) Cancel or suspend for such period (not exceeding 5 years) as he may think fit, the Independent Counsel's license/Independent Counsel's ability to hold such a license;

(ii) Order the Independent Counsel to pay a penalty of not more than \$100,000;

(iii) Censure the Independent Counsel; or

(iv) Order the Independent Counsel to pay the penalty referred to in (ii) in addition to imposing the punishment referred to in (i) or (iii).

16. Where the Attorney-General refers the complaint to the Law Society, the usual disciplinary processes set out in LPA Part VII should, with appropriate modification where necessary, apply (viz. Inquiry Panel, Review Committee, Inquiry Committee, Disciplinary Tribunal, Court of 3 Judges). In this regard, the outcomes emanating from the disciplinary process should mirror (as appropriate) those applicable to Singapore PC holders in LPA Part VII; namely, an order may be issued by the Court:

(i) For the Attorney-General to cancel the licence of the Independent Counsel;

(ii) For the Attorney-General to suspend for such period (not exceeding 5 years), the Independent Counsel's ability to apply for and hold a licence;

(iii) For the Independent Counsel to pay a penalty of not more than \$100,000;

(iv) For the Independent Counsel to be censured; or

(v) For the Independent Counsel to suffer the punishment referred to in paragraph (iii) in addition to the punishment referred to in paragraph (ii) and (iv).

Law Society and Singapore Academy of Law membership

17. Independent Counsel should be required to be members of the Law Society of Singapore and Singapore Academy of Law to ensure that they integrate with the local legal fraternity.

SUMMARY OF PROPOSALS FOR CONSULTATION

18. This brief details a new framework to enhance diversity within the litigation sector:
- a) Independent Counsel, who are not attached to a law firm but operate independently as barristers or advocates in jurisdictions where the profession is not fused, may apply to the Selection Committee for a licence.
 - b) Selection of three to five Independent Counsel will be made, with an initial licence validity period of three years.
 - c) Eligibility and selection criteria as follows: -
 - The applicant should:
 - i. For an aggregate period of not less than 5 years, have been a Senior Counsel or Queen's Counsel;
 - ii. Be working independently as a barrister or an advocate in jurisdictions where the profession is not fused;
 - iii. Not be employed by or affiliated with any particular law firm.
 - iv. Possess professional integrity, standing and a track record of excellence in relation to his ability as an advocate following his appointment as a Senior Counsel or Queen's Counsel in the jurisdiction(s) in which he practices;
 - v. Have strong and credible endorsements from referees based in Singapore or senior Judges in the foreign jurisdiction(s) in which he practises;
 - vi. Be in active practice involving substantial advocacy in the higher courts in the jurisdiction(s) in which he practices; and
 - vii. Possess expertise or experience in the permitted areas of legal practice (see further below) and a successful practice in these areas.
 - An applicant seeking to be licensed must be willing and able to:
 - (i) Contribute to the development of the legal industry and legal fraternity in Singapore; and
 - (ii) State the minimum number of days he will be available for appearance in the Singapore courts each year, and be in a position to undertake to be so available for at least 20 days each year.
 - d) The proposed licence will permit advocacy only in permitted areas of law: primarily commercial and financial, and excluding the ringfenced areas of constitutional and administrative law,

conveyancing, criminal law, family law, succession law and trust law.

- e) The following conditions should be attached to the licence of Independent Counsel operating under the scheme: -
 - i) Should maintain independence and not be bound to any particular law firm;
 - ii) Should be instructed by a Singapore law firm;
 - iii) Should be assisted by a Singapore-qualified junior lawyer; and
 - iv) Should be required to submit an annual return of the cases handled and the number of days spent on attending hearings in Court.

- f) Licensing, regulation and discipline
 - i) Candidates to be licensed by AG (after selection by Selection Committee);
 - ii) If practice of foreign law is concerned, the Attorney-General to be entrusted with regulation and discipline; and
 - iii) If practice of Singapore law is concerned, the regulatory and disciplinary regime which applies to Singapore PC holders working in foreign entities will apply.

- g) Licensed counsel will be required to become foreign members of the Law Society and the Singapore Academy of Law.

- h) New provisions will be introduced into the Legal Profession Act to bring in this proposed licensing scheme; and the current section 15 of the Act which allows ad-hoc admission of Queen's Counsel, will be amended to allow ad-hoc admission for advocacy in the same areas of law as Independent Counsel licensed under the new scheme.

Prepared by the: Legal Industry Division, Ministry of Law
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