
**REPORT OF THE COMMITTEE TO DEVELOP
THE SINGAPORE LEGAL SECTOR**

FINAL REPORT

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Report of the Committee to Develop the Singapore Legal Sector

Table of Contents

1	BACKGROUND.....	1
2	LEGAL EDUCATION	2
	(A) Legal Academia.....	3
	(I) Changing Legal Education Landscape.....	3
	(II) Synergy between Academia and Industry	5
	(III) Recommendations.....	5
	(B) 'A' Level Law.....	7
	(I) Potential Benefits of Introducing 'A' Level Law	8
	(II) Costs of Implementing 'A' Level Law.....	8
	(III) Recommendation.....	9
	(C) Restructuring the Present Legal Education System.....	9
	(I) Admission Criteria for Law Schools.....	9
	(II) Structure of the LLB Course.....	10
	(III) Review of Content.....	12
	(IV) Recommendations.....	13
	(D) Admission to the Legal Profession	16
	(I) Practical Law Course	16
	(II) Diploma in Singapore Law	17
	(III) Pupillage.....	17
	(IV) Recommendations.....	18
	(E) Continuing Legal Education	21
	(I) Compulsory CLE.....	21
	(II) Recommendations.....	22
	(F) Promotion of Singapore as a Legal Education Hub.....	23
	(I) Initiatives Pioneered by the NUS Law Faculty	23
	(II) Recommendations.....	24

3	THE LEGAL PROFESSION	26
	(A) The Criminal/Civil Litigation Bar	26
	(I) The Present Situation	26
	(II) Recommendations	27
	(B) Access to Justice	30
	(I) The Role of the Profession in Ensuring Access to Justice	30
	(II) Contingency Fee Arrangements.....	30
	(III) Class Actions	31
	(IV) Recommendations	32
	(C) Specialist Accreditation.....	35
	(I) Increasing Specialisation	35
	(II) Recommendation.....	36
	(D) Sufficiency Concerns of the Legal Profession	36
	(I) A Decline in the Number of Practising Lawyers	36
	(II) Recommendations of the Third Committee on the Supply of Lawyers.....	44
	(III) Recommendations.....	44
4	MAINTAINING AND ENFORCING ETHICAL STANDARDS IN THE PROFESSION FAIRLY AND PROMPTLY	47
	(A) Delays in the Disciplinary Process	47
	(I) Current Problems with the Disciplinary Process.....	47
	(II) Stakeholders' Views.....	48
	(III) Recommendations	49
	(B) Initiating the Disciplinary Process.....	51
	(I) Concerns about Veracity of Complaints	51
	(II) Recommendations.....	51
	(C) Managing the Disciplinary Process	52
	(I) Current Difficulties	52
	(II) Recommendations.....	54
5	ARBITRATION AND MEDIATION	59
	(A) The Singapore Mediation Centre and the Singapore International Arbitration Centre	59

	(I)	The Growing Importance of Arbitration and Mediation.....	59
	(II)	Recommendations.....	63
6		PROMOTING SINGAPORE AS A KEY LEGAL SERVICES HUB.....	67
	(A)	Making Singapore a More Attractive Base for Foreign Law Firms ..	70
	(I)	The Current Incentives and Potential Refinements.....	71
	(II)	Recommendations.....	73
	(B)	Helping Singapore Law Firms to Expand into the Region.....	73
	(I)	Pushing Singapore Law Firms Overseas	73
	(II)	Recommendations.....	75
	(C)	Promoting Singapore as a Legal Destination to Foreign Lawyers	78
	(I)	Increasing Visibility	78
	(II)	Recommendations.....	78
7		LIBERALISATION OF THE PROFESSION	81
	(A)	Establishing a Regional Legal Centre.....	81
	(B)	The Current Practice of Law in Singapore.....	83
	(C)	Steps to Becoming a Regional Legal Centre.....	86
	(I)	Free Markets and Open Policies.....	87
	(II)	Opening Singapore’s Legal Market	89
	(III)	Recommendations.....	92
8		CONCLUSION	98
9	ANNEX A	- List of Working Group Members.....	99
10	ANNEX B	- List of Parties Consulted.....	103
11	ANNEX C	- Table of Differences Between Current JLV and Proposed Enhanced JLV	107
12	ANNEX D	- Glossary of Terms	113

Report of the Committee to Develop the Singapore Legal Sector

1 BACKGROUND

- 1.1 On 17 August 2006, the Deputy Prime Minister and Minister for Law appointed Justice V K Rajah, Judge of Appeal, Supreme Court of Singapore, to chair a committee (“the Committee”) to undertake a comprehensive review of the entire legal services sector, particularly in relation to exportable legal services, to ensure that Singapore remains at the cutting edge as an international provider of legal services both in the short-term as well as in the long-run.
- 1.2 In addition to Justice Rajah, who served as chairperson, the Committee comprised the following members:¹
- (a) Mr Chan Seng Onn, Solicitor-General, the Attorney-General’s Chambers;²
 - (b) Mr Sundaresh Menon, Judicial Commissioner, Supreme Court of Singapore;³
 - (c) Mrs Koh Juat Jong, Registrar, Supreme Court of Singapore;
 - (d) Mr Michael Hwang, Senior Counsel, Sole Proprietor, Michael Hwang;
 - (e) Mr Alvin Yeo, Senior Counsel, Managing Partner, Wong Partnership and Joint Managing Director, Clifford Chance Wong;
 - (f) Mr Cavinder Bull, Director, Drew & Napier LLC;
 - (g) Mr Lee Eng Beng, Partner, Rajah & Tann;
 - (h) Mr Kwek Mean Luck, Senior Assistant Registrar, Supreme Court of Singapore.⁴

¹ The Secretariat to the Committee comprised: (a) Mr David Lee Yeow Wee, Assistant Registrar, Supreme Court; (b) Ms Tammy Low Wan Jun, Assistant Registrar, Supreme Court; (c) Mr Paul Tan Beng Hwee, Justices’ Law Clerk, Supreme Court (until 31 May 2007); and (d) Mr Goh Yihan, Justices’ Law Clerk, Supreme Court.

² Appointed Judge, Supreme Court of Singapore, on 3 July 2007. Mr Soh Tze Bian, Senior State Counsel, Attorney-General’s Chambers, was alternate member to Mr Chan Seng Onn.

³ At the time this report was released, holding the position of Senior Partner, Rajah & Tann.

⁴ Appointed Director (Designate), Industry Division, Ministry of Trade and Industry with effect from 1 April 2007.

- 1.3 In order to facilitate as well as extend its deliberations, the Committee appointed four working groups: the Legal Education Working Group, the Legal Infrastructure Working Group, the Legal Profession Working Group and the Working Group to Promote Singapore as a Legal Services Hub in Asia. The members who served in these working groups may be found in Annex A.
- 1.4 To understand both the legal profession and its role in Singapore's wider socio-economic context, the Committee and its working groups interviewed and met with diverse constituencies⁵ as well as sought and received representations from parties who had and would have an interest in the recommendations of the Committee.
- 1.5 Having deliberated, and bearing in mind the necessity to ensure the future sustainability, growth and vibrancy of the legal profession in the face of increasingly keen regional and international competition, the Committee focused on and makes recommendations in the following areas:
- (a) legal education, in particular how to prepare our law graduates for constantly shifting commercial realities, and growing Singapore as a legal education hub for the region;
 - (b) the legal profession and its future direction, including issues of access to justice;
 - (c) the disciplinary process, and in particular ensuring the fair and speedy determination of complaints against lawyers;
 - (d) exportable legal services in the areas of arbitration and mediation, and how there can be more effective promotion of Singapore as a key provider of such legal services in Asia, as well as the roles of supporting infrastructural organisations such as the Singapore Mediation Centre and the Singapore International Arbitration Centre; and
 - (e) the promotion of Singapore as a legal hub for the region, including how best to attract foreign law firms and lawyers to Singapore as well as to assist local law firms to regionalise.

2 LEGAL EDUCATION

- 2.1 It is axiomatic that the quality of legal service in a country is only as good as the quality of its legal service providers. Therefore, it is

⁵ A list of parties consulted is at [Annex B](#).

paramount that the education and training of a lawyer is done in a holistic and proper manner to ensure that the legal fraternity has members with the necessary knowledge, skills and ethics to serve the legal sector and service the business as well as the wider community.

- 2.2 Currently, legal education in Singapore starts from an undergraduate programme at a law school, either local or foreign, followed by the Postgraduate Practical Law Course conducted by the Board of Legal Education, and a period of pupillage with a law firm or the Singapore Legal Service (“the Legal Service”). Continuing legal education is voluntary and conducted by various bodies.
- 2.3 There have been some informal links between the various institutions with a role in legal education and training. Each of the institutions works largely within the area it perceives as its role to embrace. However, the furnishing of legal education is largely left to the individual institutions and there has not been to date any formal collaboration or collective consideration on the whole spectrum of legal education.

(A) Legal Academia

(I) *Changing Legal Education Landscape*

- 2.4 A cornerstone of any world-class business centre is the quality of its educational institutions. With the opening of a second law school at the Singapore Management University (“SMU”) (“SMU Law School”),⁶ competition for good legal talent will intensify. This adds to increasingly keen competition for talent, both domestically (including private and public sectors) and internationally.⁷ With numerous options open to good legal minds, it is vital to consider how our local law faculties will be able to continue attracting and retaining their share of the limited talent pool.
- 2.5 In the 2002 report of the Working Group (Legal Services), it was noted, with concern, that 14 academic staff had resigned from the National University of Singapore Law Faculty (“NUS Law Faculty”)

⁶ The Government had accepted the recommendation of the Third Committee on the Supply of Lawyers to set up a second law school: see MinLaw website at <http://notesapp.internet.gov.sg/_48256DF20015A167.nsf/LookupContentDocsByKey/GOVI-6SRCMW?OpenDocument> (Last accessed: 1 September 2007).

⁷ It is no exaggeration for *The Economist* to note, in a recent survey on talent, that “talent has become the world’s most sought-after commodity”: see “The World is Our Oyster”, *The Economist*, October 5th 2006 where it was also noted that the “talent war” has gone global.

between the period of 1996 and 2000.⁸ During the period from 2002 and August 2006, the NUS Law Faculty saw nine resignations and eight new hires. The Dean of the NUS Law Faculty⁹ has stated that the numerical strength of the faculty “over the last few years has remained relatively stable”.

2.6 The number of faculty appointments may have been stable over the past five years in part because the NUS Law Faculty has been hiring from overseas. This itself is admirable and demonstrates to an extent that Singapore is a sufficiently attractive magnet for some international legal academics. Nonetheless, the Committee is concerned that among local graduates, academia is increasingly seen as a less attractive career choice. The most junior local academic at the NUS Law Faculty graduated from NUS in 1999, some eight years ago. In the Committee’s view, it is imperative that our local law schools should be able to attract and retain a core of committed local academics. These academics are necessary for the organic development of Singapore law and for Singapore to gain international credibility and recognition as an important centre for legal thought and development.

2.7 Previously, vigorous efforts were made by the NUS Law Faculty to position academia as a viable and attractive proposition for fresh graduates. This included a senior tutorship scheme where promising candidates were offered a position at the faculty with a scholarship the year after graduation to pursue postgraduate studies. However, the senior tutorship scheme has not been formally awarded since 1999. Although a university-wide scholarship exists which achieves broadly the same aim, this has only started to be utilised very recently.¹⁰ In addition, with the present upswing of the economy, the gap between the salaries of faculty members and practitioners (including officers from the Legal Service) is progressively widening. These factors place legal academia at a disadvantage in competing for fresh talent.

⁸ See Report of the Working Group (Legal Services) 2002 Economic Review Sub-Committee on Service Industries chaired by then-Senior Minister of State Khaw Boon Wan.

⁹ Letter dated 28 August 2006 from Dean, Professor Tan Cheng Han SC to the Chairman, attaching the Report on Implementation Status of the Recommendations of the 2002 Report of the Working Group (Legal Services).

¹⁰ The NUS does currently offer teaching scholarships on a university-wide basis but this is different from a dedicated scholarship for aspiring law tutors. Also, unlike the senior tutorship scheme, the scholarship ties a candidate for three years after graduation from a post-graduate degree, whereas the senior tutorship scheme allows candidates to teach for a year before embarking on further studies. Presumably, if a candidate finds academia unsuitable for him after a year, there are lower financial and opportunity costs.

(II) Synergy between Academia and Industry

- 2.8 The teaching of law requires a balance between imparting legal theories and principles on the one hand and practical knowledge of their application on the other. This enables students to be sensitised to the practical consequences of their work and prepares them for life as practitioners. Legal practice remains the predominant career choice among fresh local graduates.
- 2.9 Efforts have been made at the NUS Law Faculty to involve practitioners and officers from the Legal Service in the teaching of subjects at the faculty through the deployment of adjunct professors and part-time tutors. This should be encouraged, although the Committee believes that there remains considerable scope for collaboration between academia and industry to be further enhanced.
- 2.10 Faculty members may opt for secondments to the ministries, statutory boards, the Legal Service or attachments to law firms on a voluntary basis. However, rigid caps on the amount of time one can spend on such external engagements exist. This often makes meaningful involvement unappealing or impracticable.¹¹ This is undesirable not only because it may prevent academics from gaining practical experience through such external engagement, it also deprives the practising Bar from benefiting from the contributions of academics. There could be greater synergy between the student body and industry as well. This could take the form of more attachments as well as clinical legal education.

(III) Recommendations

(a) Attracting Legal Talent to Academia

- 2.11 In order for the law schools to *attract* local graduates to academia, steps should be taken to identify and attract deserving undergraduates who express interest in joining academia. Such measures may include informational sessions on what legal academia

¹¹ According to the NUS Consultation Work Scheme HR 154/06, consultation work is subjected to a limit of not more than 52 days per academic year. Consultation work in excess of the 52-day annual time limit will be permitted only under special circumstances and upon approval by the Dean. If approval is granted, the number of days of vacation leave that may be used for consultation work is limited to 14 per calendar year. Thereafter, the faculty member will have to apply to be on no-pay leave for any approved consultation work. In addition, consultation work that is related to the faculty member's research and enhances the University's reputation may be allowed during sabbatical leave subject to a cap on earnings of 25% of the Annual Base Salary plus Annual Market Allowance and the time limit as set out above.

as a career choice offers, and how to prepare oneself for legal academia. More avenues for students to participate in academic life, such as introducing student-teaching-assistant positions, opportunities for senior students who have excelled in particular areas to coach weaker students, and publicising research and editorial opportunities, may also stir interest in academia and permit students to better assess if academia suits them.

- 2.12 The Committee also recommends reviving the senior tutorship scheme, which had proved successful in attracting local graduates. As far as possible, the remuneration that a senior tutor receives should be competitively pegged to what he can potentially earn in the private sector or the Legal Service. This will make academia, at least initially, a financially viable alternative for promising graduates who may otherwise sacrifice their ideals to enter practice or join the Legal Service.
- 2.13 In addition to work environment, career advancement prospects and other work benefits, remuneration is one of the key factors in retaining academics, particularly because graduates of the calibre required by the law schools are in high demand and are able to command higher pay elsewhere. Consideration should be given as to whether the pay scales of the better law academics should be revised, perhaps on a more regular basis, to reflect changes in the marketplace. This, however, is not to say that the pay of legal academics should be comparable to those of practitioners of similar seniority. Academics have different motivations and derive career satisfaction in very different ways.
- 2.14 The financial resources available to each of the two law schools to adjust remuneration are limited.¹² The Committee recommends that the law schools should be given greater autonomy in setting their fees to ensure that their revenue is commensurate with operational costs.¹³

(b) Greater Collaboration between Academia and Industry

- 2.15 The present practice of engaging adjunct professors and part-time tutors should be further enhanced. Practising lawyers or industry

¹² The Committee has been informed that the NUS Law Faculty receives a grant of about \$15,000 per student that it admits: *supra* note 9 at paragraph 2.5.

¹³ The first Steering Committee for the NUS Law Faculty, established in 2001 and chaired by Professor Tommy Koh, has also considered and welcomed such an approach. For more information on the Steering Committee, see <<http://law.nus.edu.sg/faculty/advisors.htm>> (Last accessed: 1 September 2007).

experts (e.g. in-house counsel or representatives from banks and financial institutions) should also be drawn in to teach entire or parts of elective courses and conduct seminars within a course (both core subjects and elective subjects) convened by a full-time member of the faculty.

- 2.16 Faculty members should likewise be encouraged to take up secondments and exchanges outside their respective faculties in order to enhance their knowledge of the practical workings of the law. The law schools should actively assist in sourcing relevant placement opportunities. Academics should also consider volunteering for *pro bono* work in conjunction with existing organisations (e.g. Criminal Legal Aid Scheme or Legal Aid Bureau). In this connection, a programme headed by academics could be set up for law students to assist Criminal Legal Aid Scheme volunteers. Alternatively, this programme could be an independent legal clinic. This will not only enhance the interaction between academia and the industry, it will also have the added benefit of introducing undergraduates to general and criminal practice and inculcate a sense of duty towards *pro bono* work.
- 2.17 Restrictions or caps on faculty members' contributions outside the faculty should be relaxed or lifted, to encourage cross-fertilisation of legal talent between academia and the industry. In addition, the current restriction on academics' ability to take instructions and advise only "advocates and solicitors" should be relaxed to include in-house counsel and foreign firms or lawyers. This would necessitate an amendment to section 34(h) of the Legal Profession Act (Cap. 161, 2001 Rev Ed) ("Legal Profession Act") read with section 2 of the same Act. Conversely, law firms should be encouraged to work actively with academic experts in their respective fields whenever a case of peculiar complexity arises. The law schools in turn should take steps to promote within the profession their panels of academics who may be available for consultation work. The current practice of appointing academics as *amicus curiae* can be further enhanced. Academics have a vital role to play in maintaining the vitality of Singapore law. The procedure for academics to obtain practising certificates can be further streamlined and the law schools should consider obtaining some form of group insurance for practising or consultant academics.

(B) 'A' Level Law

- 2.18 The Committee found rising concern that the law faculties may not be attracting students with an aptitude for the study and practice of law.

This may be one possible explanation for the increasing numbers who leave the law school or the practice of law shortly after graduation. In this light, the Committee considered whether the introduction of 'A' Level Law might go some way towards ameliorating the present situation.

(I) *Potential Benefits of Introducing 'A' Level Law*

2.19 The introduction of 'A' Level Law would expose more students to the study of law before they enter university, allowing them to make an informed choice before they embark on an undergraduate study in law. Further, it would provide more potential undergraduates with a basic foundation in legal theory, thought and principles.

(II) *Costs of Implementing 'A' Level Law*

2.20 The Committee consulted the Ministry of Education ("MOE") and other stakeholders on this issue. The Committee's attention was drawn to the following issues in implementing an 'A' Level Law syllabus:

- (a) Instead of broadening knowledge, a student taking 'A' Level Law will be doing so at the expense of a basic science or humanities subject.
- (b) The experience in the UK suggests that it is uncertain whether studying law at 'A' Level sieves out those without the aptitude or the commitment to complete a university degree in law. Only 1.6% of all 'A' Level candidates in the UK take 'A' Level Law. UK universities do not regard the taking of 'A' Level Law as a measure of aptitude for legal studies or qualification for admission.¹⁴
- (c) The educational benefit of 'A' Level Law should not be overestimated. 'A' Level Law is taught at a rudimentary level and may give only limited exposure to students on the study and practice of law. Furthermore, the present 'A' Level Law syllabus in the UK places some emphasis on European Law

¹⁴ Eleven universities, including Oxford, Cambridge, University College London and Nottingham have come together to require applicants from September 2006 to have taken the Law National Admissions Test which consists of 30 multiple-choice questions testing "students' ability to comprehend, interpret and make deductions from short passages of text" and an essay on a question such as "Modern society is too dependent on debt": see British Council, *Club UK*, 2006 at 17. In fact, on the University of Cambridge website, it was stated that "Applicants are not required to have studied Law at GCSE or 'A' level. Those who have done so tend not to have any special advantage once they begin studying Law at university. Academic subjects other than Law will generally provide a solid foundation for the course, as well as give a desirable breadth of experience."

while omitting to cover other commercial law subjects such as contract law. Therefore, the 'A' Level Law syllabus offered in the UK would have to be substantially modified for the Singapore context.

- (d) Substantial resources will be required to implement the teaching of 'A' Level Law. Locating and training qualified teachers, seeking accreditation of the syllabus and procuring approved materials, amongst other things, will have to be undertaken.

(III) Recommendation

- 2.21 Having deliberated, the Committee concluded that, empirically, the benefits of introducing 'A' Level Law are speculative, and would not justify the costs of implementing such a programme. The Committee therefore does not recommend the introduction of 'A' Level Law.

(C) Restructuring the Present Legal Education System

(I) Admission Criteria for Law Schools

- 2.22 Currently, admission to the law schools is largely determined by a candidate's 'A' Level results, the candidate's performance during an admission interview and an entrance examination. This is supplemented by a policy at the NUS Law Faculty to reserve 10% of its admission quota for candidates who possess "special abilities" but who are unable to satisfy the basic admission criteria. These "special abilities" include excellence in sports and the arts, as well as leadership qualities. Similarly, the SMU Law School has a policy of admitting a select group of applicants with average academic results but outstanding non-academic abilities.
- 2.23 The Committee feels that it is important that the legal profession is not unduly homogeneous. Generally speaking, the best 'A' Level Singapore students come from a few junior colleges. Given their scholastic ability, many of them seem intent on handling only top-end work, if indeed they do practise. The concern is that over time, the profession may see a dwindling proportion of its members interested in community and public interest work, as well as other less financially rewarding but vital areas of the law, such as criminal law, family law, environmental law and public international law. Consideration should thus be given to recruiting students from diverse backgrounds, with interests and passions for a wide range of social and legal issues. Those who practise in areas of law such as

criminal law and family law are not unlike general practitioners in the medical field. As with general practitioners in the medical field, society requires a sizeable number of such legal practitioners to support the general population's legal needs and to ensure satisfactory access to justice.

- 2.24 The Committee also observes that some fresh law graduates could be imbibed with more effective communication skills. There has, though, been considerable improvement in recent years. Nevertheless, perhaps further consideration can also be given as to whether law students generally require more intensive instruction and supervision on their communication skills.
- 2.25 While fresh 'A' Level students should continue to be the preferred candidates for admission to the law schools, the Committee believes that more attention should also be given to mature students, including second-career candidates. These students may have a more visible aptitude and passion for the law. The more able of these students should perhaps be given additional opportunities to study at a local law school. They may also bring their wider perspectives and experiences to the law schools' student body, especially if they have worked in related fields such as medicine, engineering, banking or even the public service such as the police force.
- 2.26 The admissions policy of the law schools ought to give sufficient recognition to the non-academic strengths and qualities of such students.

(II) *Structure of the LLB Course*

- 2.27 The length of the undergraduate Bachelor of Laws ("LLB") course has a direct impact on the rate at which Singapore develops its legal talent pool. It is necessary to strike a right balance on the length of the LLB course. On one hand, it should not be overly extended because one school of thought prescribes that there are diminishing returns to an undergraduate study of black-letter law. At the same time, it should not be too short such that the undergraduate programme becomes unrewarding and there is insufficient time to impart basic core skills and knowledge or to give sufficient exposure to the study of law.
- 2.28 In that light, the Committee considered the issue of whether the duration of the local LLB programme should remain at four years.
- 2.29 In the Singapore context, although the existing LLB programme is taught over four years, most students complete the bulk of the core

requirements by the second year.¹⁵ The majority of the time in the third and fourth years of study is devoted to elective courses.

(a) Reasons to Support Reduction to Three-Year Course

- 2.30 Some of the elective courses involve practical law subjects. It would be more appropriate if these practical subjects are taught under the ambit of a comprehensive and rigorous vocational training course post-graduation, as a requirement for admission into legal practice. Thus, it may not be necessary for all law students to complete such a large number of elective courses in order to obtain the LLB degree. The Committee observes that in the UK, for example, it only takes three years to complete an undergraduate law degree. In Australia, students can complete a double degree in law and another subject within five years.
- 2.31 Reducing the length of the LLB course to three years might also allow students who do not intend to enter practice to pursue their career of choice earlier. Similarly, for those students who intend to practise and have already decided on a particular specialisation, less time needs to be spent on taking elective subjects outside their field of specialisation in the LLB programme. Students who wish to take a wider range of electives or study an area of specialisation in further depth will still have the option of taking the Masters in Law (“LLM”) (or its equivalent) programme.
- 2.32 A review of the compulsory core courses also suggests that some rationalisation may be desirable. Subjects should be considered “core” if they equip the student with fundamental legal precepts and knowledge that allow the student to progress on to other more specialist subject areas. In conducting its review, the Committee has taken into consideration the recommendations of the Jayakumar-Chin Report of the Curriculum Review Committee on the Bachelor of Laws Course dated November 1981. Upon careful consideration, the Committee takes the view that some subjects currently considered as “core” subjects might either be unnecessary or may be better placed in the proposed vocational training course. The reduction in “core” subjects may see a corresponding reduction in the duration of the LLB programme.

¹⁵ At the NUS Law Faculty, with the exception of Evidence and Procedure which is taught to third-year students (or fourth-year students for those who go on exchange), all the core compulsory subjects are taught within the first two years.

(b) Disadvantages of Reduction to Three-Year Course

- 2.33 There are, however, disadvantages in reducing the LLB programme to three years. First, even though electives may be practical in nature, there is value in a thorough academic exposition and study of these subjects. Vocational training, on the other hand, tends to focus on the “nuts and bolts” of the law and less on other equally important aspects such as criticism of the *status quo*, proposals for reform and interdisciplinary approaches to examining the subject.
- 2.34 Second, the student exchange programme at the NUS Law Faculty, which substantially benefits students, may be adversely affected. Student exchanges are presently year-long. Reducing the LLB programme to three years would either lead to a cancellation or truncation of the exchange programme.¹⁶
- 2.35 Third, there may be students who wish to study or specialise in more than one area of the law or to take up substantial writing projects (*e.g.* a dissertation). A three-year LLB programme may deprive these students from having the opportunity to complete all their desired electives.
- 2.36 Fourth, there may be the perception that a reduction in duration coupled with an increased intake per year will result in a drop in the quality and standards of graduates.
- 2.37 Finally, the Committee also recognises that the reduction of the duration of the undergraduate programme may give rise to practical problems. Core subjects and elective subjects will have to be restructured to fit within the shortened time-frame.

(III) *Review of Content*

- 2.38 As the common law develops and as some statutes change over time, the content of the law schools’ curriculum must similarly keep up with the changing times.
- 2.39 The Committee is comforted to note that the NUS Law Faculty engages an International Advisory Panel to provide advice on a

¹⁶ In universities where law degrees are obtained in three years, exchange programmes are, at most, half a year in length and do not feature prominently as part of the overall educational structure.

regular basis.¹⁷ The Committee also notes that attempts have been made to study the feasibility of incorporating a clinical component to help students better contextualise their legal education.¹⁸ However, more should be done not only to review individual subjects but also overall teaching methodology to ensure that the curricula of the courses keep pace with the changing demands of legal practice.

- 2.40 As an illustration, the Harvard Law School in December 2006 undertook a reform of its curriculum to ensure that, among other things, there was greater attention to statutory and regulatory interpretation and systems as well as to the systematic analysis of international and comparative law and economic systems. Further, with its review, the Harvard Law School also sought to ensure that there were ample opportunities for students to address and generate solutions for complex fact-intensive problems.¹⁹

(IV) *Recommendations*

(a) Diversifying Admission Criteria

- 2.41 While excellent 'A' Level results are an important consideration in assessing applications, law schools should be wary of relying on them as exclusive proxies or indications of potential success as law students or as future practitioners or indeed in any future career. Greater regard should be given to the aptitude and motivation of each applicant, including but not limited to, extra-curricular activity, community work and socio-economic backgrounds.
- 2.42 In addition, the law schools may wish to give more opportunity for admission to mature and second-career students who manifest an aptitude and passion for the law and who have demonstrated an ability to be competent professionals.

¹⁷ See response of the Dean, NUS Law Faculty, *supra*, note 9 above. The last curriculum review conducted at the NUS Law Faculty was done in 2002 and before that, a review was conducted around 1997.

¹⁸ See response of the Dean, NUS Law Faculty, Professor Tan Cheng Han SC in an e-mail to the Secretariat dated 27 December 2006.

¹⁹ See Harvard Law School website, *Rethinking Langdell: Historic Changes in 1L Curriculum Set Stage for New Upper-Level Programs of Study*, available at: <http://www.law.harvard.edu/news/today/dec_hlt_langdell.php> (Last accessed: 1 September 2007). Stanford Law School also announced plans to introduce a "3D" educational experience for its students by focusing on interdisciplinary study: see, *A "3D" JD: Stanford Law School Announces New Model for Legal Education*, available at: <<http://www.law.stanford.edu/news/pr/47/>> (Last accessed: 1 September 2007).

(b) Minimum Three-Year LLB Programme

- 2.43 While there are excellent reasons to retain the current four-year LLB programme, the Committee is of the view that the prospect and/or viability of a shortened undergraduate programme should not be dismissed. The possibility of completing legal undergraduate studies within a period of three years should be given careful and objective consideration by the respective law schools.
- 2.44 The Committee therefore recommends that the law schools consider, at an appropriate juncture, offering a 3-year undergraduate programme, particularly to those who do not intend to practise. The proportion of the law content for such a programme must necessarily be higher than ordinary four-year programmes run by the law schools.
- 2.45 The Committee recommends that even if a three-year law degree is put in place, the law schools should still consider the inclusion of exchange programmes and work attachments within these three years. This may have to come at the expense of dispensing with long vacations between semesters.

(c) Minimum Two-Year Course for Non-Law Graduates

- 2.46 Regardless of the length of the undergraduate LLB programme, the Committee recommends that the duration of the non-law graduate LLB programme (presently known as the Approved Graduate Programme) be reduced to two years for outstanding candidates. As these candidates would have had grounding in another discipline, the two-year course should be entirely (or almost entirely) devoted to legal content. Other non-law graduate students (for instance, those wishing to participate in a student exchange) may be given the option to pursue a three-year graduate LLB programme.

(d) Two/Three-year Graduate LLB Programme for Other Law Graduates

- 2.47 Foreign law graduates from non-gazetted universities (*e.g.* law schools in civil law countries or other non-gazetted universities in the common law countries) should be given the option of pursuing a two- to three-year graduate LLB programme, depending on their abilities. These graduates would have had a sufficient grounding in the law prior to admission to the local law schools and would not require a lengthy study, which would be repetitious in most instances. Admitting foreign law graduates to the law schools will further enhance the diversity of the student population in the law schools.

The law schools could also consider setting up scholarships to attract the top law graduates from the region to come to Singapore to undertake this two/three-year course.²⁰ However, the law schools need to ensure that the standards of their graduates are not compromised and only students with sufficiently strong foreign law degrees and good communication skills in English should be allowed entry into this programme.

(e) Regular Review of Content

- 2.48 To keep up with legal developments, each law school should conduct regular reviews of its curriculum. Regular reviews of the syllabi of individual subjects should be conducted at least once every three years. In addition, faculty-wide curriculum reviews should be conducted at least once every four to five years.
- 2.49 In order to ensure the high standards of the law schools and to achieve certain consistent minimum standards, the newly-proposed Institute of Legal Education (“ILE”) (see paragraph 2.73 below) should have a role in the review of the curricula. These reviews should thus be conducted in conjunction with a periodic revalidation of the two law schools’ curricula by the ILE. In addition, an external member, *e.g.* a representative from the proposed ILE, should be co-opted into the respective curriculum review committees of the law schools.
- 2.50 With the advent of the second law school, efforts should be made to ensure that the content of law courses offered by both law schools have a common core. The ILE should periodically consult with both law schools to ensure consistency in terms of the basic core subjects taught and to further ensure that the syllabi and teaching methodologies in general are aligned with those offered by the best foreign universities.
- 2.51 Ethics must be taught more pervasively in both law schools. Law students should be sensitised to ethical issues and conundrums at an early stage.

²⁰ These scholarships could provide that the recipients of the scholarship shall undertake to remain in Singapore for a certain period of time after graduation to contribute as legal practitioners.

(D) Admission to the Legal Profession

(I) *Practical Law Course*

- 2.52 In a recent audit by the Director of Practical Legal Training at the Leo Cussen Institute (in Australia), the general training direction and duration of the Practical Law Course (run by the Board of Legal Education) was noted to be appropriate. The Committee agrees with the auditor's report but believes that certain areas of the Practical Law Course can be further improved.
- 2.53 First, the course at present consists only of compulsory subjects. Students who have decided to choose a particular specialisation (*e.g.* corporate practice) are not able to delve further into the area(s) of their choice.
- 2.54 Second, the Committee finds that the duration of the Practical Law Course, presently at six months, may not be sufficient for practical skills to be meaningfully imparted to the law graduates.
- 2.55 Third, the Practical Law Course currently runs from around July to December of each year. Due to a gap between the completion of their LLB course and the commencement of the Practical Law Course, graduates seek to complete a certain period of their pupillage (between four to six weeks) prior to the commencement of the course. Law firms have found this practice to be disruptive and unproductive, as they are not able to meaningfully train the pupils or have sufficient contact with them during this short period before they have to leave for the Practical Law Course.
- 2.56 In addition, the Practical Law Course does not function as a gatekeeper to the entry of new graduates to the profession because traditionally, almost all candidates who have completed a local LLB degree and/or the Diploma in Singapore Law ("DipSing") proceed to pass the Practical Law Course without difficulty. Instead, the gatekeeping function is performed at the stage of the university admissions.
- 2.57 The Committee believes that there are advantages to adding a second gatekeeper for entry into the profession at the end of the vocational training phase for the following reasons:
- (a) The training for a law degree may not have the same emphases and objectives as the training for entry into legal practice. The former focuses on academic and analytical legal skills, while

the latter primarily prepares law graduates for the demands and vicissitudes of legal practice by testing “nuts and bolts” topics such as procedure. Both are equally important.

- (b) The LLB degree is a useful degree generally, even for those who do not wish to enter into legal practice, and should be made available to more individuals. A second gatekeeper is therefore essential to ensure that the numbers entering the profession are responsive to market demands.
- (c) A more comprehensive and rigorous training course will ensure quality and consistency in the standards of new lawyers who wish to practise, especially as we continue to recognise a wider pool of applicants and candidates for law schools (see paragraphs 2.41 to 2.47 above) and if the LLB programme is reduced in duration and its coverage of practical law subjects (see paragraphs 2.30 to 2.32 and 2.43 to 2.47 above).

(II) *Diploma in Singapore Law*

- 2.58 The DipSing course was intended to provide an avenue for graduates from the gazetted foreign universities to have foundational grounding in the laws and principles peculiar to the Singapore legal system.
- 2.59 The Committee received anecdotal feedback that the DipSing course has outlived its utility. Some DipSing students find the course to be unproductive because it often repeats the content of courses already taken overseas, albeit with a mild local flavour, which can easily be picked up during practice.
- 2.60 The advent of the second law school provides yet another impetus for the review of the DipSing course. At present, the DipSing course is only offered in the NUS Law Faculty. Replicating the DipSing course at the SMU Law School would be counter-productive and result in an inefficient use of resources.

(III) *Pupillage*

- 2.61 Pupillage, at some firms, has become a misnomer particularly when the pupil master has little direct contact with the pupil. In other instances, pupils are viewed as a source of cheap labour in some firms, where they are sometimes made to carry out menial or time-consuming tasks instead of receiving meaningful on-the-job training.

(IV) *Recommendations*

(a) **Vocational Training Course**

2.62 The Committee recommends that the present Practical Law Course be replaced by a new Vocational Training Course. The Committee further recommends that the duration of the Vocational Training Course commences at six months with an ultimate view to increase it to a period of one year (with a concomitant decrease in the period of the pupillage/training contract). This will allow more time for students to prepare for legal practice. In addition, the Vocational Training Course would place a greater emphasis on imparting practical skills. In time to come, the courses at the law schools with a vocational training element may be moved to the Vocational Training Course. There is no proposed time-frame as to when these changes should be implemented. They are dependent on a number of imponderables that include the ability of the proposed ILE (see paragraph 2.70 below) to manage the proposed changes.

2.63 As the Committee sees it, the Vocational Training Course will retain its traditional function of ensuring competency in core subject areas but will also be more responsive to the needs of individual students by allowing them to tailor their own courses through the election of optional subjects in their area of specialisation, such as advanced civil and criminal procedure, litigation skills, alternative dispute resolution skills and mechanisms, admiralty law, corporate practice and corporate restructuring (including, for instance, insolvency law and mergers and acquisitions).

(b) **Fusing the DipSing Course with the Vocational Training Course**

2.64 The Committee recommends that in place of the DipSing course, eligible graduates from gazetted foreign universities should be required to take additional modules introducing them to Singapore law during the Vocational Training Course. In the beginning, instead of teaching these students an entire subject in Singapore law, efforts should be made to focus on sensitising these graduates to the nuances of Singapore law in each of the modules. Incorporating this “localisation” element within the Vocational Training Course has the added benefit of allowing resources to be pooled to conduct these courses (rather than each law school conducting its own DipSing course) and also encourages greater consistency in the process of localisation. It would be preferable that both local and foreign

graduates belonging to the same cohort take the same amount of time to qualify for admission to the Singapore Bar.

- 2.65 Eventually, there could be separate local and foreign courses for local law graduates and foreign law graduates. In this way, those who have already met stringent requirements for admission to the local law schools can be allowed to pass the local course without much difficulty, although this should not unduly compromise the role of the Vocational Training Course as a second gatekeeper. The foreign course can then be opened to law graduates from all over the world with high and exacting standards to ensure that only the very best foreign law graduates are granted admission to the Singapore Bar.

(c) **Restructuring Pupillage into a Training Contract**

- 2.66 The Committee recommends that the present structure of pupillage be replaced with a training contract. The training contract will be entered into with a firm, rather than with a partner. However, the firm can still decide whether it wishes to retain collective responsibility for the trainee or delegate the responsibility to a particular partner (*e.g.* a partner in charge of training matters). The training contract will oblige the firm to engage its trainees in a structured learning programme that would include, for instance, client-interviewing skills and advocacy skills (if the trainee is in the litigation department). Where possible, the training contract should also include the rotation of young lawyers within different departments of a law firm, so that they are exposed to as wide a range of practice as possible.
- 2.67 The Committee notes that the training offered to new associates and trainees is regarded a major attraction in jurisdictions such as the UK and the US, and that surveys and rankings of law firms among associates regularly include the standard of training as a factor. This has led law firms to institutionalise and publicise their training programmes. The Committee similarly recommends that the proposed ILE (see 2.73 below) should conduct surveys of law firms, their trainees and young associates, and publish its findings. This will give recognition to law firms that expend resources on training their lawyers and promote the level of training in law firms through healthy competition.
- 2.68 The training contract should remain, for the moment, at six months, equivalent in duration to pupillage. This will facilitate the rotation of young lawyers within different departments of the law firm.

2.69 In order to avoid the scheduling problems raised (see 2.55 above), the Committee further recommends that it shall be mandatory for the period of traineeship to commence only after the completion of the Vocational Training Course.

(d) Institute of Legal Education

2.70 With the changes in the legal education landscape and for the reasons mentioned in paragraphs 2.1 to 2.3 above, steps need to be taken to ensure that the efforts of the two law schools, and other efforts in continuing legal education and marketing Singapore as a legal education hub, are concerted and focused.

2.71 Further, the various initiatives recommended by the Committee pertaining to legal education should not be carried out in a piecemeal fashion. Rather, they should be overseen by a single entity. This will ensure that there is consistency in approach and no duplicity of effort.

2.72 In order to achieve these aims, it is necessary to establish a single umbrella institution that will coordinate, administer and have oversight of all initiatives and programmes related to the abovementioned aspects of legal education.

2.73 Therefore, the Committee recommends that an ILE be set up in substitution of the existing Board of Legal Education that currently has a much narrower remit. The ILE should be chaired by a very senior member of the legal fraternity with the necessary standing, supported by the senior members of the various stakeholders of legal education, such as the law schools, Singapore Academy of Law ("SAL") and the Law Society of Singapore ("the Law Society").

2.74 The ILE would:

- (a) have the primary focus of charting the development of and requirements for post-university education, including vocational training and continuing legal education (see paragraph 2.76 below). It would also have the responsibility of coordinating, administering and overseeing the implementation of the various recommendations related to legal education;
- (b) be staffed by a full-time secretariat; and
- (c) work closely with the key stakeholders such as SAL, the Law Society and the two law schools.

(e) **The Vocational Training Course as Gatekeeper**

2.75 The Committee believes that, eventually, it will become necessary to impose a second gatekeeper to entry into the legal profession as the number of law graduates rise. This will enable Singapore to welcome graduates from all over the world and from all universities, while ensuring the quality of students admitted to the Bar. The examination at the end of the Vocational Training Course, which would be the equivalent of the Bar examination in other jurisdictions, must be rigorous, although this will be more so for the foreign course which will be introduced eventually. The Committee envisages that qualification by way of Singapore's Vocational Training Course may eventually have the same cachet for lawyers wishing to practise in the region as the New York Bar exam is to lawyers worldwide. To promote this, Singapore should open the Vocational Training Course to graduates from all over the world and, to this extent, a foreign course for foreign law graduates should be implemented in the future.

(E) **Continuing Legal Education**

(I) ***Compulsory CLE***

2.76 Continuing Legal Education ("CLE") has been made compulsory in a number of Commonwealth jurisdictions, namely, Australia,²¹ Hong Kong,²² England and Wales,²³ as well as the US.²⁴ Each of those jurisdictions has a fairly well-developed scheme in place.

2.77 While there exists a fair amount of CLE activity within the legal profession in Singapore, it is not *mandatory* for lawyers to participate in the available activities. Moreover, these activities presently take the form of lectures or seminars held on an *ad hoc* basis by organisations

²¹ CLE is compulsory in both New South Wales and Victoria. In New South Wales, the Mandatory Continuing Legal Education has been in place since 1987: see Rule 42 of the New South Wales Law Society Professional Conduct and Practice Rules. In Victoria, the compulsory Continuing Professional Development scheme was started in 2004: see Continuing Professional Development Rules 2005.

²² Mandatory Continuing Professional Development was introduced in Hong Kong in January 2003: see the Law Society of Hong Kong website at <http://www.hklawsoc.org.hk/pub_e/cpdcourse/info%5C02.asp> (Last accessed: 1 September 2007).

²³ Since 1985, the Law Society of England and Wales has operated a compulsory Continuing Professional Development scheme: see Part IV of the Law Society (UK) Training Regulations 1990.

²⁴ See, for example, New York where the CLE programme is governed under Part 1500 of the New York State Administrative Code, <<http://www.nycourts.gov/attorneys/cle/1500.shtml>> (Last accessed: 1 September 2007).

such as the SAL, the Law Society (usually in conjunction with the NUS Law Faculty), other private/government organisations and private conference organisers. However, there is no overall supervision or coordination amongst the service providers and law firms in order to ensure minimum standards of these programmes and to chart a holistic CLE programme that all lawyers and in-house counsel will be able to benefit from.

- 2.78 Indeed, in an ever-changing legal landscape, there is a constant need to update practising lawyers on changes to existing branches of law (such as the changes to civil procedure, corporate practice and criminal law) as well as to familiarise them with new and emerging areas of law (such as economic torts, Islamic banking, competition law, intellectual property, oil and gas, to name a few). While large law firms may be capable of providing some form of in-house training, it is unrealistic to expect smaller or medium-sized law firms and sole practitioners to have the necessary infrastructure to run such in-house courses on the same scale (if at all). Lawyers from these smaller firms cannot realistically be expected to refresh themselves and regularly upgrade their skills through resources within their firms.
- 2.79 CLE initiatives are already part of the professional licensing requirements in other professions. For instance, accountants (since 1995), doctors (since 2003) and pharmacists (since 2007) are all required to participate regularly in continuing education activities.
- 2.80 In order to ensure the continuing growth of the intellectual capital and professional standards of the legal profession, the Committee believes that the introduction of compulsory CLE in Singapore is long overdue.

(II) Recommendations

(a) Compulsory CLE

- 2.81 The Committee recommends the introduction of compulsory CLE for all advocates and solicitors, including all foreign lawyers and local lawyers registered with the Attorney-General to practise Singapore law in certain permitted areas of legal practice in the Joint Law Ventures (“JLVs”), Singapore-based foreign law firms or Singapore law firms.²⁵ Compulsory CLE will not only broaden the legal knowledge of practitioners but will also provide useful training to

²⁵ For the avoidance of doubt, this recommendation does not extend to in-house counsel.

practitioners who are contemplating switching to a different area of practice, thereby enhancing their manoeuvrability. It will further encourage and enable senior practitioners to share their expertise and experience with younger lawyers. The Law Society takes the view that “mandatory legal education has the potential of benefiting the profession by improving standards”.²⁶

2.82 The regulation and administration of compulsory CLE should also come under the supervision of the proposed ILE. A CLE Committee, to be formed under the auspices of the ILE, would have representation from the various stakeholders, especially small and medium-sized firms which may otherwise lack resources to conduct their own in-house training. At the same time, the CLE Committee would accredit and set the standard and overall direction for the CLE programme. Any registered institution, including the two law schools, the SAL, the Law Society, private organisations and law firms, can conduct accredited courses.

(F) Promotion of Singapore as a Legal Education Hub

(I) *Initiatives Pioneered by the NUS Law Faculty*

2.83 In a recent survey published in *The Economist*, it was noted that governments are increasingly using “universities as magnets for talent”.²⁷ The legal fraternity is no exception. The importance of the two law schools as magnets for legal talent was noted by the 2002 report of the Working Group (Legal Services). In that report, the NUS Law Faculty was “encouraged to work more closely with the relevant government agencies (such as the Ministry of Law, the Attorney-General’s Chambers (“AGC”) and the SAL) to provide high-end legal and policy thinking, research and analysis and to further awareness among companies and businesses of intellectual property (IP) and other issues through executive programmes”.²⁸ The report also commented that the NUS Law Faculty “should continue to contribute to the understanding and development of law in other Asian countries”.²⁹

²⁶ See letter from President, Law Society, Mr Philip Jeyaretnam SC to the Committee dated 21 December 2006.

²⁷ See “The Battle for Brain Power”, *The Economist*, October 5th 2006.

²⁸ *Supra*, note 8 at paragraph 17.

²⁹ *Ibid.*

- 2.84 Since those recommendations, the NUS Law Faculty has established the Asian Law Institute (“ASLI”) in March 2003 with a total of 13 founding members.³⁰ It has attracted many scholars from the region as visiting fellows and professors to conduct research, present seminars and teach courses at the faculty. The ASLI has also organised three successful annual conferences.³¹
- 2.85 Apart from its work with the ASLI, the NUS Law Faculty has continued to work with government agencies and statutory boards, such as the Maritime and Port Authority of Singapore in offering a Diploma Programme in Maritime Law.³² In 2006, the NUS Law Faculty signed a Memorandum of Understanding (“MOU”) with Microsoft Singapore. Under this MOU, funding is provided by Microsoft for NUS to conduct a capacity building programme from 2007 on intellectual property for key individuals in South-East Asia. Further, the NUS Law Faculty won a competitive bid to host the World Trade Organization’s (“WTO’s”) Regional Trade Policy Course from 2007 for a period of three years.³³ More notably, the NUS Law Faculty is now offering a new double degree LLM programme with the New York University from 2007.³⁴ While efforts have been made to enhance Singapore’s position as a regional legal education hub, the Committee takes the view that more can be done in this area.

(II) Recommendations

(a) Identifying Core Areas for Excellence

- 2.86 First, areas for excellence such as arbitration, transport law (*e.g.* shipping and aviation law), biotechnology law, intellectual property law and information technology law, *etc.* that will dovetail with the nation’s economic priorities should be identified. In order to excel in these areas, Singapore needs to have a through train of legal talent – from academics to practitioners. As noted in *The Economist* survey,

³⁰ These members include the law faculties or law schools of Chulalongkorn University, University of Hong Kong, University of Malaysia, Peking University, University of Philippines and Seoul National University.

³¹ Other accomplishments of ASLI include the launch of its journal, the Asian Journal of Comparative Law, in May 2006, and a proposed new specialist LLM programme in Asian Legal Studies from August 2007.

³² *Supra*, note 9 at paragraph 36.

³³ This is the WTO’s flagship training programme for key government trade officials from the Asian region: *supra*, note 9 at paragraph 38.

³⁴ See <<http://www.nyulawglobal.org/graduateadmissions/masteroflaws/index.htm>> (Last accessed: 1 September 2007).

“[e]ven universities, which were once bastions of collegial equality, are willing to pay a premium for academic stars – not only because their ideas are so valuable but also because they will attract other high-flyers”.³⁵

2.87 Each of these core areas for excellence should be intensively taught in at least one of the two law schools. Efforts should be made to foster the growth and development of these core areas for excellence by having world-class academics publish papers, participate in international conferences and teach in these areas. While each law school should be given the autonomy to decide the areas it wishes to concentrate on, manpower and resource constraints would dictate that there should be some coordination on the precise specialist focus or areas each law school should concentrate on.

(b) Collaboration with External Agencies

2.88 Both law schools should be encouraged to undertake greater collaboration with statutory boards (*e.g.* the Monetary Authority of Singapore and the Maritime Port Authority) and other commercial and/or international organisations (*e.g.* the WTO) to promote Singapore as a legal education hub through regional and international conferences, symposia or short-term advanced courses (see paragraph 2.90 below).

(c) Team Up with International Legal Institutions

2.89 The law schools should also be encouraged to team up with international legal institutions to run courses in niche areas of law, in order to attract students from the region.³⁶ One such example could be to tie up with an established institution offering postgraduate programmes in arbitration. These courses would probably be run intensively over a short period to make international participation feasible.

³⁵ See “Revenge of the Bell Curve”, *The Economist*, October 5th 2006, where it was noted that:

“Top performers are doing well in every field. Even universities, which were once bastions of collegial equality, are willing to pay a premium for academic stars—not only because their ideas are so valuable but also because they will attract other high-flyers. These huge rewards may offend egalitarians, but they make a lot of economic sense. Stars have a dramatic impact on the fortunes of organisations.”

³⁶ The Committee notes that the NUS Law Faculty has recently won a competitive bid to host the WTO’s Regional Trade Policy Course for a period of three years from 2007. This is the WTO’s flagship training programme for key government trade officers from the Asian region: see *supra*, note 8 at paragraph 38.

(d) Regional Centre for Continuing Legal Education

2.90 To harmonise the recommendations relating to compulsory CLE under the auspices of the ILE and Singapore's efforts at becoming the region's legal education hub, the Committee recommends that the law schools and the proposed ILE collaborate to create a CLE hub for the region by offering courses in:

- (a) the common law tradition for practitioners and in-house counsel from neighbouring civil law countries;
- (b) regional laws of the ASEAN nations for practitioners and in-house counsel who wish to have a working knowledge of the laws and practices in the region;
- (c) specialised areas of practice, *e.g.* courses in dispute resolution and remedies under the common law system, to increase awareness of common law remedies (tort, contract, and especially equity) amongst civil system lawyers; and
- (d) introductory Singapore law for in-house counsel or foreign law firms having business in or representing businesses in Singapore.

2.91 These courses could be run or overseen by the ILE, whether on its own and/or in association with the law schools, international law schools, law firms and regional law bodies and institutions. Efforts should be made to ensure that the courses run by the ILE would not be a duplication of the courses run by the law schools.

3 THE LEGAL PROFESSION

(A) The Criminal/Civil Litigation Bar

(I) *The Present Situation*

(a) The Criminal Litigation Bar

3.1 The criminal Bar has indicated that although there are sufficient numbers of criminal law practitioners at present, renewal of the criminal Bar will be a challenge as young lawyers in Singapore are not attracted to this line of work. An intractable reason for this is that criminal law practice, particularly in practice outside white-collar crimes, is generally not financially attractive. In the face of increasingly more attractive options in other fields, and even overseas, this trend is not surprising.

(b) The Civil Litigation Bar

- 3.2 The legal sector needs to augment the talent pool of lawyers in civil litigation. Currently, the benefits of practising in the civil litigation Bar are perceived as not being commensurate with the efforts and stress associated with civil litigation. The rewards from civil litigation often lag behind the rewards received from other areas of practice such as corporate, banking and finance work. One plausible reason is the relatively low costs recoverable from court taxation (see paragraphs 3.9 to 3.13 below).
- 3.3 The lack of numerical sufficiency in the civil litigation Bar is of particular concern. Local and international businesses in Singapore will always need competent dispute resolution advisers. Further, traditionally, the Bar has been the main source for judicial appointments. In addition to the clear national interest in having a high-calibre Judiciary, a strong Bench is also a prerequisite for any successful positioning of Singapore law as a thought leader, or the promotion of Singapore as a forum for dispute resolution.

(II) *Recommendations*

(a) The Criminal Litigation Bar

- 3.4 There is no quick fix to resolving what is going to be a serious shortage of criminal law practitioners in the future. One way, as recommended above,³⁷ is to increase the number and diversity of law graduates. This may improve the probability of graduates choosing less mainstream career paths, especially among second-career graduates who may place a greater priority on non-financial rewards. In order to attract and retain these lawyers in this area of work, the Committee also recommends that the criminal Bar establish a formal mentorship programme whereby senior practitioners can mentor and encourage young lawyers who want to do some criminal work or to try their hand at it. This may help ease any anxiety young lawyers may have about being involved in criminal defence work. Mentors do not have to come from the same firms as the young lawyers. For instance, lawyers in large firms that do not have significant criminal law practices should be able to tap on the experience of senior members of the criminal Bar as well.

³⁷ *Supra*, paragraph 2.42 above.

- 3.5 Another way, as already implemented, is to engage law firms and their lawyers to volunteer for *pro bono* work on a more committed basis. An extension of this programme might include larger law firms giving out fellowships to one or two associates who will then work exclusively or mainly on *pro bono* cases at the firm for a year, with an understanding that the associate will work for the firm thereafter. This enables those with a passion for *pro bono* work, but who may find it financially difficult to do it, or who wish to also have a corporate career, to achieve their aims without compromise.³⁸ The law schools, in conjunction with law firms or philanthropic organisations, may also set up public interest scholarships for those interested in pursuing such work after graduation. These programmes should help steer a few young lawyers towards public interest work. Finally, as already mentioned above, the law schools could set up programmes which involve law students in *pro bono* work.
- 3.6 Further, the Law Society can consider whether assistance can be given in the formation of criminal law chambers to help defray costs and provide general encouragement to those engaged in or wishing to pursue criminal legal practice.

(b) The Civil Litigation Bar

- 3.7 The problem of the courts awarding low costs can be ameliorated by facilitating a gradual increase of the taxed costs. In time, a successful party should be allowed to recover, from the losing party, the quantum of costs that is reasonably close to the quantum that he has to pay to his lawyer on an indemnity basis. This quantum should be commensurate with what a competent litigator, whose skills and standing are appropriate for the complexity of the case at hand, would charge.
- 3.8 The Committee appreciates that the internal cost guidelines applied by the Supreme Court have not remained static since they were first implemented in May 2003, and have been reviewed by the Supreme Court on a number of occasions. In particular, the guidelines were reviewed in January 2005 upon feedback from the Bar that costs awarded by the court should be more commercially realistic. Thereafter, the guidelines for certain proceedings that used digital transcription services were further revised upwards by 20% in October 2005. More recently in January 2007, the cost guidelines were

³⁸ See, for example, the Sullivan & Cromwell *pro bono* fellowship programme, available at: <<http://www.sullcrom.com/careers/legalrecruiting/probono/>> (Last accessed: 1 September 2007).

revisited after amendments to Order 59 rule 19 of the Rules of Court (Cap. 322, R 5 2006 Rev Ed) (which provides for certificates of more than two counsel to be awarded by the court in suitable cases) came into effect. The revised cost guidelines issued in January 2007 allow for a general increase of about 10% on costs for interlocutory applications, except for mortgage actions under Order 83 of the Rules of Court. Provision has also been made for an uplift of the costs awarded where a certificate of more than two counsel is awarded by the trial judge as well as where a Senior Counsel is involved in the case.

- 3.9 The Committee is also aware that the issue of costs has to be considered in light of other broader policy considerations, such as access to justice, the cost-competitiveness of the litigation Bar, and the need to maintain parity with international firms and arbitration practices. Another factor for consideration is that any cost revisions should take place incrementally so as not to disturb public expectations and commercial certainty.
- 3.10 Nevertheless, the Committee is of the view that the amount of taxed costs awarded by our courts should be re-examined, and the quantum raised. There are three reasons for this.
- 3.11 First, the general feedback from the Bar is that taxed costs awarded by the courts are often on the low side. Over the last 15 years, the operating costs of law firms have increased substantially, and costs awarded to lawyers are not commensurate with the expenditure by the firms on a case.
- 3.12 Second, the low amounts sometimes awarded by the courts make it difficult for law firms to justify the quantum of their solicitor-client or solicitor-and-client bills. While party-and-party costs and party-and-solicitor costs are conceptually distinct, this is not always apparent to clients. This state of affairs has led to a situation where lawyers feel that litigation is not as profitable as corporate work, contributing some way to the decline of lawyers joining the litigation Bar.
- 3.13 Third, the current costs regime has created an ever-increasing gap between the amount of standard costs awarded by the courts, and solicitor-and-client costs charged by the law firm. This in turn has meant that a successful litigant recovers a smaller proportion of his legal costs. This may be unjust to successful defendants, who have been involuntarily dragged into a legal action, and may end up being substantially out of pocket. If this trend continues, it may be unsuitable to regard the award of standard costs as a meaningful

recovery of legal costs. Instead, it will be more appropriate to regard it as a token recovery sum. This is in contrast to the trend in arbitration cases to ensure that the winning party should be reasonably indemnified through his recovery of costs.

- 3.14 Consideration can also be given by the courts to fix an indemnity costs cap for various categories of cases, *e.g.* mortgage proceedings. This discretion, to be exercised by the taxing registrar, can be reviewed on a regular basis. The courts may also consider awarding defendants indemnity costs more readily, since most defendants are embroiled in suits involuntarily. Although it may be argued that high litigation costs could deny access to justice since they give an undue advantage to litigants with deep pockets, the converse is also often true: the potential inability of a party, particularly a defendant to a suit, to recover the costs of litigation may also impede access to justice.

(B) Access to Justice

(I) *The Role of the Profession in Ensuring Access to Justice*

- 3.15 The legal profession plays a crucial role in ensuring that the man-on-the-street has access to justice. The cost of justice has sometimes proven to be prohibitive for individual litigants. Other jurisdictions have tried to resolve this tension through the use of two mechanisms, contingency fee arrangements and class actions.

(II) *Contingency Fee Arrangements*

- 3.16 As Singapore's legal profession has matured and there is increasing difficulty in getting lawyers to represent indigent clients, the Committee considered the issue of whether contingency fees ought to be permitted to facilitate greater access to justice. Indigent litigants, especially those among the sandwich class who do not qualify for legal aid, are finding it increasingly difficult to obtain legal services in order to press civil claims or defend them. In this regard, the Committee took into account feedback from the AGC³⁹ as well as the Law Society.

- 3.17 There are four benefits that will accrue if conditional fee arrangements are permitted.

³⁹ A paper by the Law Reform and Revision Division, AGC, *Proposal to Allow Conditional Fees in Singapore* (2004), was particularly helpful.

- (a) *Increased access to justice:* The option of a conditional fee arrangement means that a plaintiff of moderate means who has a strong case but who does not qualify for legal aid will have a chance to have his day in court. The lawyer who would normally be unwilling to risk non-payment might reason that the higher potential returns justify his taking the risk for not asking for payment to account.
- (b) *Benefits for the legal profession:* Parties in cross-border disputes may be more inclined to choose Singapore courts and Singapore lawyers if the option of contingency fee arrangements is available.
- (c) *Allowing legal aid to be refocused on priority areas:* Allowing contingency fee arrangements will mean that a good number of motor or industrial injury claims can be self-funded rather than through legal aid. Legal aid in Singapore can then be focused on other priority areas, such as family proceedings, as has been the case in the UK.
- (d) *Supporting a pro-business environment:* Contingency fee arrangements may benefit small and medium enterprises, which might otherwise forgo enforcement of their legal rights because of cost restraints. Greater flexibility in arranging fee structures may allow the businesses to better manage risks of litigation in business disputes, translating into lower business costs.

3.18 A common concern is that contingency fee arrangements will result in frivolous and vexatious litigation in Singapore. However, this is not necessarily the case. Another oft-rehearsed argument is that since lawyers working under a conditional fee arrangement will have a direct financial stake in the outcome of the case, they may be tempted to breach their primary duty as officers of the court, or exploit their clients by securing the most profitable deal for themselves at the clients' expense. While this may be partially correct, it should be confronted and corrected by an uncompromisingly efficient and fair disciplinary process.

(III) Class Actions

3.19 Consideration can also be given to allowing class actions in appropriate categories of cases in Singapore. Class actions can be used as a tool to enhance access to justice in instances where a large number of persons have been adversely affected by another's conduct and the total amount at issue is significant but each individual's loss may be

insufficient to make it commercially viable for that individual to attempt to vindicate his rights alone.

- 3.20 Class actions are a feature of several common law jurisdictions such as the US, Canada⁴⁰ and Australia. For example, in Australia, it has been noted that the availability of such a mechanism is “of increasing importance in a global economy in which civil wrongs are often committed on a mass scale by large and powerful entities”.⁴¹ However, the Committee also recognises that the class action procedure may be abused if it is implemented without appropriate limits or controls.
- 3.21 In Hong Kong, the 2004 Final Report of the Hong Kong Chief Justice’s Working Party on Civil Justice Reform recommended that a scheme for multi-party litigation be adopted and that a Working Group be established to study the schemes implemented in comparable jurisdictions with a view to recommending a suitable model for Hong Kong.⁴²

(IV) *Recommendations*

(a) Contingent Fee Arrangements

- 3.22 There are three types of contingency fees:
- (a) *Percentage Contingency Fee Arrangements*: This allows the lawyer concerned to have a share of any compensation won with no direct co-relation to the risk taken or work done.
 - (b) *Speculative Fee Arrangements*: In such arrangements, a fee is only payable to the lawyer concerned if the matter comes to a desired conclusion.
 - (c) *Conditional Fee Arrangements*: The lawyer concerned is paid an additional amount (otherwise often termed an “uplift”) over what has already been paid if the case arrives at a successful conclusion. Such amount is normally pegged as a percentage

⁴⁰ Five provinces/territories in Canada have enacted class action legislation, namely Ontario, British Columbia, Alberta, Quebec, Saskatchewan, Manitoba, New Brunswick and Newfoundland and Labrador.

⁴¹ See Bernard Murphy & Camille Cameron, *Access to Justice and the Evolution of Class Action Litigation in Australia* [2006] MULR 14, <<http://www.austlii.edu.au/au/journals/MULR/2006/14.html>> (Last accessed: 1 September 2007).

⁴² See Final Report of the Chief Justice’s Working Party on Civil Justice Reform at <<http://www.civiljustice.gov.hk/fr/paperhtml/fr297.html>> (Last accessed: 1 September 2007).

of normal fees, but can also be pegged as a percentage of compensation obtained.

- 3.23 Having considered the various options, the Committee is of the view that option (c), specifically that the additional amount paid is pegged as a percentage of normal fees, will address the disadvantages often associated with contingency fee arrangements. In terms of addressing the potential problem of vexatious litigation, conditional fee arrangements are likely to encourage only cases with good prospects of success since the uplift is paid only upon a successful conclusion. Furthermore, the uplift in conditional fee arrangements is not pegged to the amount of damages, but to the value of the work done. Finally, a legislative cap on the success fee in conditional fee arrangements would minimise the risk of abuse by unscrupulous lawyers.
- 3.24 The Committee recommends that the conditional fee arrangement should set out the parties' definition of what will be deemed a "successful outcome" in each case. The arrangement should incorporate a non-waivable requirement that control of the litigation in terms of whether or not to settle should remain with the client alone. Legislative caps on the maximum uplift will also temper the personal interest that lawyers may have in their clients' cases. Court scrutiny of the conditional fee arrangement will also prevent abuse by providing an avenue for aggrieved clients to petition to court for the conditional fee arrangement to be taxed.
- 3.25 The Committee observes that there is a global trend towards allowing contingency fees of varying structures. Conditional fees were introduced in the UK in 1995, with a 2002 UK survey revealing that 71% of the 398 respondent firms used conditional fee agreements. Conditional fees are allowed in Australia, with uplift fees ranging from 25% to 100% in the various states. More recently, New Zealand has also enacted legislation to allow lawyers the right to charge conditional fees.⁴³ The Law Reform Commission of Hong Kong published a consultation paper in September 2005, recommending that existing prohibitions against the use of conditional fees should be lifted for certain types of civil litigation.⁴⁴ On 9 July 2007, the Law Reform Commission of Hong Kong published its final report

⁴³ See the New Zealand Lawyers and Conveyancers Act 2006, which received royal assent on 20 March 2006. A New Zealand Law Commission paper, *Subsidising Litigation*, may be found at <<http://www.austlii.edu.au/nz/other/nzlc/pp/PP43/>> (Last accessed: 1 September 2007).

⁴⁴ The consultation paper is available on the website of the Law Reform Commission of Hong Kong, at <<http://www.hkreform.gov.hk/en/publications/conditional.htm>> (Last accessed: 1 September 2007).

supporting the use of conditional fees to promote access to justice for certain classes of litigants.⁴⁵

3.26 The implementation of a regime for conditional fee arrangements in Singapore will necessitate changes to legislation. These are dealt with in some detail by the AGC paper.⁴⁶ As any necessary legislative amendments are not within the remit of this Committee, this Report will merely note that amendments will have to be effected to section 107(1)(b) of the Legal Profession Act, which prohibits any agreement that contemplates payment of fees only in the event of success of a case, and to rule 37 of the Legal Profession (Professional Conduct) Rules (Cap. 161, R 1, 2000 Rev Ed), which prohibits an advocate and solicitor from entering into any negotiations with a client for either an interest in the subject matter of litigation or remuneration proportionate to the amount which may be recoverable by the client in the proceedings.

3.27 In addition, a framework of conditions applicable to conditional fee agreements will have to be incorporated in legislation. The Committee adopts the recommendations made in the AGC paper,⁴⁷ and suggests that the following key features should be included:

- (a) Use of conditional fee agreements should be confined to civil proceedings, excluding family proceedings. This is currently the case in the UK.
- (b) The client must be fully informed of the nature and operation of the conditional fee agreement.
- (c) The agreement must specify certain prescribed details in writing. These will include the basis on which the success fee is calculated, and circumstances under which the lawyer's fees are payable.

⁴⁵ The Commission acknowledged the effectiveness of conditional fees as a tool for widening access to justice. However, the Commission was of the view that after-the-event insurance, an important component in a successful conditional fee regime, was not likely to be readily affordable in Hong Kong. As such, conditions were not appropriate for the introduction of conditional fees in Hong Kong. The Commission recommended that the way forward would be to set up a Conditional Legal Aid Fund be set up together with a new body to administer the fund and to screen applications for the use of conditional fees. For more details, see <<http://www.hkreform.gov.hk/en/publications/rconditional.htm>> (Last accessed: 1 September 2007).

⁴⁶ *Supra*, note 39.

⁴⁷ *Ibid.*

- (d) Court intervention should be allowed on grounds of unfairness or unreasonableness, at no or minimal cost to the client.
- (e) There should be a legislative cap on the success fee, *e.g.* 100% of the normal fee that the lawyer would have charged in the absence of a conditional fee agreement. This is currently the case in the UK.
- (f) There should be provisions dealing with the impact of success fees on party and party costs, as well as on settlement agreements. One such provision should be that the losing defendant should not ordinarily be made to pay any success fee agreed between the plaintiff and his lawyer except in exceptional circumstances where the court rules that it is equitable to do so. The law should also set out the rights of parties in a situation where a settlement agreement is reached not only on damages but also on costs. The paper recommends that there should be consultation of experienced practitioners before the law is drafted.
- (g) Conditional fee uplifts would only apply to dispute resolution and be subject to a three-year sunset provision. The matter can again be reviewed then.

(b) Class Actions

3.28 At present, in Singapore, representative proceedings are allowed in the Rules of Court.⁴⁸ However, the scope of such representative proceedings is limited. Therefore, the Committee recommends that further consideration be given to the issue of whether Singapore should allow class actions and, if so, to consider a suitable model of class actions to be adopted in Singapore. Class actions can be used as a tool to enhance access to justice.

(C) Specialist Accreditation

(I) *Increasing Specialisation*

3.29 The Committee recognises that legal work has become increasingly specialised in recent years, reflecting the increasing complexity in the wider economic and social environment. This trend is likely to continue. More, however, should be done to further bolster this trend, and also to give recognition to specialists, especially those outside

⁴⁸ See Order 15 rule 12 of the Rules of Court.

litigation, who currently have no equivalent of the Senior Counsel title. A formal system of peer recognition will also have the effect of encouraging lawyers to specialise and excel in their particular areas of law.

(II) Recommendation

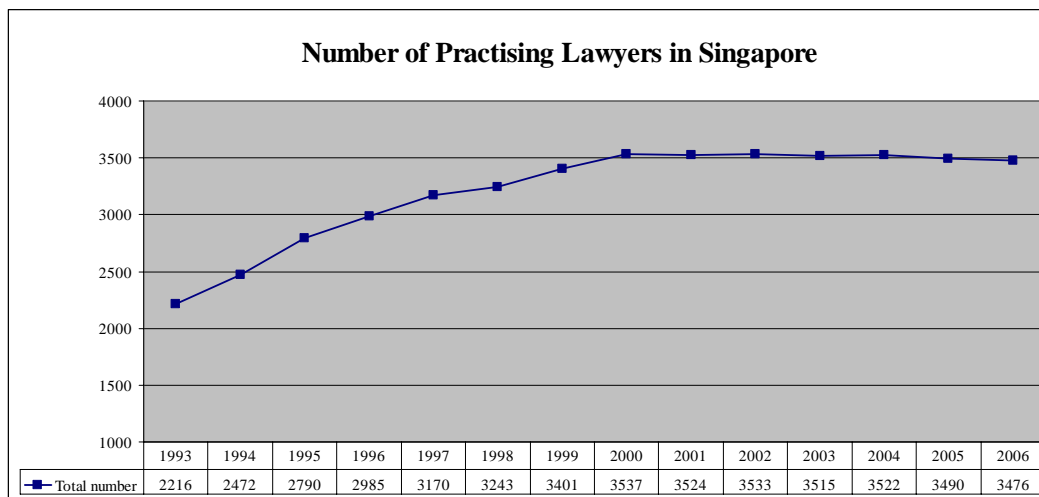
3.30 Looking into the establishment of formal accreditation schemes for particular fields of specialisation similar to that in the medical profession may facilitate the process of specialisation in Singapore. The Committee notes that a report issued by the SAL after the 2005 SAL Strategic Planning Retreat also recommended reviving a study into establishing a specialist accreditation scheme.

3.31 The Committee supports this recommendation, particularly for those who engage in corporate or non-contentious work, where recognition is currently lacking.

(D) Sufficiency Concerns of the Legal Profession

(I) A Decline in the Number of Practising Lawyers

3.32 The number of practising lawyers in Singapore had risen steadily over the last decade or more, until 2001 when the Bar saw its first decline.



Source: *The Law Society of Singapore*

3.33 The focus of the Committee’s deliberations is on the number of practising lawyers in Singapore. While there has been a levelling off in the number of practising lawyers in more recent years, the Committee

is encouraged to note that in recent years, there has been in fact an increase in the number of professionals in the legal fraternity and those providing legal services in Singapore if one takes into account:

- (a) the membership information of the Singapore Corporate Counsel Association (“SCCA”) which stood at around 380 (as at October 2006);⁴⁹
- (b) the membership information of the SAL (see table below); and
- (c) anecdotal evidence that there are approximately 1,500 corporate counsels in Singapore, both foreign and local, who may or may not be members of the SCCA and/or the SAL.

Number of SAL Members from 2002 to 2006

Membership as at	Active members	Members on waiver ⁵⁰	Total members
March 2002	5,010	1,411	6,154
March 2003	5,055	1,565	6,620
March 2004	5,138	1,697	6,835
March 2005	5,231	1,832	7,063
March 2006	5,363	1,867	7,230

Source: Singapore Academy of Law

3.34 The recent levelling trend in the number of practising lawyers is attributable to two factors:

⁴⁹ See e-mail from Ms Angeline Lee, Chairperson of the SCCA, to the Secretariat dated 4 October 2006

⁵⁰ SAL members may opt to waive membership fees if, for a period of not less than six months, they will:

- (a) be continuously absent from Singapore;
- (b) not be ordinarily resident or domiciled in Singapore;
- (c) not be in the profession of law - a member shall be deemed not to be in the profession of law where he does not have in force a practising certificate and is not any of the following:
 - (i) member of SAL Senate;
 - (ii) a legal officer;
 - (iii) a teacher in law at any university or institution of higher learning;
 - (iv) a person employed to perform legal work or the duties of a lawyer by the Government, a statutory body, a corporation or unincorporated association; or
 - (v) such other person who in the opinion of the Executive Committee of the SAL is carrying on activities so closely connected to the law or the profession of law as to be regarded as being in the profession of law; or
- (d) not be gainfully employed.

- (a) the insufficiency of the current supply of law graduates yielded locally to meet the demands of the strong growth in the domestic legal services sector; and
- (b) the inability of the legal profession to retain a significant number of lawyers with under seven years of post-qualification experience.

3.35 Because the former factor has to some extent now been addressed by the opening of a second law school, the Committee is concerned with the latter reason. The statistics show that the number of young lawyers (those with less than seven years in practice based on their date of admission) has dropped by one-third from 2001 to 2006 even as the NUS Law Faculty has been producing an annual cohort of about 200 since 2001, up from the previous intake of 150 students a year since 1993.

Years in Practice Based on Date of Admission			
Year	< 7	7 to 12	> 12
2001	1,537	735	1,252
2002	1,490	682	1,361
2003	1,381	724	1,410
2004	1,272	766	1,484
2005	1,111	801	1,578
2006	1,004	787	1,685

Source: The Law Society of Singapore

3.36 Likewise, a look at the profile of lawyers who did not renew their practising certificates for the practising year 2005/2006 shows that more than half this number were lawyers with less than seven years of post-qualification experience.

Profile of Lawyers Who Did Not Renew Their Practising Certificates in Practising Year 2005/2006							
Years in practice based on date of admission	Total		Male		Female		
Less than 7	188	58%	88	57%	100	58%	
7 to 12	71	22%	29	19%	42	25%	
More than 12	66	20%	37	24%	29	17%	

Source: The Law Society of Singapore, data as at 5 May 2005

3.37 In viewing the number of lawyers who did not renew their practising certificates in the year 2006/2007, a similar trend is discernable.

Profile of Lawyers Who Did Not Renew Their Practising Certificates in Practising Year 2006/2007						
Years in practice based on date of admission	Total		Male		Female	
Less than 7	157	53%	86	53%	71	52%
7 to 12	67	23%	27	17%	40	29%
More than 12	73	25%	48	30%	25	18%

Source: The Law Society of Singapore, data as at 5 Sept 2006

3.38 The attrition rate is much higher in young lawyers with less than seven years post-qualification experience compared with the other two age profiles. This poses a real problem for the legal profession. It is widely acknowledged anecdotally that the impact of young lawyers leaving the profession is felt in the present shortage of experienced mid- to senior-level associates. These statistics confirm this. If this trend continues, there will be a shortage of experienced lawyers in the next 15 years.

(a) Reasons for the High Attrition Rate of Young Lawyers

3.39 Various local studies have been carried out to identify the factors which cause lawyers, particularly young lawyers, to leave the profession.⁵¹ This Report will only set out the key findings of these studies.

3.40 In 1998, the Law Society carried out an in-house survey of its members.⁵² Amongst other things, the survey revealed that 55.2% of respondents found legal work highly stressful, with 71.4% working between five and a half days to seven days per week.

3.41 In 2001, the Law Society conducted another survey to find out why increasing numbers of lawyers were leaving practice. The Law Society surveyed 31 ex-lawyers who had left practice and 89 managing partners and proprietors of law firms. 71% of respondents to the Law Society survey cited “stress due to pace of work and workload” as the most significant challenge faced in practice. Other factors cited

⁵¹ Samuel Ang, “Flight of the Legal Eagles: A study on the attrition of young lawyers from the legal profession in Singapore”, *Singapore Law Gazette* (May 2006).

⁵² Palakrishnan, “Lawyers Leaving Practice”, *Singapore Law Gazette* (May 1998).

included “lack of social life” and “difficulty in balancing work and family life”.

Law Society Survey 2001 – Significant Challenges Faced in Practice	
Stress due to pace of work/workload	71%
Difficult client expectations/demands	55%
Insufficient/declining income	29%
Doubts about the future of law practice	29%
Boredom, insufficient challenge	23%
Growing complexity in legal practice	23%
Difficulty dealing with changes in law and practice	13%

3.42 The Law Society surveys were followed shortly by a Ministry of Law Census of the Legal Industry and Profession in November 2001. The census covered 99% of Singapore law firms, 75% of all lawyers and 38% of former lawyers. The outcome of the census affirmed the findings of the Law Society. It was observed that significant numbers of young lawyers were leaving the profession due to discontent with long working hours, heavy workload and incommensurate remuneration. While some left the profession altogether, the majority of lawyers stayed in the wider legal services industry as in-house legal counsel or as lawyers in offshore or overseas law firms.

Census of the Legal Industry and Profession – Reasons Cited for Ceasing Practice			
Reasons for ceasing practice	< 7 years in practice	7 to 12 years in practice	> 12 years in practice
Heavy workload and long working hours	60%	45%	32%
Remuneration not commensurate with workload	49%	50%	28%
To pursue other interests, aspirations or careers	39%	32%	32%
Stress in dealing with clients	39%	32%	32%
Pace of litigation	35%	29%	20%

3.43 The 1998 Law Society survey also revealed that 43.3% of lawyers entered the legal profession for the “love of the law”, 14.8% were drawn to the profession because of a desire for public service, and 30.5% were motivated by the prestige of being a lawyer. This probably reflects the current position as well. What is not clear is whether there is a significantly higher attrition rate among those who were attracted to the profession mainly because of the “prestige” factor.

(b) Where are Young Lawyers Going?

3.44 The 2001 Ministry of Law census revealed that a majority of lawyers who left practice with law firms chose to remain in law-related positions.

Census of the Legal Industry and Profession - Occupations of Ex-Lawyers		
Present occupation of ex-lawyers	Males	Females
Law-related position	53%	55%
Position unrelated to law	34%	21%
Not working	13%	25%

3.45 Interestingly, junior lawyers who left the profession found jobs with higher pay and lower average working hours. Is the profession under-compensating younger lawyers? Is there a confluence of other considerations that diminishes the importance of compensation?

Census of the Legal Industry and Profession - Remuneration and Working Hours of Ex-Lawyers			
Remuneration and Working Hours of Ex-Lawyers	< 7 years in practice	7 to 12 years in practice	> 12 years in practice
Median gross annual remuneration as a lawyer	\$54,000	\$101,000	\$120,000
Median gross annual remuneration at present occupation	\$75,400	\$99,000	\$94,200
Average working hours per week while in practice	60.1h	52.6h	49.5h
Average working hours per week in present occupation	49.3h	45.2h	51.3h

- 3.46 According to a recent article published in the *Singapore Law Gazette* in September 2006,⁵³ many young lawyers who leave the profession take up positions as in-house legal counsel, reflecting an increasing demand by multinational companies and government-linked companies. To the extent that this is a reflection of a demand for legally trained individuals, this demand should as far as possible be met with supply. Young lawyers who move in-house are not lost to the profession but continue to play a vital role in the wider legal services industry.
- 3.47 Other young lawyers are attracted by the higher salaries of foreign law firms. These firms are presently not permitted to practise Singapore law. This ought to be addressed so that local young lawyers will not be lost to the Singapore legal profession when they are able to stay in Singapore and practise Singapore law, albeit with a foreign law firm.
- 3.48 There are yet others who have left the legal sector to do something completely unrelated to law. It may be said that perhaps this group should be given particular attention as their retention would increase the supply of lawyers. However, it must be accepted that a certain percentage of the attrition rate consists of (a) young lawyers who realise that the legal profession is not for them; (b) young lawyers who have always seen the legal profession as a stepping stone or temporary vocation until they find what they really wanted to do; or (c) others who leave Singapore altogether, preferring to live in another country.

(c) **A World-Wide Problem**

- 3.49 The loss of lawyers from the legal profession is not unique to Singapore. Many other jurisdictions also face a significant attrition of young lawyers. For example, in the UK, a survey conducted by the City of London Law Society (“CLLS”) revealed that one in three London assistant solicitors intended to leave the legal profession due to the long hours, unacceptable levels of stress and unrealistic billing targets.⁵⁴ The Boston Bar Association found from one of its surveys involving 154 firms and 10,000 associates that 10% left within one year, 43% within three years, 67% within five years and 75% within

⁵³ Cheng Shing Chow, “Retention of Young Lawyers,” *Singapore Law Gazette* (September 2003).

⁵⁴ “City Assistants Blighted by Stress” *Legal Week* (7 November 2002); cited in Samuel Ang, “Flight of the Legal Eagles”, *supra* note 51.

seven years.⁵⁵ In Australia, 40% of law graduates left the profession within five years of admission citing excessively long hours, stress arising from too much work, lack of recognition and appreciation, as well as lack of family and social life.⁵⁶

- 3.50 It is equally important to recognise that the legal profession is not facing this problem alone. The accounting profession in Singapore has faced the same vicissitudes for a number of years, with accounting firms now recruiting a significant proportion of back-room staff without local accounting degrees. From their dialogues with foreign law firms, Committee members were also apprised of the migration of lawyers from their firms to investment banks.

(d) The Cost of Losing Lawyers

- 3.51 A report was issued by the Project for Attorney Retention in the US in August 2001,⁵⁷ which studied the “balanced hours” programmes (that is, programmes allowing lawyers to work part-time) implemented by law and accounting firms in Washington. The report notes that by conservative estimates, it costs a US law firm USD200,000 to replace a second-year associate when he leaves the firm. These costs of attrition include lost productivity; costs of training provided by the firm; costs of lost knowledge, skills, clients and contacts that the departing person takes with him or her; administrative costs; and the effect of high attrition on the morale and productivity of the lawyers who remain with the law firm. In addition, the firm faces new hire costs consisting of recruiting expenses, including advertisement expenses; head-hunter fees and/or referral bonuses; hiring or signing bonuses; moving expenses; interviewing time spent by lawyers at the firm; training costs; and lost productivity costs of a lawyer inexperienced/unfamiliar with the firm’s clients. Another significant cost of attrition is the discontent of clients caused by the constant turnover in attorneys who represent them.

⁵⁵ *Facing the Grail: Confronting the Cost of Work-Family Imbalance*, Boston Bar Association Taskforce report (1999) in “Boston’s Newest Law Firm Challenges Traditional Associate Billing Model”, *Business Wire* (2 June 2003); cited in Samuel Ang, “Flight of the Legal Eagles”, *supra* note 51.

⁵⁶ *Guide to Thriving and Surviving: Young Lawyers’ Launch*, Media release by Law Institute of Victoria (9 August 2001); cited in Samuel Ang, “Flight of the Legal Eagles”, *supra* note 51.

⁵⁷ *Balanced Hours: Effective Part-Time Policies for Washington Law Firms* (August 2001) published by the Project for Attorney Retention, part of the Program on Gender, Work & Family, American University, Washington College of Law, available online at <www.uchastings.edu/site_files/WLL/BalancedHours2nd.pdf> (Last accessed: 1 September 2007).

(II) Recommendations of the Third Committee on the Supply of Lawyers

3.52 The Third Committee on the Supply of Lawyers issued its report in 2006, recommending an increase in the supply of fresh graduates.

3.53 Among other proposals, it suggested as an interim measure to alleviate the shortage of lawyers, that overseas Singaporean law graduates holding Second Class (Lower Division), Honours law degrees or its equivalent from an Overseas Scheduled University be allowed to qualify for Singapore law practice subject to certain conditions (“Overseas Graduates Interim Measure”). These were that they:

- (a) have three years of legal work experience either in a FLF or SLF, or as Assistant Public Prosecutors or legal executives in the Singapore Attorney-General’s Chambers;
- (b) are qualified as solicitors of either Hong Kong or England & Wales; and
- (c) have completed and passed the Diploma in Singapore law course and the PLC conducted by the BLE.

Todate, only 18 applicants have been admitted under this programme. Four other applicants could not satisfy the criteria. The Committee has received feedback that the waiting period of three years is somewhat excessive. Given the length of the waiting period, and the attendant loss of seniority, most qualifying graduates have not pursued this route.

3.54 In the section to follow, the Committee seeks to complement those recommendations by considering the reasons for a lack of sufficiency of the legal profession within specific sectors, and by suggesting possible solutions specific to each sector. It should be observed at the outset that there is currently a lack of reliable data on the different sectors of the legal profession as identified by this Report, and that the different sectors ought to be tracked in the future so that government policies may be formulated with more exacting precision.

(III) Recommendations

(a) Encouraging Work-Life Balance

3.55 The Committee recommends that serious thought should be given to measures that will encourage greater work-life balance. The Committee recommends that law firms re-examine their policies so as

to implement effective work-life balance for their associates along the lines of the Ministry of Manpower's Work-Life initiative that has gained currency since 2000. The initiative introduced a fund in August 2004 to support work-life measures in companies.⁵⁸ Some law firms have already applied for this fund and others should be similarly encouraged. Especially relevant to law firms would be the opportunity for lawyers – particularly those with families – to be able to opt for a different partnership track in exchange for more flexible working hours or work-from-home arrangements. Sabbaticals may also be awarded to lawyers who have worked a certain number of years for them to re-charge themselves or engage in other work or assignments that will fulfil their personal ambition. While the Committee is not in favour of mandating such arrangements, the Law Society could conduct surveys of law firms and associates on the quality of life, and give recognition to and even perhaps profile firms committed to ensuring work-life balance.

(b) Pro Bono Work

3.56 The Committee also recommends that measures should be taken to foster idealism and community bonding amongst lawyers, in particular, through the promotion of *pro bono* work. While many young lawyers join the profession to pursue a career that challenges them intellectually through exposure to complex litigation and corporate deals, they also see the legal profession as a positive component of society that is integral to the maintenance of a fair and just legal system. Many young lawyers have a desire to help society through the practice of law. This idealism should not be depleted through intense and stressful work hours with little or no time to contribute to society.

3.57 *Pro bono* work consistently raises the morale of young lawyers as it fulfils their idealism and helps them to view their contribution to society as a lawyer in a meaningful and tangible way. It also helps to collaterally improve the standing of the profession, thus encouraging others to join the profession.

3.58 The Committee recommends that participation in *pro bono* work and legal clinics should be encouraged amongst young lawyers. There currently exist avenues, like the Criminal Legal Aid Scheme ("CLAS") and the Association of Women for Action and Research ("AWARE"), for lawyers to make a difference in the community. The commitment

⁵⁸ See <<http://mom.gov.sg/work-life>> (Last accessed: 1 September 2007).

of each law firm to every lawyer doing a set number of hours of *pro bono* work a year will help to re-focus the profession to the importance of such activity.

(c) **Encouraging Lawyers to Return**

3.59 There are many lawyers of not inconsequential seniority who have decided to leave the profession to look after new families. However, these lawyers may wish to rejoin the profession when their children have matured and no longer require full-time care. This is an important source of recruitment for the legal profession. These lawyers have already acquired the necessary skill sets. Returning lawyers should be encouraged to return to practice, whether on a full-time, flexi-hours or part-time basis.

3.60 The Committee recommends that the Law Society sets up a committee to assist in the re-acclimatisation of these lawyers. Programmes may include informational sessions to bring such lawyers up to speed on the latest developments in core areas, such as civil procedure, and perhaps, if necessary, to assist them in finding suitable firms.

3.61 Such re-acclimatisation schemes should also be extended to lawyers who have joined offshore firms that have sent them overseas to practise, or those who have practised overseas for a substantial period of time. In particular, lawyers who have had the full benefit of the foreign law firm experience, rising to become partners and developing a practice for their firms, would be valuable assets to attract back to Singapore.

(d) **Increasing the Supply of Lawyers**

3.62 The Committee now recommends that the period of three years in respect of the Overseas Graduates Interim Measure (see paragraph 3.53 above) be reduced to two years, *inter alia* for the following reasons:

- (a) Solicitors from England & Wales who are currently exempted only have to complete a two-year training contract before they qualify as solicitors
- (b) The nature of legal work in law firms is almost invariably intensive and a period of two years is adequate to meet the objective
- (c) The shorter waiting period may encourage a greater number of qualifying graduates to enter the profession.

The Committee also recommends that suitable working experience in foreign law firms outside Singapore for a similar period be also considered as a relevant qualifying criterion.

- 3.63 The Committee further recommends that the problem of attrition of lawyers be addressed by increasing the supply of lawyers in Singapore. This can be achieved in two main ways. First, the intake of foreign law graduates can be increased by means of the two/three-year graduate LLB programme (see paragraph 2.47 above). Second, the authorities could consider recognising degrees from a greater number of good foreign law schools. This will also reduce the pressure and/or need for the local universities to expand too rapidly.

4 MAINTAINING AND ENFORCING ETHICAL STANDARDS IN THE PROFESSION FAIRLY AND PROMPTLY

(A) Delays in the Disciplinary Process

(I) *Current Problems with the Disciplinary Process*

- 4.1 An integral part of enforcing ethical standards in the profession is the disciplinary process. Recently, however, there has been some unhappiness voiced by the public about the disciplinary process. A recurring complaint is that the process is slow.
- 4.2 This perception is not entirely misplaced. The average time taken by the Disciplinary Committees to complete their cases has doubled from 7.5 months in 2002 to 15.4 months in 2006 and the total caseload currently exceeds the number of available Disciplinary Committee Chairmen in 2005.⁵⁹

⁵⁹ The statistics on Disciplinary Committee cases as provided by the Disciplinary Committee Secretariat are as follows:

Year	Average Time taken by Disciplinary Committee to complete cases*
2002	7.5 months
2003	7.0 months
2004	8.0 months
2005	9.8 months
2006 (as at 13 Nov 2006)	15.4 months

- 4.3 Part of this reason is that the current composition of a Disciplinary Committee comprises two lawyers from private practice (including the chairperson), one officer from the Legal Service and one lay person. This mixture of members often makes it difficult for the Disciplinary Committee to schedule early hearings. This unquestionably contributes significantly to the present delay.

(II) Stakeholders' Views

- 4.4 To expedite Disciplinary Committee hearings, careful consideration has been given to a proposal to amend the Legal Profession Act to defer any judicial review of a Disciplinary Committee proceeding until the Disciplinary Committee has completed hearing and investigating any matter referred to it, recorded its findings in relation to the facts of the case, and made its determination and recommendations in its report. Any legal and/or factual issues relating to and arising out of each Disciplinary Committee proceeding should only be referred to the Court of Three Judges by the Law Society of Singapore Council ("Law Society Council"), the lawyer complained against or the complainant after the Disciplinary Committee report has been released. The new amendment ought to clearly spell out that the Court of Three Judges will be able to hear and determine any issues that can now be brought by way of judicial review from a Disciplinary Committee's decision.
- 4.5 In addition, it has been suggested that in order to ensure prompter attention to complaints without compromising fairness in the Disciplinary Committee process, a single retired judge should be appointed to preside over each Disciplinary Committee. Some reservations over this proposal were expressed by stakeholders. One stakeholder pointed out that, with the exception of one Disciplinary Committee case, the few cases (three others) which came up for judicial review did not have anything to do with the Disciplinary

* Refers to cases whose Disciplinary Committee reports are completed in the stated year. These cases may have been filed in a previous year.

This delay is partly attributable to the sudden increase in the inflow of new cases in **2004** (16 cases) and **2005** (25 cases). Although more Disciplinary Committee Chairmen were appointed to deal with the influx, the total caseload still exceeded the number of Disciplinary Committee Chairmen in **2005** and **2006**. This caused the average disposal time of the Disciplinary Committees to rise from between 7.5 and 8.2 months in the period from 2002 to 2004, to 9.8 and 15.4 months respectively in 2005 and 2006. It should be pointed out that the disposal time above is in relation to cases which were completed in the stated year (*i.e.* they could have been filed in previous years). The timeframes are not calculated based on the year in which the cases were filed for this would have resulted in some inaccuracy, as some cases from 2004 to 2006 remain outstanding and averages for those years can only be based on projections.

Committee but arose from a variety of reasons such as the admissibility of evidence presented by the prosecution, the alleged lack of notice by an Inquiry Committee of fresh information inquired into and alleged delay in prosecution. The stakeholder took the position that the Disciplinary Committee should continue to be composed of two lawyers from private practice (including the Chairman) and one officer from the Legal Service to preserve the important principle that when formal investigation of a matter takes place, there is judgment by one's peers with the presence of an independent party, namely, the officer from the Legal Service officer. However, the stakeholder agreed that the lay person should be removed from the Disciplinary Committee.

- 4.6 Yet another stakeholder pointed out that the lay person was included by the Government in 1986 (despite strong opposition from the Law Society Council) "as an observer with no vote in decision-making" but merely "to see that justice is being done" and "to improve the public perception of the disciplinary process and to dispel any cynicism about lawyers protecting their own kind" (see the Legal Profession (Amendment) Bill as reported from Select Committee, Volume No: 48; Sitting Date: 27 October 1986). As such, any proposal to remove the lay person may not go down well with the consumers of legal services. The stakeholder further noted that it seemed odd that an Inquiry Committee, which performs a less important function, should comprise four persons, whereas the proposed Disciplinary Tribunal, which discharges a much more onerous duty, should consist of only one person.

(III) Recommendations

(a) Composition of the Disciplinary Committee

- 4.7 Notwithstanding the reservations and observations expressed by the various stakeholders, the Committee agrees with the objectives of the proposals to address more efficiently the disposal of cases at the Disciplinary Committee stage. It must also be borne in mind that a not inconsiderable number of lawyers are acquitted of any misconduct at the Disciplinary Committee stage. For them, as well, justice is denied when hearings are unreasonably delayed.
- 4.8 Accordingly, the Committee recommends the replacement of the current composition of Disciplinary Committees with a Disciplinary Tribunal to be presided by an advocate and solicitor who is a Senior Counsel or who has at any time held office as a Judge or Judicial

Commissioner of the Supreme Court. Whenever possible, preference should be given to the appointment of a retired Judge or former Judicial Commissioner of the Supreme Court. The Disciplinary Tribunal will be appointed by the Chief Justice.

(b) Time-Lines

4.9 To provide guidance to each Review Committee, Inquiry Committee and Disciplinary Tribunal as to the maximum amount of time that each should take to decide any matter, the Committee recommends strict adherence to stipulated timelines. These include:

- (a) Upon the receipt of a complaint, the Chairman or Deputy Chairman of the Inquiry Panel should constitute a Review Committee within two weeks of the referral of a complaint against an advocate and solicitor to the Chairman by the Law Society Council.
- (b) The Review Committee should complete its duties within four weeks of its constitution.
- (c) The Chairman or Deputy Chairman of the Inquiry Panel should convene an Inquiry Committee within three weeks of a referral by a Review Committee.
- (d) The Law Society Council should make its determination under section 87(1) of the Legal Profession Act within one month of the receipt of the Inquiry Committee's Report.
- (e) Where the Law Society Council has determined under section 87(1)(d) of the Legal Profession Act that a matter be referred back to an Inquiry Committee for reconsideration or a further report, the Inquiry Committee should submit its response or further report within four weeks, and the Law Society Council should make a determination under section 87(1)(a), (b) or (c) of the Legal Profession Act within one month of the receipt of the response or further report.
- (f) The Law Society Council should apply to the Chief Justice to appoint a Disciplinary Tribunal within four weeks after it has determined that there should be a formal investigation.
- (g) Where a Disciplinary Tribunal has determined that cause of sufficient gravity for disciplinary action exists, the Law Society should make an application under section 98 of the Legal Profession Act within one month from the date of the determination of the Disciplinary Tribunal.

- (h) Where a Judge has made an order under section 97(3)(b) of the Legal Profession Act directing an applicant under section 97 or the Law Society Council to make an application under section 98, the applicant or the Society, as the case may be, should be required to make the application under section 98 within one month from the date of the order.

(B) Initiating the Disciplinary Process

(I) *Concerns about Veracity of Complaints*

4.10 While genuine complaints should be taken seriously, the public interest is not served when lawyers are hauled through the disciplinary process as a result of vexatious or baseless complaints by clients with ulterior motives or driven by malice or misplaced unhappiness. Such complaints also cause unnecessary wastage of resources in sifting and investigating these unmeritorious claims.

4.11 However, there is currently no adequate safeguard against such abuse of the disciplinary process.

(II) *Recommendations*

(a) Introducing Statutory Declarations

4.12 It is recommended that, as in the case of complaints against doctors and public accountants, complaints against advocates and solicitors must be made in writing and be supported by a statutory declaration affirming or swearing the truth of the particulars of the complaint, except if it is made by a public officer. Where a complaint is not so supported, the Law Society Council may reject the complaint without referring it to the Chairman of the Inquiry Panel.⁶⁰ Precedents for the requirement that a complaint should be supported by a statutory declaration may be found in section 40(1) of the Accountants Act (Cap. 2, 2004 Rev Ed) and section 39(4) of the Medical Registration Act (Cap. 174, 2005 Rev Ed).

4.13 Every person who makes a complaint against an advocate and solicitor to the Law Society Council should also be required to state whether, to his knowledge, there are other complaints against the

⁶⁰ A consequential amendment would have to be made to section 85(17) of the Legal Profession Act, which provides for a complaint to be supported by a statutory declaration or affidavit only if this is required by the Chairman of the Inquiry Panel or of an Inquiry Committee.

advocate and solicitor, whether by himself or any other person, which arise from the same set of facts.

- 4.14 The new requirements for a complaint should not apply to any information regarding the conduct of a solicitor that is referred to the Law Society by a Judge of the Supreme Court or the Attorney-General under section 85(3) of the Legal Profession Act. Nor should they apply to any information touching upon the conduct of a solicitor which is referred by the Law Society Council, on its own motion, to the Chairman of the Inquiry Panel under section 85(2).

(b) Penalties for Frivolous Complaints

- 4.15 To deter frivolous complaints, the maximum amount that the Inquiry Committee may require a complainant to deposit should be increased to \$1,000 (instead of the present \$500).
- 4.16 In addition, an Inquiry Committee or Disciplinary Tribunal should be empowered to order complainants to pay the costs of the proceedings before them if the complaints are found to be frivolous or vexatious, even if the amount of those costs and expenses exceeds the amount of any sum deposited. This power must, however, be used sparingly. The costs awarded may be fixed by the Inquiry Committee or Disciplinary Tribunal, as the case may be, or taxed by the Registrar of the Supreme Court or the Registrar of the Subordinate Courts. The person awarded such costs and expenses may sue for and recover the costs and expenses that remain unpaid as if they were a debt due to him.

(C) Managing the Disciplinary Process

(I) *Current Difficulties*

(a) The Inquiry Committee

- 4.17 Currently, when the Law Society receives a complaint against an advocate and solicitor, the Law Society Council must refer the complaint to the Chairman of the Inquiry Panel if the Law Society Council determines that the complaint relates to the conduct of the advocate and solicitor.⁶¹ The Chairman of the Inquiry Panel will then

⁶¹ See section 85(1) of the Legal Profession Act and *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR 145 at paragraph 19.

constitute a Review Committee to review the complaint.⁶² On completion of the review, the Review Committee will direct the Law Society Council to dismiss the matter or refer the matter back to the Chairman of the Inquiry Panel.⁶³ The Review Committee will only direct the Law Society Council to dismiss the matter if it is unanimously of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance.⁶⁴ Upon receiving the direction of the Review Committee, the Law Society Council will give effect to the direction and inform the complainant and the advocate and solicitor accordingly.⁶⁵ If the complaint is referred back to the Chairman of the Inquiry Panel, the Chairman will constitute an Inquiry Committee.⁶⁶

- 4.18 While this process is necessary to sieve the wheat from the chaff, it is also necessary to streamline and improve upon the process so as to make optimal use of manpower and also to increase the pool of persons eligible to participate in the process in order to facilitate a more efficient determination.

(b) Judicial Review

- 4.19 The availability of judicial review, even before a Disciplinary Committee has completed its work, has the potential to stall the disciplinary process, especially if there is a subsequent appeal from the decision of the High Court. The Committee finds that this is an unhelpful and unnecessary expenditure of judicial and human resources.

(c) Other Aspects of the Process

- 4.20 In addition to streamlining the disciplinary process, the Committee finds that other aspects of the process may be further improved. First, under the current statutory regime, the Law Society Council has the power to order an advocate and solicitor to pay a penalty under sections 88(1) and 94(3) of the Legal Profession Act in the amount of \$5,000 and \$10,000 respectively. Moreover, the Court of Three Judges only has the power to suspend or strike out a lawyer if he is found guilty of misconduct. The Committee believes that the present

⁶² See section 85(6) of the Legal Profession Act.

⁶³ See section 85(8) of the Legal Profession Act.

⁶⁴ See section 85(8)(a) of the Legal Profession Act.

⁶⁵ See section 85(9) of the Legal Profession Act.

⁶⁶ See section 85(10) of the Legal Profession Act.

sentencing options available to the Law Society Council and the Court of Three Judges are unduly restrictive and may result in disproportionate punishment in certain circumstances.

- 4.21 Secondly, in relation to legal officers and non-practising solicitors, the current maximum penalty of \$5,000 should be increased to serve as a stronger deterrence (in addition to the existing punitive orders under section 82A(12) of the Legal Profession Act) if necessary.
- 4.22 Thirdly, the Committee finds that the current regime does not sufficiently protect the public from lawyers who may be suffering from a physical or mental disease that may impair their ability to practise competently. For instance, while section 25A(1) of the Legal Profession Act provides several circumstances in which the Attorney-General or the Law Society Council may request the Registrar of the Supreme Court to refuse the application for a practising certificate or to issue a practising certificate subject to such conditions as the Attorney-General or the Law Society Council may specify, no explicit reference is made in relation to the mental impairment of a lawyer.

(II) Recommendations

(a) Streamlining the Inquiry Committee

- 4.23 The Committee proposes that the disciplinary process be streamlined by allowing (though not requiring) the members of a Review Committee who did not dismiss a complaint to be appointed to serve on the Inquiry Committee for that complaint. In certain cases, this will enhance expediency as it will allow two members of the Inquiry Committee who are already familiar with the substance of the complaint and the reasoning of the Review Committee to decide whether or not the complaint is frivolous, vexatious, misconceived or lacking in substance. Section 85(11) of the Legal Profession Act should be amended to provide that a member of the Review Committee who has reviewed a matter concerning an advocate and solicitor will not be disqualified from acting as a member of an Inquiry Committee inquiring into the same matter.
- 4.24 The Committee also recommends that when the Inquiry Committee refers either a complaint or a piece of information for formal investigation, it ought to be required in its report to the Law Society Council to recommend the charge(s) which, in its opinion, should be preferred against the lawyer. This should be considered by the Law Society Council and can be employed by the prosecutor appointed by

the Law Society Council. The Inquiry Committee is well placed to perform this role with its sufficient familiarity with the facts and the evidence before it.

- 4.25 Although section 86(12)(a) of the Legal Profession Act empowers an Inquiry Committee to appoint any person to make, or assist in making, preliminary inquiries, this power to appoint an “investigator” is seldom, if ever, exercised. The Committee recommends that Inquiry Committees consider appointing investigators to assist them in making preliminary inquiries. Such investigators should be appointed from a panel of lawyers who are prepared to volunteer their services for such work. An investigator must be a qualified person under the Legal Profession Act, as his responsibilities will require knowledge and application of the law relating to advocates and solicitors. An investigator appointed to make preliminary inquiries relating to a particular complaint should be of the appropriate standing (having regard to the standing of the respondent to that complaint) and should have the requisite experience to investigate the matter. The Legal Profession Act should be amended to vest in an investigator all powers of investigation currently vested in Inquiry Committees. Specifically, investigators should be expressly vested with the power to require the complainant, the respondent and their witnesses to provide written information (including information verified by affidavit or statutory declaration)⁶⁷ and to attend before them for the recording of statements.
- 4.26 An investigator should complete his investigations and submit his findings to the Inquiry Committee that appointed him within a specified time frame. With the aid of the findings from an investigator, an Inquiry Committee would be better equipped to assess a complaint. This will in turn reduce the amount of time required to convene meetings and shorten the time required for the disposal of the matter by the Inquiry Committee.
- 4.27 The Committee is cognisant of the fact that there may occasionally be difficulty in appointing lay persons to serve as members in the Inquiry Panel due to their work schedules. It is also advisable to continue to have the involvement of lay persons in the initial stage of processing a complaint in order to give more transparency to the disciplinary process. The Committee therefore recommends that the panel could encompass active citizens who may not be professionals, such as

⁶⁷ In New South Wales, Australia, such a power is exercisable by an investigator under section 660(1)(b) of the New South Wales Legal Profession Act 2004.

school principals, vice-principals, retired professionals/principals and other responsible citizens and community leaders who may have the time to participate in Inquiry Committee hearings.

- 4.28 To the extent that delays in the commencement of inquiries by Inquiry Committees are caused by a shortage of senior advocates and solicitors who are able to serve on Inquiry Committees at short notice, the Committee proposes that section 84(2) of the Legal Profession Act be amended to reduce the eligibility requirement for an advocate and solicitor to be appointed as a member of the Inquiry Panel from “not less than 12 years’ standing” to “not less than 7 years’ standing”. However, the Chairman of an Inquiry Committee or a Review Committee, or the Chairman or Deputy Chairman of the Inquiry Panel, must continue to be an advocate and solicitor of not less than 12 years’ standing.
- 4.29 The Committee recommends that the Chief Justice appoint a Deputy Chairman to assist the Chairman in the work of the Inquiry Panel, in particular, when the Chairman is out of Singapore. The role of the Deputy Chairman would be aimed more at providing support for the present Chairman of the Inquiry Panel. However, he should also have the powers of the Chairman in the event that the Chairman is unavailable. This will help prevent the work of the Chairman of the Inquiry Panel from being held up.
- 4.30 Section 98 of the Legal Profession Act requires that an application for a solicitor to be struck off the roll or suspended from practice or censured be made “by originating summons *ex parte* for an order calling upon the solicitor to show cause”. Such an application will first be made to a Judge of the High Court. When the order to show cause has been granted, the Law Society will apply by summons in the same proceedings for a final order before the Court of Three Judges. The Committee recommends that the requirement for the first *ex parte* application be abolished. Once a Disciplinary Tribunal has determined that cause of sufficient gravity for disciplinary action exists under section 83 of the Legal Profession Act, there is sufficient basis for the Law Society to apply directly to the Court of Three Judges for an order against the advocate and solicitor concerned. There is no real need for a first *ex parte* application to sieve out unmeritorious applications.

(b) Streamlining Judicial Review

4.31 The Committee recommends that judicial review of any act done or any decision made by a Disciplinary Tribunal be deferred until after the Disciplinary Tribunal has concluded its deliberations. A court hearing the applications pursuant to section 97 or 98 of the Legal Profession Act should be given the power:

- (a) to consider any matter which might otherwise have been raised at an application for judicial review of a decision of a Disciplinary Tribunal, including any question as to the legality or propriety of the determination of the Disciplinary Tribunal, or as to the regularity of any proceedings of the Disciplinary Tribunal; and
- (b) to set aside the determination of a Disciplinary Tribunal, and to either direct the Disciplinary Tribunal to rehear and reinvestigate the complaint or matter or direct the Law Society to apply to the Chief Justice for the appointment of another Disciplinary Tribunal to hear and investigate the matter.

(c) Improving Other Aspects of the Process

4.32 The Committee recommends that section 94(3)(a) of the Legal Profession Act be amended and that the Law Society Council be allowed to impose a penalty of up to \$20,000 upon a finding by the Disciplinary Tribunal that while cause of sufficient gravity does not exist to send the case to the Court of Three Judges, a fine should nonetheless be imposed.

4.33 In respect of the sentencing powers of the Court of Three Judges, the Committee recommends amending the existing sections 83(1) and 98(1) of the Legal Profession Act to widen the range of possible sentences that the Court of Three Judges may impose to include:

- (a) striking off the roll;
- (b) suspension from practice for a period not exceeding five years;
- (c) payment of a penalty of not more than \$100,000;
- (d) censure; and
- (e) payment of a penalty of not more than \$100,000 in addition to a suspension from practice for a period not exceeding five years or censure.

- 4.34 In order to increase the power of the courts to impose deterrent sentences, a court hearing an application under section 82A(10) of the Legal Profession Act would be able to impose a fine on an officer of the Legal Service or non-practising lawyer of up to \$20,000, as opposed to the present maximum of \$5,000.
- 4.35 In order that the public is assured that lawyers with a physical or mental disease are still able to carry out their duties to the clients, the Committee recommends that a Judge may, on the application of the Attorney-General or the Law Society Council, order that a solicitor submit to a medical examination by a registered medical practitioner, in order that the registered medical practitioner may determine whether the fitness of the solicitor to practise has been impaired by reason of any physical or mental disease.
- 4.36 In this connection, the Committee also recommends that section 25A(1) of the Legal Profession Act be amended to cover a solicitor whose fitness to practise has been determined by a registered medical practitioner to be impaired by reason of the solicitor's physical or mental condition or, who having been ordered by a Judge to submit to a medical examination, fails to do so within two days from the date of the order. This would empower the Law Society Council or the Attorney-General to request the Registrar of the Supreme Court to refuse to issue a practising certificate or to issue a practising certificate subject to such conditions as the Attorney-General or the Law Society Council may specify. In addition, the Attorney-General or the Law Society should be able to apply to a High Court Judge for directions that a current practising certificate is to have effect subject to such conditions as the Judge thinks fit or for an order that the practising certificate be suspended.
- 4.37 Further, in tandem with the objective to stop a lawyer whose fitness to practise has been impaired by reason of his physical or mental illness from incompetently rendering his services to the public, the Committee also proposes that paragraph 1(1) of the First Schedule to the Legal Profession Act be amended to allow the Law Society to intervene on an urgent basis in the event that a lawyer is unable to attend to his practice by reason of his physical or mental condition. The Committee also proposes that the Legal Profession Act should include a provision empowering the Law Society Council to issue a stop order to prevent the lawyer from servicing clients until he submits himself to a medical examination.

4.38 In addition, the Committee also recommends the following amendments to the Legal Profession Act to enhance the disciplinary process:

- (a) The appointment of a Senior Counsel, who is suspended from practice or struck off the roll or whose appointment the Court of Three Judges has recommended be revoked, should be deemed revoked.
- (b) To prevent long overdue complaints against errant advocates and solicitors, a “limitation period” of six years (akin to civil claims) should be introduced.
- (c) In exceptional cases where more time may be needed, the Chairman or Deputy Chairman of the Inquiry Panel should be empowered to grant a Review Committee an extension of the period within which to complete its review.
- (d) Additional measures should be put in place to ensure that where a complaint has been made against a lawyer, the lawyer and the complainant are notified of the outcome of the complaint within a reasonable period, *e.g.* for the Law Society Council to inform the lawyer and the complainant within 14 days of its determination of a complaint under section 87 of the Legal Profession Act.

5 ARBITRATION AND MEDIATION

(A) The Singapore Mediation Centre and the Singapore International Arbitration Centre

(I) The Growing Importance of Arbitration and Mediation

5.1 Singapore stands in the cross-winds of the two rising major Asian economies. As these markets become more sophisticated and as transnational and trans-border work mushroom, there will be an inevitable increase in the demand for dispute resolution services, including alternative dispute resolution (“ADR”) services such as arbitration and mediation. In a survey of ten of the largest local and offshore law firms in Singapore about international arbitration work in the past three years, it was revealed that international arbitration caseloads have increased by an average of 20% annually, total billings from arbitration have doubled, and arbitration departments in law

firms have grown about 15% in size annually.⁶⁸ In the period from 1 January 2002 to 30 December 2006, the Singapore Mediation Centre (“SMC”) saw a total of 94 mediations involving at least one foreign party. These figures suggest that there is a significant and growing market for international ADR services that Singapore is well placed to capture.

- 5.2 Singapore has already made many strides in the right direction in developing its arbitration and mediation services.
- 5.3 In terms of arbitration, a major step was taken with the founding of the Singapore International Arbitration Centre (“SIAC”), a non-profit organisation, in 1991. Funded by the Government at its inception, the SIAC is now entirely financially self-sufficient. In 2001, the SIAC transitioned from an organisation primarily providing facilities for arbitration to an institution administering arbitration. Two years later, in 2003, the SIAC ceased its corporate link with the SAL and became a company guaranteed by the Singapore Business Federation.
- 5.4 Today, Singapore is widely recognised as one of the premier arbitration venues in the region, due in large part to the success of the SIAC’s marketing efforts.⁶⁹ In addition, at any given time, there are numerous international *ad hoc* arbitrations being held in Singapore. Since 2000, the number of cases handled by the SIAC has grown, and its caseload ranks respectably among other arbitral institutions in the world:⁷⁰

No. of International Cases Administered by Arbitral Institutions						
Institution	2000	2001	2002	2003	2004	2005
AAA-ICDR	510	649	672	646	614	580

⁶⁸ Keynote address by Guest-of-Honour, DPM Professor S Jayakumar at the Opening Ceremony of the AAA-ICC-SIAC Conference on “Institutional Arbitration in Asia” on 3 October 2006 at the Shangri-La Hotel.

⁶⁹ In the report of the JLV/FLA Committee, survey responses from banks and financial institutions indicated that five out of seven respondents (one stated that the question was not applicable to it) would choose Singapore as the place of arbitration over some other venue. In the survey responses from multinational corporations, ten out of 15 respondents indicated that Singapore would be one of their top choices as a venue to conduct arbitration proceedings (three others stated that their choice would depend on the circumstances of the case).

⁷⁰ Statistics from the SIAC website, see <<http://www.siac.org.sg/facts-statistics.htm>> (Last accessed: 1 September 2007). See Annex C – Glossary of Terms – for the full names of the institutions.

No. of International Cases Administered by Arbitral Institutions						
ICC	541	566	593	580	561	521
CIETAC	543	562	468	422	461	427
LCIA	87	71	88	104	87	118
SCC	66	68	50	77	45	53
KCAB	40	65	47	38	46	53
SIAC	41	44	38	35	48	45
JCAA	8	16	8	14	15	9
KLRCA	20	3	3	5	3	7
BCICAC	3	4	4	4	4	0
PDRC	0	1	2	0	0	0

All Cases Administered by SIAC						
Description	2000	2001	2002	2003	2004	2005
Under SIAC rules	52	57	57	44	65	52
Under other rules	6	7	7	20	13	22
Total	58	64	64	64	78	74

5.5 As an arbitration venue, Singapore offers world-class infrastructure, excellent support facilities and services, a clean and safe environment, political and social stability, and a strong tradition of the rule of law supported by a capable and pragmatic judicial system. The cost of holding an arbitration in Singapore is also very competitive when compared to other cities such as Hong Kong.⁷¹ To further improve our support infrastructure, DPM Professor S Jayakumar unveiled plans to develop an integrated arbitration complex as a dedicated centre for the provision of a full suite of arbitration services to meet the needs of

⁷¹ Based on research by the International Financial Law Review and the SIAC, the cost of an arbitration for a typical \$5million dispute in Singapore is half that of Hong Kong. Lawyer's fees are half those in Hong Kong and arbitration fees can be up to 30% less: see "Squeaky Clean", *Far Eastern Economic Review* (4 October 2004) at p 52.

all international arbitration users who come to Singapore.⁷² The SIAC, currently housed in the City Hall Building, will be moving to a new integrated dispute resolution complex (“IDRC”) inside the White House Building at Maxwell Road sometime beyond 2008. The IDRC is part of the plans of the Ministry of Law and the Economic Development Board of Singapore (“EDB”) to stimulate the growth of our international arbitration industry and to enhance Singapore’s position as a fast-developing arbitration hub. This new complex will boast world-class infrastructure with custom-built hearing rooms replete with state-of-the-art facilities. It is envisaged that this complex will also house major international arbitration institutions as well as relevant arbitration-related service providers such as transcription and translation facilities.

- 5.6 In tandem with the establishment of the IDRC, the Ministry of Law has been actively wooing major international arbitration institutions to operate from, and refer cases to, Singapore. Further, several arbitral bodies have also been looking to forming partnerships with the SIAC to jointly undertake arbitration work in Singapore. The American Arbitration Association (“AAA”) has since chosen Singapore as the location of its first ever Asian office by entering into a joint venture with the SIAC in February 2006. Singapore’s laws and rules are also arbitration-friendly and are consonant with new developments in the international arbitration scene.
- 5.7 Mediation is another area where Singapore is actively developing, primarily through the SMC, which is a non-profit organisation guaranteed by the SAL. Like the SIAC, the SMC also received government funding at its inception in 1997 and is currently self-financing. The SMC is housed in the new Supreme Court Building and receives the support of the Supreme Courts, the Subordinate Courts of Singapore and the SAL. Between 1 January 2002 and 31 December 2006, the SMC conducted 465 mediations, an average of 90-odd per year. About 20% of these mediations involved a foreign party.
- 5.8 The Committee’s belief that ADR’s popularity is burgeoning rapidly is supported by published statistics. Interestingly, there appears to be a corresponding downward trend in the number of cases being filed in the courts. In 2001, there were 2,069 civil cases filed in the High Court. This has since steadily declined, and in 2006, only 1,045 civil cases were filed.

⁷² *Supra*, note 68.

5.9 While the SIAC and the SMC have done well to put Singapore on the map as a viable and desirable ADR centre, more can certainly be done – and has to be done – to capture the international market and stay ahead of our competitors in the region. For instance, while the SIAC has done a commendable job in bringing administered arbitration cases into Singapore, there is a large market for private *ad hoc* arbitrations that still remains untapped. If Singapore can capture an appreciable percentage of this market, there will be spin-off benefits for Singapore law firms (“SLFs”) and/or Singapore-based foreign law firms (“FLFs”), which can provide legal advice and support the arbitrations. Benefits may also extend to other sectors of the economy. Similarly, the SMC’s mediations are still largely domestic. Even so, approximately 48% of the mediations were either referrals from the courts or as a result of the SMC writing to parties who had filed suits in the courts. Therefore, there is still room to increase the proportion of international disputes being settled by mediation and to market the SMC as a dispute resolution mechanism of first choice.

(II) Recommendations

(a) Promoting Singapore as an ADR centre

5.10 In order that Singapore can position herself as a regional ADR centre, the SMC and the SIAC may wish to consider collaborating with each other in various complementary ways.

(b) Housing the SMC in the New IDRC

5.11 The Committee is of the view that the SMC should consider taking up a permanent presence in the new IDRC so that the latter can be promoted not only as an arbitration centre, but also as a centre for a comprehensive range of ADR services. The inclusion of the mediation component within the IDRC will offer another option through which parties may seek to resolve their disputes. An IDRC that provides a more comprehensive range of ADR mechanisms, instead of merely concentrating on arbitration, will be instrumental in raising the profile of Singapore as an international ADR centre, and not merely as an international arbitration hub. The SMC can also leverage on its physical proximity with the offices of the other international arbitral institutes based in the IDRC to network as well as to build familiarity and credibility with the services offered by the SMC. The Committee notes that, for example, the leading mediation centre in the UK, the

Centre for Effective Dispute Resolution (“CEDR”), has its office located in the UK equivalent⁷³ of our soon-to-be developed IDRC.

- 5.12 It is envisaged that the new office in the IDRC would be in addition to the SMC’s current office in the new Supreme Court Building. Should the SMC maintain two offices, this will better enable the SMC to promote itself internationally, and yet maintain its character as a court-annexed ADR centre which has played a pivotal role in the growth of domestic mediation. In this regard, the Committee notes that since its inception, the SMC has grown in its portfolio of work due to the referral of cases from the Singapore courts to the SMC.⁷⁴ This has in turn raised the credibility of mediation in Singapore as an accepted and respected mode of dispute resolution domestically. The corresponding prestige accorded to being located in the new Supreme Court Building, coupled with the convenience of the venue, is an incentive for parties to continue to refer cases to the SMC.

(c) **Joint Promotions**

- 5.13 The Committee recommends that the SIAC and the SMC consider conducting regular joint promotional and marketing campaigns.⁷⁵ The SIAC and the SMC can collaborate to promote Singapore as the premier destination for ADR. The IDRC can front such joint promotional efforts to attract interested parties to choose Singapore to be the place for the resolution of their disputes via arbitration or mediation. Parties who wish to understand the processes involved in the individual modes of dispute resolution would then be directed to the relevant bodies for further information and for administration of their disputes. The promotional activities that could be undertaken include:
- (a) local and overseas presentations, conferences and seminars;
 - (b) advertising and publications;

⁷³ The UK centre is known as the “International Dispute Resolution Centre”. It is located in the heart of “Legal London” and has the support of the following institutes, namely (in alphabetical order): ARIAS (UK), CEDR, the Chartered Institute of Arbitrators, the London Chamber of International Arbitration (“LCIA”), the London Maritime Arbitrators Association, RESOLEX, the Society of Construction Arbitrators and the Worshipful Company of Arbitrators, and is a CEDR-approved facility. In addition, the Corporation of London has given its support and is a shareholder, as is the LCIA. The LCIA, CEDR, City Dispute Panel and RESOLEX have their offices in the Centre.

⁷⁴ Statistics obtained from SMC show that between 40% and 50% of its annual caseload comprises referrals from the courts, either by judges who referred the matter directly or by the SMC writing to parties in cases flagged by the courts as having the potential to be resolved by mediation.

⁷⁵ The SIAC and the SMC have in fact after discussions with the Committee already commenced such joint efforts, which included a joint trip to Changsha, China in September 2006.

- (c) establishing a pool of highly regarded arbitrators and Senior Counsel who can act as “ambassadors” for the SIAC and the SMC: they could give talks and seminars overseas and host receptions in the name of the SIAC and the SMC and they would serve to endorse the quality of our ADR services;
- (d) creating opportunities for networking with key figures in the international ADR community;
- (e) hosting receptions after international arbitrations or mediations to which officials from the proposed Special Unit (see paragraph 5.14 below) and local legal practitioners are invited: such interaction would aid in increasing the international profile of local ADR services which would be spread by word of mouth when these arbitrators return to their home countries; and
- (f) setting up a dedicated website for the promotion of Singapore as an arbitration and mediation venue:⁷⁶ the website can showcase the pool of world-class arbitrators located in Singapore, and also provide contacts and support for logistics arrangements.

5.14 To facilitate these efforts, the SIAC and the SMC should consider setting up a joint Marketing Council for ADR services, to be undertaken by a Special Unit within the SIAC and the SMC. This will reinforce the one-stop ADR centre image and also allow the SIAC and the SMC to share resources and costs for the common objectives (such as marketing), while remaining as separate and distinct arms offering different types of services. Special advisers with expertise in specific areas can be appointed to sit on the Marketing Council. In addition, the Marketing Council should have regular meetings with representatives from the proposed Special Unit or, if not, relevant bodies, such as the Ministry of Law, International Enterprise Singapore (“IE Singapore”), the EDB, the Singapore Tourism Board, the AGC, SLFs, FLFs, local and foreign companies, and business and trade associations, to constantly refine and develop our ADR strategy.

(d) **Attracting Key Arbitration and Mediation Centres to Singapore**

5.15 The Committee recommends that the SIAC and the SMC take active steps to encourage reputable arbitration and mediation chambers to set up satellite offices in Singapore. Apart from the International

⁷⁶ See for example: <<http://www.icdr.gov.au>> (Last accessed: 1 September 2007).

Chamber of Commerce (“ICC”)⁷⁷ and now the AAA, other suitable centres should be attracted to set up sub-centres here. Alternatively, the SIAC and the SMC should enter into institutional links with foreign ADR institutions to act as their case administrator within the region. An incentive such as tax breaks in relation to the repatriation of profits for those institutions making use of the SMC’s and the SIAC’s case administration services could be given serious consideration.

- 5.16 The Special Unit proposed (see paragraph 5.14 above) should also work with foreign ADR institutions for Singaporeans to be appointed to their standing arbitration and mediation panels. On a reciprocal basis, the SMC and the SIAC may place the key ADR practitioners of these foreign ADR institutions on their international panels. Should such ADR practitioners act as mediators, arbitrators or other ADR neutrals in cases administered by the SMC or the SIAC, they could be given incentives such as tax breaks in relation to their incomes earned.
- 5.17 In addition, Singapore should actively woo international organisations that either serve as case referral bodies or appointing authorities under dispute resolution clauses or are responsible for the drafting of international standard form contracts. For instance, tax incentives could be given to major insurers and protection and indemnity clubs (P&I clubs), as well as international organisations (such as the International Federation of Consulting Engineers (“FIDIC”)) that issue internationally-accepted standard form contracts to set up regional offices in Singapore, particularly if their standard form contracts contain dispute resolution clauses that provide for ADR in Singapore, preferably under the auspices of the SMC and/or the SIAC. At the very least, such incentives would expose these international organisations to local ADR practitioners. If our local ADR practitioners perform well, these international organisations may be more ready to employ Singapore’s dispute resolution services in future.

(e) Increasing the Pool of Arbitrators and Mediators

- 5.18 The Committee further recommends that the SIAC and the Singapore Institute of Arbitrators (“SIArb”) increase the pool of arbitrators by training future arbitrators and considering the possibility of CLE for local arbitrators. In addition, the SIArb should offer and market

⁷⁷ Singapore is ICC’s top destination for Asia in two areas: (1) Singapore was ICC’s top arbitration venue in Asia with 17 hearings conducted in 2001; and (2) the number of Singapore resident arbitrators appointed by ICC in 2002 also occupied top spot in Asia.

specialised courses in the region on CLE in these areas. In order to achieve this, steps should be taken to expand the panel or pool of foreign arbitrators with international standing, local arbitrators, and arbitrators with specialised or technical backgrounds, for example, IT experts, architects, engineers, biotech specialists, *etc.*

- 5.19 The same is recommended for mediation, *i.e.*, the SMC should work with the Government and look into conducting training courses in negotiation and dispute resolution for foreign institutions, governments, private entities and institutions. The SMC should also develop an accreditation scheme for foreign participants of the SMC's training courses.
- 5.20 Furthermore, the Committee is of the view that the SMC can and should go further in raising its profile internationally. The SMC can take steps to strengthen and internationalise its existing panel of mediators by inviting eminent persons of international repute to serve as its mediators in international disputes. This can be done by seeking renowned academics and practitioners, both here and overseas, to serve as part of its local and international advisory panel that will meet at least once every two years and advise the SMC on its regional drive. For a start, the SMC should work with the two local law schools and the Law Society to upgrade and expand its existing regional conflict resolution training programmes.

6 PROMOTING SINGAPORE AS A KEY LEGAL SERVICES HUB

- 6.1 Globalisation of economies has led to increased demand for multinational legal practice. While Singapore's overall services exports doubled in the last ten years, legal services exports appear to have grown six times during the same period. This was driven mainly by the huge increase in cross-border legal transactions, contributed to a large extent by the economic development of China and India.
- 6.2 With its strategic location in South-East Asia and its sound legal structure, Singapore is well positioned to become a key legal services hub in Asia. Besides the direct economic benefits, the growth of our exportable legal services sector will help develop more sophisticated and cutting-edge legal services to facilitate the growth of other important sectors of the economy, such as the banking, corporate finance, biomedical and maritime industries.
- 6.3 For Singapore to be a legal hub in Asia, we need to help our SLFs to venture abroad and capture a greater share of the regional market. We

also need to attract more FLFs to set up in Singapore and use it as a base for their regional work.

- 6.4 Our SLFs are currently small compared to the international players and would need assistance to grow. As a point of comparison, the top ten law firms in the world hired an average of 2,008 lawyers and achieved average turnovers of S\$2.46 billion per firm in 2006.⁷⁸

Rank	Firm	Country	Turnover (in S\$b)	No of lawyers	Profit per equity partner (in S\$m)
1	Clifford Chance	UK	3.21	2,432	2.52
2	Linklaters	UK	2.91	2,072	3.31
3	Skadden ARPS Slate Meagher & Flom	US	2.75	1,699	3.27
4	Freshfields Bruckhaus Deringer	UK	2.75	2,013	2.58
5	Latham & Watkins	US	2.42	1,668	2.74
6	Baker & McKenzie	US	2.31	2,975	1.30
7	Allen & Overy	UK	2.29	1,760	2.45
8	Jones Day	US	2.20	2,178	1.23
9	Sidley Austin	US	1.92	1,495	2.11
10	White & Case	US	1.79	1,783	2.12

- 6.5 In the latest census conducted by the Ministry of Law and the Department of Statistics published in November 2003,⁷⁹ there were 3,081 lawyers in Singapore, and SLFs had a *combined* turnover of only S\$831 million. Applying a growth factor commensurate with Singapore's gross domestic product ("GDP") growth between 2004 and 2006, the SLFs' combined turnover in 2006 is estimated to be around S\$1.04 billion. Even after taking into account the combined turnover of all SLFs for 2006, Singapore would still fall just outside the

⁷⁸ All figures obtained from *The Lawyer's Global 100 (2006)* at <http://www.thelawyer.com/global100/2006/tb_1-25.html> (Last accessed 1 September 2007) and converted into Singapore dollars.

⁷⁹ Findings of the Census of the Legal Industry and Profession 2001, conducted by the Ministry of Law, Singapore.

global top-30 list for last year. None of the SLFs are in the top 100. Denton Wilde Sapte, which comes in at the 100th position, has 509 lawyers, about twice that of our biggest SLFs, and a turnover of about S\$459 million, close to half of the turnover of all SLFs combined.

- 6.6 This disparity is both a function of the size of our domestic market and the relatively lower fee rates commanded by SLFs as compared to FLFs. In the face of our small domestic market, regionalisation is the key to expanding the size of our legal market. While Singapore can be considered the legal hub of South-East Asia, there is scope for greater penetration of our key regional markets such as India, Indonesia, and Vietnam. In particular, we should consider how Singapore could be marketed as the natural gateway into the booming Indian market.
- 6.7 Second, it is important to continue to attract FLFs to set up offices in Singapore so that Singapore continues to be an attractive city for young Singaporean lawyers who wish to be exposed to high-end international transactional work that international firms may offer. In fact, an increasing number of our young lawyers in the three to five years' post-qualification experience group have left SLFs for FLFs based in cities such as Hong Kong, Shanghai, Tokyo, New York and London to seek exposure to such work.⁸⁰ Whilst the significantly higher pay offered by FLFs is certainly a major reason for the talent drain, many young lawyers also leave because the Singapore market simply does not provide sufficient opportunities for sophisticated global work that these cities offer.
- 6.8 The outflow of local legal talent is a cause for concern. Once they join FLFs overseas, it is difficult to draw these young Singaporean lawyers back to Singapore, especially when they leave at an early age of their careers and without families. If left unchecked, this outflow could also constrain the ability of SLFs to further expand and regionalise their operations. The Third Committee on the Supply of Lawyers has sought to supplement the local market with foreign lawyers under the proposed Talent Tap for SLFs scheme. Under the scheme, qualifying SLFs can sponsor and employ high-quality foreign lawyers with a view to them eventually qualifying to practise Singapore law (subject

⁸⁰ While statistics are difficult to obtain, it is clear that Singaporeans are moving from SLFs to FLFs in growing numbers. In 2001, there were 61 local lawyers who gave up their practising certificates to practise in FLFs in Singapore. By February 2007, the number has doubled to 119. This does not include the number who have given up their local practising certificates to practise directly in FLFs overseas, or those who were in FLFs based in Singapore but decided to move to FLFs overseas. This number is sizeable and will only grow in tandem with the globalised economy.

to the conditions prescribed by section 130C of the Legal Profession Act).⁸¹

- 6.9 The Committee strongly supports the introduction of the Talent Tap scheme, which represents a small but significant step towards the liberalisation of the local legal market. However, it is unclear if the Talent Tap scheme and other proposed measures (such as increasing the intake of law undergraduates) could, by themselves, make up for the talent drain.
- 6.10 A much more fundamental issue remains unresolved: the attractiveness of legal practice in Singapore for globally mobile young lawyers. The size, maturity and sophistication of the Singapore legal market still lags far behind those of our competitor cities such as New York, London and Hong Kong. As long as the pay and type of work available in SLFs continue to remain stagnant, the outflow of local talent will continue unabated.
- 6.11 At this point of time, the Committee proposes three key strategies to develop Singapore as the premier legal hub of the region:
- (a) making Singapore a more attractive base for FLFs;
 - (b) helping SLFs to expand into the region; and
 - (c) promoting Singapore as a legal destination to foreign lawyers.

(A) Making Singapore a More Attractive Base for Foreign Law Firms

- 6.12 While the limited domestic market holds limited attraction for FLFs, Singapore has succeeded in marketing itself as a regional base for foreign lawyers. There are two main reasons for this: (a) the stable legal, political and social infrastructure here; and (b) our regional neighbours' reluctance to open their doors to FLFs.
- 6.13 Singapore's reputation as a clean and safe city to live in will always be a major pull factor for expatriates. However, this has to be balanced against the fact that proximity to clients is a vital consideration for any commercial lawyer. Although Changi Airport might offer superior connectivity to the region, lawyers will ultimately follow their clients to be where the business is. If the traditional markets the FLFs serve

⁸¹ At present, a foreign lawyer cannot practise foreign law and hold a Singapore practising certificate which will entitle him/her to practise Singapore law at the same time. An exception is made for foreign lawyers in JLVs under section 130C of the Legal Profession Act. See also: Guidelines for Registration of Foreign Lawyers in Joint Law Ventures to Practice Singapore law (originally dated 15 March 2001, updated on 18 March 2003).

out of Singapore (such as Indonesia and India) open up in future, there is no guarantee that FLFs will continue to remain here.⁸² While Indonesia and India may not be liberalising their markets in the immediate future,⁸³ Singapore should prepare for such an eventuality. A case in point is Vietnam which has gone down the liberalisation route and will be attracting some FLFs to base their regional practice there.

(I) *The Current Incentives and Potential Refinements*

(a) **Attracting Foreign Law Firms**

6.14 There is presently one main incentive programme available to encourage FLFs to base their operations here. This is IE Singapore's double tax deduction ("DTD") Scheme, which does not have any local equity requirements. Under the DTD Scheme, Singapore-registered firms with *permanent establishments in Singapore* can qualify for double tax deduction on market development expenses such as consultancy fees for market feasibility studies, travel costs, media and promotional costs, etc.

6.15 The DTD Scheme could provide an incentive for FLFs to use Singapore as a springboard to new, untested markets such as India and Vietnam, as they will be able to deduct twice the eligible market development expenses incurred against their taxable income. Based on the Committee's discussions with IE Singapore, there are no strict guidelines or further qualifying criteria. However, DTD support is not available for firms that are already enjoying other forms of tax incentives.

6.16 Consultations with FLFs indicated little or no knowledge of the available programmes, uncertainty over the qualifying criteria and confusion over terms of art such as "incremental qualifying profits" and "centres of competence". The FLFs welcomed the introduction of financial incentives, but stressed that they should:

- (a) address the fundamental structural issues of the sector;
- (b) be adequately publicised;
- (c) be understandable and easy to use; and

⁸² For example, Freshfields has decided to close its Singapore office and relocate to Hong Kong to serve its clients in China. South Korea is also another market that is liberalising in 2007 in response to its WTO obligations.

⁸³ India has been examining proposals regarding liberalisation but has not acted on them.

(d) be implemented flexibly.

6.17 Some FLFs also pointed out that tax incentives did not have a major impact on their profit per equity partner figures as their firms applied an “equalisation” policy over tax/other incentives (*i.e.*, deductions received by each individual office are equalised across the entire firm).⁸⁴

6.18 In order to better understand the unique structural considerations and other needs of FLFs, the Committee recommends the conduct of market surveys amongst FLFs. The market surveys will perform two main functions. First, they will highlight to participants the existing incentive programmes available to them. It is hoped that this will increase market awareness and encourage FLFs to make use of such incentives to situate more of their personnel and support operations in Singapore. This will further entrench their presence here and contribute to the expansion of the legal services sector in Singapore.

6.19 Second, by facilitating a more open and consultative process, the market surveys will help the authorities to find out from the FLFs themselves what is useful or lacking in terms of incentives and other types of government assistance. Besides the inclusion of incentives, the survey should identify other types of assistance measures that could be useful, such as networks, branding, *etc.* The feedback received from the surveys should be taken into careful consideration by the relevant authorities when designing or re-designing incentive programmes.

(b) Attracting In-House Counsel

6.20 The Committee believes that Singapore should also move to increase the number of in-house legal departments in Singapore. As a result of tighter budgets and the desire for client-specific advice, in-house counsel are increasingly taking on more legal work than before. Singapore cannot afford to ignore this growing segment of the legal services sector.

6.21 Further, in-house legal departments will always farm out complex litigation or specialised work to professional law firms. Their increased presence here will therefore generate spin-off benefits for SLFs and FLFs based in Singapore.

⁸⁴ Nevertheless, most FLFs agreed that tax incentives would be a strong pull factor.

6.22 A company's legal department is generally located in the same city as its corporate headquarters. Therefore, the majority of our efforts will be absorbed into the EDB's Headquarters Programme, which has the larger goal of encouraging more companies to locate their regional/global headquarters here.

6.23 However, a small number of corporations may choose to site their legal departments in a different city for strategic, economic or other reasons. Unlike functions such as technical or secretarial support, legal departments are by and large stand-alone operations that can easily take instructions from overseas management. Other incentives that can be designed specifically to draw more in-house legal departments to Singapore should be explored.

(II) Recommendations

(a) Market Surveys

6.24 See paragraphs 6.18 and 6.19 above.

(b) Consultations with In-House Counsel

6.25 The Committee recommends holding detailed feedback and consultations with in-house counsel and senior management to explore if incentives can be designed specifically to draw more in-house legal departments to Singapore. Such dialogue sessions should be held on a regular basis.

(B) Helping Singapore Law Firms to Expand into the Region

(I) *Pushing Singapore Law Firms Overseas*

6.26 In the last Census of the Legal Industry and Profession 2001, SLFs were asked to set out their expansion plans up to and including 2003. The results of the Census were:

Setting up Branches Overseas	Firms	Countries Where Firms Intend to Set Up Branches	Firms
Total	359	Total	53
Yes	28	China	18
No	331	Malaysia	11
		Indonesia	7

Setting up Branches Overseas	Firms	Countries Where Firms Intend to Set Up Branches	Firms
		India	6
		Thailand	3
		Others	8

6.27 According to the Review Committee on Joint Law Ventures and Formal Law Alliances (“the JLV/FLA Committee”), 14 SLFs have either started local regional desks, ventured abroad to set up law practices in other cities or have licences to practise in China.⁸⁵ These are:

- (a) ASG Law Corporation – local China and India desks;
- (b) Colin Ng & Partners – offices in Beijing and Hong Kong with local Australia and India practice groups;
- (c) David Chong & Co – offices in Kuala Lumpur, Johor Baru, Labuan, Suzhou and the British Virgin Islands;
- (d) Drew & Napier LLC – offices in Shanghai, Kuala Lumpur, Malaysia and Jakarta;
- (e) Joseph Tan Jude Benny – offices in Kuala Lumpur, Bangkok, Taipei and Piraeus;
- (f) Kelvin Chia Partnership – offices in Hanoi, Ho Chi Minh City and Yangon;
- (g) Khattar Wong – office in Shanghai;
- (h) Rajah & Tann – office in Shanghai;
- (i) Robert WH Wang & Woo – office in China;⁸⁶
- (j) Rodyk & Davidson – office in Shanghai;
- (k) Stamford Law Corporation – office in Beijing;
- (l) Wee Swee Teow – office in Hong Kong; and
- (m) Wong Partnership – office in Shanghai.

6.28 Apart from maintaining small representative offices and capturing some mid-level cross-border work, none of the SLFs have managed to carve out a name for themselves regionally. Without adequate investment financial resources and insider knowledge of the

⁸⁵ See <http://www.legal500.com/as500/frames/si_fr.htm> (Last accessed: 1 September 2007).

⁸⁶ Dissolved in 2004 to form Robert Wang & Woo LLC, which does not have any overseas offices.

respective markets, SLFs have found it difficult to compete with the domestic law firms and international FLFs in these cities.

- 6.29 There is vast potential for the export of legal services into the region. As far back as 2001, 55 SLFs indicated that they had handled cross-border transactions⁸⁷ that generated a total of \$24.992 million in revenue receipts. Beyond traditional favourites China and Indonesia, the largely untapped Indian market also holds tremendous promise.

(II) *Recommendations*

(a) **Targeted Promotion and Assistance Package**

- 6.30 There are two key strategies that must be developed in tandem to ensure the successful regionalisation of SLFs. First, the skills and expertise of SLFs must be adequately *promoted* to clients (both onshore and offshore) and target markets. Secondly, SLFs with an interest in regional expansion should be *assisted* with a package of grants, tax incentives and other measures specially designed to encourage the export of legal services abroad.
- 6.31 In crafting an effective promotion and assistance package, we can draw on the experiences of regulators and promoters in the UK and Australia. The export development employed in these countries is noteworthy for their sophistication and attention to detail. Rather than simply providing a mixed bag of grants and tax incentives, the UK and Australia have recognised the unique value of legal services and tailored comprehensive promotion and assistance strategies accordingly.
- 6.32 The Committee recommends that a similar approach be taken in Singapore. While fiscal incentives will continue to play a big part in our regionalisation plans, we should look beyond financial assistance to consider other “softer” but no less important areas of market development such as promotion, expert advice, training, market research and contact-building.
- 6.33 The Committee therefore recommends conducting a market survey of SLFs with regionalisation experience/aspirations in order to ascertain their target markets, levels of awareness of present incentives, views on the suitability of existing measures and “wish lists” for new incentives or other assistance. The survey can also tap into the

⁸⁷ Defined as transactions regulated/affected by Singapore law and at least one other national law.

knowledge and experience of Singapore-based FLFs which have regionalised successfully.

- 6.34 Drawing from the survey findings, a detailed promotion and assistance package (consolidating existing incentives and new proposals) should be specially designed for target SLFs to penetrate the region. The details of the package (including qualifying criteria, actual incentives and specific assistance measures) should be developed with input from senior lawyers in target SLFs.
- 6.35 Without pre-empting the results of the survey, the Committee believes that the following areas should be the focus of the promotion package:
- (a) *General promotion of SLFs:* Many international FLFs grew by accompanying the companies of their respective countries on their expansion overseas. More can be done to promote the use of SLFs by Singapore companies through trade seminars and awareness programmes. In addition, the use of financial incentives to encourage Singapore companies to use SLFs or incorporate exclusive choice of law and jurisdiction clauses in favour of Singapore into their regional contracts should be explored. SLFs can also be included in trade/promotion missions to target destinations. SLFs should be included in joint promotion schemes such as IE Singapore's iPartner programme (which encourages Singapore-based companies in a vertical supply relationship to form an alliance when venturing abroad).⁸⁸
 - (b) *Market research:* Target markets in the region should be identified and information guides and marketing kits specific to each destination, including information on opportunities in particular practice areas, should be prepared. Rather than concentrating mainly on China (which is already served by Hong Kong), the Committee recommends that the range of markets to be studied be widened to include other markets such as India and ASEAN, for which Singapore is more ideally placed to act as a natural gateway.
 - (c) *Market preparation:* Besides financial grants such as IE Singapore's DTD scheme for entry into new markets, the package should also provide liaison and networking services in the destination city and expert advice tailored specifically to the expertise and resources of the relevant SLF.

⁸⁸ As it would be counterproductive to include all SLFs with regional aspirations into each iPartners alliance, the problem lies in determining which SLFs should be chosen for which alliance.

- (d) *Training and education:* Programmes should be run to familiarise Singaporean lawyers with the laws and regulatory requirements of the destination city. The lawyers should also be trained in general marketing strategies.
- (e) *Establishment and expansion:* The package should provide grants and tax incentives to offset establishment and initial operating costs, tax incentives on regional profits and sustained expert guidance on further expansion opportunities.

(b) A Single Promoter

- 6.36 Under the current system, there is no clear demarcation of roles between various institutions with a stake in the legal services sector, such as the Ministry of Law, the AGC, the EDB and IE Singapore. The disparate regime gives rise to market confusion and restricts the development of a coherent promotional and regulatory philosophy. Each agency has its own unique capability, but the success of Singapore as a legal hub depends on the effective combination of regulatory and promotional skills, applied by a body with both legal and economic expertise.
- 6.37 The Committee recommends that the lead agency in the promotion efforts should be one with ownership of the legal sector. Whilst EDB and IE have in-depth marketing skills, the small size of the legal service sector relative to other parts of the economy constrains the attention and resources that can be devoted to it within those organisations. We therefore recommend that all initiatives to promote Singapore as a legal hub should be overseen by a single department within the Ministry of Law.
- 6.38 The new unit should take control of all legal services promotion work. It should co-ordinate promotion, incentive and assistance programmes, track market movements and effect policy changes where necessary.
- 6.39 We recognise that there may be concerns about merging the regulator's and promoter's roles into a single body. The proposed model is in fact based on the Maritime and Port Authority of Singapore, which regulates and drives market development initiatives in the maritime industry. Bodies such as the Infocomm Development Authority of Singapore and the Monetary Authority of Singapore have also effectively combined regulatory and promotion functions without any difficulty.

(C) **Promoting Singapore as a Legal Destination to Foreign Lawyers**

(I) ***Increasing Visibility***

6.40 The Committee's recommendations relating to the promotion of Singapore as a regional player in the ADR market are also relevant to our aim in promoting Singapore as a legal destination for foreign lawyers.

6.41 In addition, the Committee believes that Singapore should strive to increase the visibility of Singapore law and legal institutions in the region. As Singapore law gains greater regional acceptance and international recognition, it can carve out a respectable role as the preferred alternative law of choice to UK and US law in the region. The increased use of Singapore law will increase arbitration, litigation and other related economic activities in Singapore, and further enhance Singapore's reputation as a legal hub.

(II) ***Recommendations***

(a) **Establishing Scholarships**

6.42 The Committee understands that the Ministry of Education is considering awarding scholarships to outstanding foreign students to pursue their LLB or LLM degrees in the Singapore law schools and strongly supports this because it will build a core of regional lawyers trained in and attuned to Singapore law. The Ministry of Law or the law schools in Singapore may wish to consider adding to the funding to increase the number of scholarships available.

6.43 If these students choose to stay in Singapore, they will form a pool of ready foreign talent to make up for the loss of local lawyers to our competitor cities. If they choose to return to their home countries and rise to prominent positions in their law firms, their educational experience in Singapore is likely to make them more inclined to use Singapore as a legal hub or use Singapore law to structure their international commercial transactions.

6.44 There are also non-legal sector benefits. Legal studies are intimately related to our social and political system. Just as the UK and US have built up their "soft" power through cultural exposure, increased contact with Singapore law will also help to produce a generation of regional players who are more sensitive to Singapore's social and political values.

6.45 In addition to offering scholarships, the law schools of NUS and SMU should collaborate with other stakeholders such as the Law Society and the SAL to put together a two to three-week long “summer school” programme to showcase Singapore law and Singapore’s legal institutions to foreign lawyers. The programme can be taught by law professors, senior practitioners and judges. This will help to familiarise foreign lawyers to Singapore law and also serve as a platform to promote our local academics and lawyers to a wider audience. The programme can be targeted at two levels of audience. The technical portion of the “summer school” programme as a whole can be targeted at the mid-level lawyers who would be more interested in the nuts and bolts. In addition, there should be shorter components of the programme targeted at the legal movers and shakers of the big law firms in the region, set at a more strategic level and accompanied by functions to promote networking and relationship building.

(b) Joint Regional Conferences

6.46 An effective way to expand the visibility of Singapore law is to increase the Singapore law content in joint regional conferences such as the annual ASLI Conference.

6.47 The Committee recommends exploring the possibility of increasing the number of overseas conferences dedicated to Singapore law, in partnership with institutions in our target cities such as the East China University of Politics and Law (Shanghai), the Peking University Law School (Beijing), the Faculty of Law in Chulalongkorn University (Bangkok) and the National Law School of India (Bangalore).⁸⁹

(c) Expand the Range of Free Singapore Law on the Internet

6.48 Currently, the only Singapore law available for free on the Internet consists of recent decisions of the High Court and the Court of Appeal in the last three months on the Supreme Court’s website and judgments cited in the Singapore Law website.⁹⁰

6.49 The Committee recommends discussion with the SAL to explore if the range of free Singapore law can be increased. While there will be costs implications, allowing wider access to Singapore law will promote basic understanding of and familiarity with Singapore law to foreign

⁸⁹ These universities are, together with the NUS Faculty of Law, part of the founding members of ASLI.

⁹⁰ See <<http://www.singaporelaw.sg>> (Last accessed: 1 September 2007).

lawyers, and also showcase the strengths of our judiciary and the legal system as a whole. The free LawNet may use an older version search engine, and leave out secondary materials.

- 6.50 All websites showcasing Singapore law content should also be sufficiently promoted to increase access and awareness. This can include featuring the websites prominently in search results from popular online search engines such as Google and Yahoo, as well as advertising through traditional media channels such as newspapers and legal publications.

(d) Codified Commercial Law Subjects

- 6.51 While a common law system that develops on the basis of *stare decisis* has the advantage of flexibility, it is difficult for any lawyer unfamiliar with the system to find out what the law is on a given topic without having to research a whole litany of cases. This was precisely why the American Law Institute began issuing Restatements of the Law in 1923.

- 6.52 Restatements are essentially codifications of common law judge-made doctrines that have developed gradually through case law. Although Restatements are not binding authorities, they are highly persuasive because they are formulated over several years with extensive input from law professors, practising attorneys, and judges.⁹¹ When done well, they reflect the consensus of the legal community as to what the law is (and in some areas, what it should become).

- 6.53 There is great potential in the use of Restatements to improve the accessibility, transparency and understandability of Singapore law to foreign lawyers in the region. Other up and coming cities such as Dubai have gone a step further and spearheaded codification efforts to make their commercial laws more accessible. The Dubai International Financial Centre (“DIFC”) has specially designed a codified legal framework of civil and commercial laws and regulations based on best practices of leading jurisdictions in Europe, North America and

⁹¹ See the speech of renowned American jurist Benjamin Cardozo in December 1923, where he explained the importance of Restatements in a lecture at Yale Law School: “When, finally, it goes out under the name and with the sanction of the Institute, after all this testing and retesting, it will be something less than a code and something more than a treatise. It will be invested with unique authority, not to command, but to persuade. It will embody a composite thought and speak a composite voice. Universities and bench and bar will have had a part in its creation. I have great faith in the power of such a restatement to unify our law.”

Asia. The DIFC's codes have been drafted with a view to producing a clear, flexible and practical legislative framework.⁹²

- 6.54 Singapore is surrounded by a large number of civil law countries such as China, Indonesia, Vietnam, Thailand, *etc.* Civil lawyers in these markets are naturally cautious of the ambiguity inherent in common law systems, and would much rather prefer to deal with codes that offer them certainty and clarity.
- 6.55 The Committee therefore recommends, as a start, that the Singapore Law website should provide materials on commercial law in a code format, which is easily accessible to lawyers from civil law countries. In time, if and when there are sufficient resources, such material could be developed into guidance codes, and help bridge the gap between our common law system and the civil law systems of our target markets, and encourage regional lawyers to use Singapore law to structure their international commercial transactions. Singapore already has several models of codified law such as the Bills of Exchange Act, the Sale of Goods Act, the International Sale of Goods Act and the International Arbitration Act, which have served the public well by narrowing the areas of legal uncertainty. The Committee recognises that the codification process is a long and resource-intensive exercise. It therefore recommends that, at the outset, emphasis should be placed on areas of law which have greater international currency, such as contracts, tort, protection of intellectual property, property law and principles of equity and restitution.

7 LIBERALISATION OF THE PROFESSION

(A) Establishing a Regional Legal Centre

- 7.1 The vision of making Singapore a regional centre for legal services begs the fundamental questions of what constitutes such a centre and what the factors necessary for its establishment and continued success are. In the Committee's view, a true regional legal centre is one: (a) where there are lawyers who are qualified to advise on the laws of different jurisdictions from around the world; (b) which can support a broad range of international business transactions within the region; and (c) where the local laws and lawyers are involved in regional business transactions.

⁹² The laws and regulations of the DIFC can be found at: http://www.difc.ae/laws_regulations/index.html (Last accessed: 1 September 2007).

- 7.2 In each of the established international or regional legal centres – London, New York, Hong Kong – there is a substantial market for commerce and the businesses that the legal services sector supports. This commerce/business platform provides a critical mass that sustains the continued relevance of the location as a regional centre, which in turn attracts a greater volume of commerce and business that use its services.
- 7.3 For example, London services the legal needs of the UK and continental Europe; whilst New York supports the Americas – both North America and, increasingly, South America. Of course, both English law and New York law support transactions globally, including those that have and those that do not have a geographical nexus with England and the US. The use of English and New York laws in these foreign markets further increase their relevance and influence. The wide use of English and New York law also serve to attract dispute resolution activities – both in London/New York and in other major business centres around the world, where these laws have been chosen to govern transactions.
- 7.4 Both New York and London are hubs from which the relevant local law is pushed out to the region (and globally) as it follows the expanding business deals and transactions that are “exported” from their respective locations. (This “pushing out” or “exporting” of New York law and English law is a reflection of the importance of the US and England as centres for financing transactions and global business.)
- 7.5 Each of these regional centres has adopted a relatively free market approach with respect to the practice of law, which originally has helped in their development as legal centres. Likewise, they have also maintained an open system that allows for the practice by (and in most cases, admission of) foreign lawyers in these regional centres as locally-qualified lawyers with relatively low barriers to entry. Few, if any, limits exist on foreign lawyers working in these jurisdictions as foreign lawyers.
- 7.6 The barriers to entry to the domestic legal practice in these regional centres have been lowered and, in many cases, virtually eradicated to allow for free movement of foreign lawyers and FLFs into the respective domestic markets. This strategy to admit foreign lawyers into the local practices allows ready access to the legal expertise of foreign lawyers and largely reduces or eliminates the distinction between local and foreign firms in these regional centres (at least in so

far as large commercial transactions are concerned). It is often the international full-service law firms that are best positioned to serve clients in commercial matters, both locally and internationally. This is one important way in which regional legal centres anchor themselves to the global legal system and thereby integrate more fully within the global market place.⁹³

(B) The Current Practice of Law in Singapore

7.7 At present, the domestic market is essentially closed to foreign lawyers and FLFs.⁹⁴ Whilst a large number of FLFs from various

⁹³ In Hong Kong, a foreign law firm may submit an application for registration as such if all partners who intend to practise in Hong Kong are foreign lawyers or the sole practitioner is a foreign lawyer and the firm intends to have, within two months after registration, a place of business in Hong Kong for the purpose of practising or advising on foreign law. A registered foreign law firm is able to practise the law of the jurisdiction(s) in which its partners and associates are qualified, and third jurisdictions in which it is competent to practise. Such firms are precluded from practising Hong Kong law or employing and/or taking Hong Kong solicitors into partnership. However, a registered foreign law firm can establish a Hong Kong practice so long as all of the partners in the Hong Kong firm are Hong Kong-qualified solicitors and the required ratios of Hong Kong solicitors to foreign lawyers are observed. See <http://www.hklawsoc.org.hk/pub_e/admission/ForeignLawFirms/Pdf/FLF-InfoPackage.pdf> (Last accessed: 1 September 2007).

In the UK, a foreign lawyer who wishes to practise law in a self-employed capacity can do so as a sole practitioner, a partner with a firm of foreign lawyers or in a partnership with English solicitors. A multinational practice, that is, a partnership of solicitors and registered foreign lawyers, can also be set up. A multinational practice must include at least one solicitor or registered European lawyer, together with at least one registered foreign lawyer. A registered foreign lawyer is a foreign lawyer who is registered with the relevant authority to be permitted to enter into practice with a solicitor and/or a registered European lawyer. See <http://www.lawsociety.org.uk/documents/downloads/proethics_settingUp.pdf> and <<http://www.lawsociety.org.uk/documents/downloads/overseaslawyersengwales.pdf>> (Last accessed: 1 September 2007).

⁹⁴ The number of foreign lawyers and the number of FLFs based in Singapore have remained more or less the same over a ten-year period with some minor fluctuations. In short, they have stagnated. The 1999 Report of the Legal Services Sector Review Committee reported that there were 66 FLFs in 1997 and 70 in 1998. According to the latest figures provided by the AGC, there were 61 FLFs in 2000 and 72 as of 31 July 2007. In terms of the number of foreign lawyers in Singapore, there were 576 in 2000 which increased to 638 in 2006 with a marginal increase to 645 as of 31 July 2007. These figures may be explicable on the basis of: (a) stronger competition from the region such as Hong Kong; and (b) the declining attractiveness of Singapore as a legal services hub. At the same time, more local graduates are working in FLFs either based in Singapore or, increasingly, abroad. In 2000, there were 15 Singapore lawyers practising in FLFs; in 2007, this number is 119. It also bears mention that the number of lawyers practising domestically in Singapore has more or less remained constant while the number of Singapore qualified lawyers working in FLFs globally and filling in-house corporate counsel roles has very substantially increased. The combination of these trends suggest that in the future: (a) the top FLFs may only regard Singapore as a satellite office of Hong Kong (and not as a main regional hub) to service domestic and regional clients (like Freshfields); (b) the number of FLFs in Singapore have been more or less constant, suggesting that Singapore's attraction as a legal centre has not kept pace with the regional legal centres which have grown substantially in the corresponding period (see footnote 95 below); (c) it may be increasingly difficult to attract talented young lawyers to populate SLFs as more young lawyers seek the international work exposure that FLFs can offer. Therefore, unless Singapore continues to attract cutting-edge transactional work,

jurisdictions have offices in Singapore, the lawyers in their Singapore operations are restricted from practising Singapore law and are not permitted to appear in court.

- 7.8 These firms remain in an offshore capacity and are only allowed to practise the laws of their respective home jurisdictions both in Singapore and the region. In the light of these restrictions, Singapore law (as a matter of legality and for obvious economic reasons) is not actively recommended nor used as the governing law by these FLFs in the various regional transactions they support. In essence, the FLFs live in a "parallel dimension" – present in Singapore but not connected to or engaged in the system.
- 7.9 Because the FLFs in Singapore are not connected to the Singapore legal system, their presence here (in terms of size) is generally much smaller than in Hong Kong.⁹⁵ Of course, the larger sizes of FLFs in Hong Kong have also to do with its proximity to the PRC. However, Singapore's geographical proximity to India (and the burgeoning South-East Asia market) has not yet had an appreciable effect on FLFs in Singapore growing in size though there are some FLFs with a substantial Indian focus. In some cases, the Singapore offices of the FLFs are essentially satellites of their larger Hong Kong offices. As such, the FLFs are not tightly anchored here, even if they participate in JLVs. The recent withdrawal of Freshfields from its Singapore JLV followed by the retracting of its Singapore resources to the larger Hong Kong office illustrate this point.
- 7.10 Notwithstanding the restrictions on FLFs practising Singapore law, an interesting phenomenon has developed over the past few years: there is a steady stream of Singapore-qualified lawyers migrating to join FLFs both in their overseas offices as well as in Singapore. These fully qualified Singapore lawyers do so in order to gain a greater regional

good local graduates may leave for FLFs abroad. That these trends are occurring *despite* Singapore's currently optimistic economic outlook is all the more cause for worry. South Korea is also another potential competitor in the future as it liberalises in response to its WTO obligations: see, Hyung Tae Kim, "Legal Market Liberalisation in South Korea: Preparations for Change", (2006) Pac. Rim L. & Pol'y 199. The one positive trend from these statistics is that FLFs are interested, wherever possible, to populate their branches here with Singaporeans rather than foreigners. Economics and profitability inevitably impel such a consequence. Localisation will take place over time if competent local lawyers are available.

⁹⁵ According to the *Hong Kong Study of the Manpower Needs of the Legal Services Sector (2001)*, at the end of 1999, there were 480 foreign lawyers who were registered with the Law Society, of whom 241 worked with Hong Kong law firms. In 2006, there were 834 registered foreign lawyers in Hong Kong – almost a doubling: see, *Entry and Practice of Foreign Law Firms in Hong Kong* (November 2006), available at: <<http://www.hketo.ca/abouthk/socio4.html#judicial>> (Last accessed: 1 September 2007). Therefore, not only has the number of foreign lawyers in Hong Kong surpassed that in Singapore, it is on the increase. In Singapore, however, the numbers have not substantially changed.

or international exposure to their careers, and for better pay and career prospects, better training, and improved working hours.⁹⁶

- 7.11 The fact that these Singapore-qualified lawyers are restricted from practising Singapore law (even whilst based in Singapore) has not prevented this trend from continuing. One possible conclusion from this movement is that there is a desire by Singapore-qualified lawyers to migrate towards positions offering more regional or global exposure that are not currently being offered by SLFs.
- 7.12 The liberalisation of the Singapore legal market to the point where FLFs are permitted to practise Singapore law may impede the trend of very good young Singapore-qualified lawyers giving up practice in Singapore to join FLFs overseas. This may potentially slow down the drain of local legal talent and allow key legal talent to be retained within the Singapore legal sector, albeit employed by FLFs. By anchoring these lawyers in Singapore, these lawyers will hopefully become more rooted to Singapore as compared to having them leaving Singapore young and establishing families overseas. It will also provide more opportunities for Singaporean lawyers who are presently overseas to come back to Singapore to practise. Furthermore, allowing FLFs to practise Singapore law will create an incentive for these firms to grow their practice in Singapore and in turn make it necessary (and profitable) to hire locally-trained lawyers to staff their offices, and, in particular, service the local and regional law components of their transactional work.
- 7.13 It is important to recognise that Singapore lacks a significant hinterland similar to the other regional legal centres mentioned above. This factor limits Singapore's ability to firmly establish Singapore law as a regional/international *lex mercatoria*. Singapore's domestic economic market is also much less significant than these other regional legal centres and therefore its ability to influence foreign contracting parties to employ Singapore law is more limited. In order to achieve the objective of establishing Singapore law as a regional *lex mercatoria*, two factors should be considered:
- (a) potential incentives to businesses and financial institutions to use Singapore law as the governing law of their regional transactions; and
 - (b) the potential ability of FLFs in recommending the use of Singapore law to govern regional/international transactions.

⁹⁶ *Supra*, note 80.

- 7.14 Despite Singapore's small domestic market, it remains a location of choice for businesses operating in the region. This stems from its reputation as a modern, efficient metropolis that is cosmopolitan and well-regarded for its transparency and rule of law. Nevertheless, more can be done to encourage businesses to adopt Singapore law to govern their international transactions. In this regard, incentives to create a more active Singapore dollar-denominated bond market can be the first of several initiatives aimed at attracting businesses to use Singapore law as the governing law for their transactions in the region.
- 7.15 The second factor described above has been recognised in part through the SAL's engagement of in-house counsel of multinational corporations ("MNCs") located in Singapore to encourage the use of Singapore law as part of the overall effort to establish Singapore law as the *lex mercatoria* for the region and to anchor regional arbitration here. This initiative is promising but is only one part of the overall equation for success: another part lies in the hands of MNCs and the FLFs that are located here. They should be similarly engaged and incentivised to recommend the use of Singapore law. However, under the current regulatory regime, since FLFs cannot practise Singapore law, they cannot be expected to recommend the use of Singapore law to their clients. Given the current restrictions, the consequence of the FLFs not making such a recommendation is a potential loss of revenue for them since they are unable to advise on transactions governed by Singapore law. Since the FLFs are often in a position to recommend governing laws, the FLFs should be engaged, otherwise the vision to establish Singapore law as the *lex mercatoria* for the region will be difficult to attain. In most other jurisdictions where they practise, FLFs usually practise local law with locally-qualified lawyers, and are in a position to, and will, recommend the use of local law if it is in their economic interests to do so.

(C) **Steps to Becoming a Regional Legal Centre**

- 7.16 The above considerations relate to the "pull" factor: *i.e.*, the role that MNCs, businesses and FLFs can play to have Singapore law "pulled" onto the regional stage to achieve Singapore's objective of becoming a regional legal centre. The other factor for advancing the vision is through a "push", where SLFs are encouraged to venture abroad through the establishment of foreign regional offices and branches. In this regard, it is important to note that SLFs have had limited success in achieving their regional goals and many have not seen regional expansion as a critical success factor for their continued growth and

development.⁹⁷ One prevailing reason for this lack of motivation is the presence of a protected and profitable domestic practice that does not encourage SLFs to seriously look abroad for opportunities.

7.17 Thus far, Singapore has adopted a conservative approach through the JLVs and the Formal Law Alliances (“FLAs”). The JLV and FLA schemes have seen limited success since they are predicated on a formal tie-up between SLFs and FLFs that seek to allow SLFs the opportunity to develop their regional/international practice in collaboration with the FLFs. These structures seek to promote working opportunities, know-how transfer and provide SLFs with a catalyst for regional growth. However, two key ingredients are lacking: full economic union and profit sharing. This has led to an inability to sustain and grow the ventures from their initial enthusiastic beginnings.

7.18 There has since been an acceptance of the key role played by economic union in aligning interests. In April this year, the Legal Profession (Amendment) Act 2007 was passed to put into effect a proposal made by the Third Committee on the Supply of Lawyers. This proposal, now enacted in section 130L of the Legal Profession Act, allows SLFs to hire and share up to 25% of their equity/profits with foreign lawyers in their local partnerships. Although this is a step in the right direction to develop Singapore into a regional legal centre, this step could be of limited effectiveness.

(I) *Free Markets and Open Policies*

7.19 Singapore needs to approach the issue of developing into a regional legal centre with greater aggressiveness and urgency in order to catch up with global competitors.⁹⁸ Indeed, to compete effectively in the global marketplace, inertia, on legal reform or any other competitiveness challenge, is no longer an option. Singapore has always recognised its limited domestic market and has therefore adopted open-market principles to increase its economic potential in most areas of economic activity.

⁹⁷ See *supra* note 86. In the last Census of the Legal Industry and Profession 2001, only 28 out of 359 SLFs reported interest in setting up branches overseas.

⁹⁸ According to the findings of the Census of the Legal Industry and Profession 2001 published by the Ministry of Law and the Department of Statistics in November 2003, SLFs had a combined turnover of only S\$831 million, which is even less than some of the top firms in the US. Clifford Chance, ranked first in the world, had a turnover of \$2.69 billion in 2005; with the top ten law firms in the world having an average turnover of \$2.06 billion.

- 7.20 Active participation in the regional and global economy has always helped Singapore grow beyond the constraints of its limited domestic market. This approach has also pushed Singapore-based companies abroad to establish regional (and, to an increasing extent, global) footprints. Examples of this include the open-skies and open-port policies that have resulted in Singapore firms such as Singapore Airlines and Neptune Orient Lines having global reach.
- 7.21 When left behind in the global marketplace, Singapore has acted to reclaim a leading position: this is clearly seen, for example, in the liberalisation of the telecommunications sector in response to market changes, to the setting of an aggressive timeline for Singapore banks to dispose of their non-core banking assets and to the granting of Qualified Banking Licenses to international banks to provide the roadmap for greater openness and competition in the banking sector.⁹⁹
- 7.22 Such market opening initiatives have been articulated and implemented whilst balancing the needs of local/domestic interests: be they in the form of compensation to SingTel for its loss of the telecommunications monopoly or ensuring that the local banks are sufficiently prepared for the time when the domestic banking barriers are totally dismantled.
- 7.23 A similar approach could be taken in managing the transition from the current closed local practice to a liberalised legal market that seeks to establish Singapore's premier position as a regional legal centre.
- 7.24 Perhaps the real question to be addressed is not whether Singapore should take this step forward but how quickly.
- 7.25 It is acknowledged that the legal market in Singapore has opened up over the past few years with the introduction of the JLVs and FLAs. This has been a positive step and has brought benefits to some participating firms. However, the JLV structure usually represents in substance two firms – one local and one foreign – working together on certain matters, and does not truly reflect an open market.

⁹⁹ The Monetary Authority of Singapore submitted that a phased liberalisation over a five-year period has brought about the intended benefits. At paragraph 4 of its *Comments on the Liberalisation of Legal Services* (November 2006), it says: "Today, the whole banking system is more competitive and innovative. Because of the access to domestic deposits, foreign banks have anchored more activities in Singapore, and provided alternatives to users here. Local banks have responded to the competition, upgraded their capabilities and regionalised, in order to grow their markets and to meet global challenges. Consumers and corporations have benefited from more choice and better pricing."

- 7.26 The roadmap to liberalise the banking sector and the encouragement of the many sectors of the Singapore economy to venture abroad has already been set in motion. There is now a pressing need for the legal sector to follow and keep pace in order to effectively support the growth of the country's initiatives in those other key sectors.
- 7.27 The fact that Singapore's legal sector only contributes 0.5%¹⁰⁰ to her GDP, lagging behind the global norm of 1.5% to 2% for similar developed countries, suggests that steps can and should be taken to enhance the economic contribution of the legal sector. Beyond hard numbers, there is the spin-off benefit of having a strong legal hub, which is harder to measure but no less important. A more mature and sophisticated legal market that is able to offer a whole suite of cutting-edge legal services will also facilitate and sustain the growth of other important sectors in the economy, such as the banking, corporate finance and maritime industries.

(II) *Opening Singapore's Legal Market*

- 7.28 One major concern for opening up the Singapore legal market by allowing foreign lawyers and FLFs to practise Singapore law is the potential economic impact on SLFs and the legal market here. These include: (a) the supposed adverse impact on small practices which have a focused domestic practice akin to "general practitioners" in the medical industry; (b) increased competition from FLFs in high-end transactional work; (c) continued upward pressure on salaries; and (d) the impact on court proceedings.
- 7.29 The Committee acknowledges the indispensable work of small and medium law firms and their invaluable contribution in servicing the legal needs of a significant proportion of the domestic market. Without these firms, many Singaporeans will not be able to obtain legal advice even on basic issues such as family and probate law at a reasonable cost.
- 7.30 However, FLFs do not engage in "general practice". The FLFs that Singapore should attract do not typically engage in this type of practice even in their home countries, so it would be expected that they would not focus on this area in Singapore. This is also borne out in other jurisdictions that have liberalised their markets, including Thailand and Hong Kong in Asia. FLFs there are focused on profitability. On the contrary, the desired outcome of allowing FLFs to

¹⁰⁰ This figure, provided by EDB, includes legal services provided out of Singapore by FLFs.

advise on Singapore law is that it would provide an economic incentive for these firms to advise their clients to adopt Singapore law as the governing law in their contracts, thereby establishing Singapore law as the *lex mercatoria*. In this way, more transactions and even dispute resolution would take place in Singapore, bringing in additional work that law firms do not currently compete for. Singapore law has a real opportunity to be used as the governing law in South-East Asia, if not East Asia, and we should take this opportunity before it is too late.

- 7.31 Admittedly, the larger SLFs may experience competition in high-end cross-border transactional work. Even so, since FLFs are not likely to compete on price with local firms and will, at least initially, not be in a position to compete on local deals, FLFs might have an advantage only in large cross-border deals (which in any event most local firms are not currently engaged in¹⁰¹) where they could provide one-stop shop to international clients. (While the JLV scheme was intended to provide a one-stop shop to clients, it has not always worked out to be so in practice.)
- 7.32 One consideration, though by no means a crucial one, is that local lawyers and SLFs are now clearly better able to cope with international competition. If liberalisation is accepted, it would be in phases and only a very select few FLFs would be given a licence under the scheme.¹⁰² With the present position set to continue, it is best that liberalisation occurs now when our firms are doing well and in a position of strength.
- 7.33 Undue concern that there would be continued upward pressures on salaries as FLFs attempt to hire good Singapore lawyers may be misplaced. This pressure already exists: even with a "closed" market, there is evidence of Singapore legal talent leaving for the higher salaries offered by FLFs (both domestic and abroad).
- 7.34 As for court proceedings, the Committee currently opposes liberalising litigation services as there appears to be no benefits to be derived from this. Interestingly, only two of the several FLFs in Singapore that were consulted have expressed any enthusiasm for practice in this area.

¹⁰¹ In 2001, only 55 SLFs indicated that they had handled cross-border transactions that generated a total of only \$24.992 million in revenue receipts.

¹⁰² A paper submitted by the EDB to the Committee also highlights the possibility of controlling any disadvantages that FLFs may pose through the use of licensing requirements and regulations: see *Developing Singapore as a Legal Hub* (November 2006) at paragraphs 10-19.

- 7.35 Some stakeholders have suggested that opening up the local legal sector to competition by FLFs may result in a decline in the quality of legal advice available in Singapore. The Committee suggests that this ignores the emphasis FLFs place on their reputations and their rigorous risk management policies.
- 7.36 Over time, allowing FLFs to set up in Singapore will benefit *local lawyers* as well because FLFs will hire more locals in order to develop a more local practice.¹⁰³ The accounting profession, after liberalisation, has seen the top firms staffed by locals rather than foreigners. For Singapore and Singapore-qualified lawyers, the brain drain might be reduced because Singapore lawyers would have more options: they could remain in Singapore as Singapore lawyers but also obtain more international/global experience by working in Singapore at an FLF. They would have more access to knowledge and training resources, IT resources, and global partnership and management positions.
- 7.37 In a liberalised market, SLFs may feel inclined to compete on price to prevent the business from moving to the FLFs. But this will not be sustainable in the long term as legal fees in Singapore are already very competitive. Instead, the competition will probably encourage local law firms to average up or raise their service levels by becoming more sophisticated in their advice – venturing beyond the giving of “pure” legal advice.
- 7.38 It should be recognised that apart from the possible concerns listed above, there are a number of potential benefits that Singapore stands to reap from opening the legal sector, such as:¹⁰⁴
- (a) an improved level of legal services arising from the liberalised competitive environment – this would encourage SLFs to rise to the levels of global legal service standards and better service domestic and regional corporate clients;¹⁰⁵

¹⁰³ In Hong Kong, a number of foreign law firms have converted to become Hong Kong law firms as several of their partners have passed the local qualifying exams and been admitted by the courts: see p 19 of the *Hong Kong Study of the Manpower Needs of the Legal Services Sector*. Statistics from the Hong Kong Year Book show that despite the climbing number of FLFs and foreign lawyers in Hong Kong, the local law firms and lawyers have also steadily risen, demonstrating that liberalisation need not be at the expense of the local legal community. On the other hand, the number of lawyers in Singapore has remained, broadly speaking, stagnant even in the present buoyant global economy.

¹⁰⁴ These arguments are well recognised: see, e.g., Michael J Chapman and Paul J Tauber, “Liberalising International Trade in Legal Services: A Proposal for an Annex on Legal Services under the General Agreement on Trade in Services”, (1995) 16 *Mich. J. Int’l L.* 941 at 954–956

¹⁰⁵ At p 12 of the *Hong Kong Study on Manpower Needs of the Legal Services Sector* (2001), it was reported that the international firms were leading changes in practice management by, managing their practices as businesses. This approach is reflected in the hours of recoverable billable work they

- (b) further incentivise the largest SLFs to export their services and regionalise;
- (c) partially reversing or slowing down of the current legal brain drain of Singapore-qualified lawyers;
- (d) the building up of Singapore lawyers' capabilities in knowledge management, training resources, IT infrastructure, global partnership experience and regional management expertise through the integration of Singapore lawyers within FLFs in Singapore, *i.e.*, the even more rapid growth of the intellectual legal capital of Singaporeans;
- (e) the setting up of the necessary legal infrastructure to support an increasingly sophisticated and knowledge intensive business environment in Singapore;¹⁰⁶
- (f) the development of an exportable legal industry by promoting the use of Singapore law as the *lex mercatoria* in the region;
- (g) an increase in the legal services sector's contribution to the country's GDP;¹⁰⁷ and
- (h) the enhancement and entrenchment of Singapore's image and position as a regional legal centre.¹⁰⁸

(III) Recommendations

7.39 The Committee believes that a sectoral approach to liberalisation should be adopted. For example, international arbitration has already been partially liberalised and is suitable for further liberalisation; whereas in the area of commercial practice, more measured steps may be necessary.

expect from their employees, their integrated systems to facilitate effective working, their approach to client servicing and their ability to bring in or consult appropriate experts in other parts of the world when this will assist the client.

¹⁰⁶ See, paragraph 1 of EDB's paper, *supra* note 102. This is a point also raised by the Monetary Authority of Singapore's comments, *supra* note 99: "A strong suite of legal and other supporting services, such as tax and accounting, underpins the growth of the financial sector." The adequacy and sophistication of legal expertise needed will only increase as Singapore seeks to grow other advanced sectors such as bio-technology and the creative industries. Currently, such expertise exists only in one or two large local law firms.

¹⁰⁷ The EDB notes that the increase in the legal services sector's contribution to the country's GDP has largely been driven by FLFs: *supra* note 102 at paragraph 2.

¹⁰⁸ One commentator attributes Hong Kong's sterling reputation as the region's legal hub to its liberalisation, as compared to Singapore: See, Darryl D Chiang, "Foreign Lawyer Provisions in Hong Kong and the Republic of China on Taiwan," (1995) UCLA Pac. Basin L. J. 306, at 345

(a) International Arbitration

7.40 Under the current regime, FLFs are permitted to act only after the notice of arbitration is issued.

7.41 In response to feedback received, and in line with the desire to maximise the prospects of Singapore becoming a leading arbitration centre, it is recommended that the role of FLFs should be extended to allow advice rendered in contemplation of international arbitration.¹⁰⁹

7.42 The caveat to this is that in the event that any advice is rendered by an FLF in matters governed by Singapore law, such advice must be given by a Singapore-qualified lawyer who can be employed by the FLF. This will also encourage the FLFs to hire local graduates. Once the notice of arbitration is issued, then the existing situation in which there is no restriction on FLFs from acting prevails.

7.43 To further incentivise the FLFs to promote Singapore law for international commercial transactions or agreements, and in line with the proper role of the FLFs in the drive to make Singapore a regional hub for legal services, FLFs based here (and in turn the Singapore-qualified lawyers working in these FLFs) should be allowed to undertake Singapore law work in international commercial arbitration proceedings governed by Singapore law, including the vetting or drafting of Singapore law agreements incorporating arbitration clauses or advising on the legal rights and liabilities of the parties to such agreements both before and after the dispute is referred to arbitration, provided certain conditions are satisfied:

- (a) both parties to the commercial transaction or agreement are entities incorporated, resident or have their place of business outside Singapore; or
- (b) the subject-matter of the commercial transaction or agreement is most closely connected to a place located outside Singapore and hence has no physical connection whatsoever to Singapore; or
- (c) the obligations of the commercial transaction or agreement between the parties are to be performed entirely outside Singapore.

¹⁰⁹ It should be noted that only a few of the FLFs in Singapore have an active international arbitration practice. This pales in comparison to the numbers in Hong Kong. Out of 22 international law firms active in arbitration work in Asia, only four are in Singapore and all 22 are in Hong Kong.

(b) **Commercial Practice**

7.44 There are three possibilities in terms of whether and how to liberalise the legal market for general commercial practice:

- (a) *Proposal 1: Maintain the status quo.*
- (b) *Proposal 2: As a half-way house between liberalisation and retaining the status quo, it has been proposed to the Committee that the JLV scheme be further enhanced and extended. Under this scheme, FLFs would be able to hire Singapore-qualified lawyers to advise on Singapore law; FLFs would be required to share their profits from Singapore law-related activities; and FLFs, in turn, may share profits with the SLFs in the permitted JLV practice areas. However, it was also proposed that this enhanced JLV scheme should be limited to SLFs having more than ten equity partners, each with more than ten years' experience. Singapore lawyers hired by the FLFs should have more than three years' experience. In addition, the ratio of Singapore lawyers to foreign lawyers in the constituent FLF should be capped at 1:5; and the ratio of Singapore lawyers in the constituent FLF to those in the constituent SLF should be 1:5.*
- (c) *Proposal 3: Requests for proposals will be made for FLFs to make out a case on how allowing them to practise Singapore law will benefit Singapore. These firms (which could be called "Qualifying Foreign Law Firms" ("QFLFs")) must first be able to demonstrate a concrete commitment to Singapore, by pledging to keep their Singapore office at a certain size and composition for an agreed number of years and by agreeing to make Singapore their regional hub by vouching that certain countries in the region will be serviced by their Singapore offices. Only those QFLFs which have made out a compelling case for mutual benefit will be allowed to practise Singapore law through Singapore-qualified lawyers. For example, the presence of these QFLFs in Singapore must help to (a) increase offshore law work from ASEAN, India, China and other Asian economies; (b) increase legal expertise and transactional skills of Singapore lawyers, especially in areas such as private banking, intellectual property and corporate law; and (c) promote the use of Singapore law in international transactions. This model is known as the Request-for-Proposal ("RFP") model.*

- 7.45 Proposal 1 is self-explanatory. Singapore will continue to rely on its existing programmes, such as the JLV system and other economic incentives, to attract FLFs to Singapore, although they will remain essentially “offshore”. For the reasons already canvassed above, the Committee does not recommend adopting Proposal 1.
- 7.46 The Committee received feedback on Proposal 2. There was general consensus that the proposal would not achieve more than what the present incarnation of the JLV scheme has achieved, given that the features of Proposal 2 (particularly, the ability to share profits) are not new and some aspects can take place under the present regime. Of particular concern were the views of FLFs, which submitted that Proposal 2 imposed too many restrictions and conditions. All the FLFs that were consulted indicated that they would not be interested in the scheme. The Committee believes that recommending Proposal 2 alone would be an insufficient signal of Singapore’s commitment to liberalisation of the legal market.
- 7.47 Interestingly, even some prominent SLFs generally agreed that Proposal 2 was not an improvement on the present JLV scheme. It appears that the main difficulty in the present JLV scheme is that in most cases the foreign and local constituent firms are not fully harmonised. Requiring FLFs to share their Singapore law profits is charging FLFs a “franchise fee” for being permitted to practise Singapore law. Most FLFs would be unwilling to accede to this. In addition, Proposal 2 imposes restrictions on the SLFs that can participate, thereby preventing smaller or boutique firms from engaging in what is supposed to be a beneficial scheme.
- 7.48 The Committee shares the concerns raised. Nonetheless, an enhanced JLV scheme should also be permitted provided that it is not the exclusive avenue of liberalisation even in the short term. With modification, the enhanced JLV scheme could be regarded as a complementary extension of the present scheme. To this end, the Committee recommends adopting Proposal 2 but with the following amendments:
- (a) the permitted areas of cooperation from which profits may be shared should be expanded to include arbitration (in line with our recommendation in paragraph 7.41 above);
 - (b) the constituent FLFs would be able to share up to 49% of the profits of the constituent SLFs in the permitted areas of cooperation;

- (c) apart from the latter requirement, the JLV constituents should be allowed to decide whether, and to what extent, to share profits;
- (d) the criteria for SLFs that qualify for the enhanced JLV scheme should be the same as the criteria for those SLFs which presently qualify for the JLV scheme;
- (e) FLFs may hire up to one Singapore lawyer for every foreign lawyer in the FLF constituent;
- (f) local partners should be allowed to concurrently hold partnership and administrative positions in the FLF constituent; and
- (g) the Singapore lawyers hired by the constituent FLFs in the JLVs will come under the regulatory and disciplinary control of the Attorney-General as the current regulatory authority for the JLV scheme.¹¹⁰

The table at Annex D summarises the differences between the current JLV scheme and the proposed enhanced JLV scheme.

7.49 The Committee also recommends the adoption of Proposal 3. The proposal, while cautious, will signal Singapore's firm commitment to attracting quality FLFs to practise in Singapore in a mutually beneficial way. The Committee envisages that a limited number of firms (five firms or less if the applicant firms do not meet the stringent requirements set out) will be given this licence to practise Singapore law through Singapore-qualified lawyers. In addition, the practice areas open to QFLFs will be limited (see paragraph 7.56 below).

7.50 At the macro-level, it may pave the way for increasing the volume and quality of high-end transactional work coming into Singapore. At a micro-level, Singapore-trained lawyers working in these approved FLFs will be exposed to high-end regional transactional work without having to surrender their practising certificates, thereby permitting them to maintain their currency and rejoin a SLF subsequently. This should go some way in stemming the tide of young lawyers leaving to

¹¹⁰ In this regard, section 130O of the Legal Profession (Amendment) Act (No. 20 of 2007) will have to be amended to require the Attorney-General to work together with the Law Society when a complaint relates to a Singapore lawyer registered by the Attorney-General to practise Singapore law in the permitted JLV areas of legal practice before he exercises his disciplinary control over such a Singapore lawyer, and also confer a discretion on the Attorney-General to refer such a Singapore lawyer to the Law Society's Inquiry Committee or Disciplinary Committee for necessary action if he deems it appropriate.

work in FLFs in other financial sectors such as Hong Kong and London.

- 7.51 While the concerns of large SLFs – those that are likely to face direct competition from FLFs practising Singapore law – are legitimate, the Committee believes that they will benefit over time from the enhanced competition, be incentivised to regionalise, and also benefit from increased demand in Singapore legal services as Singapore law may gain currency as the regional *lex mercatoria* in the long run. Proposal 3 also introduces liberalisation in a measured way, which allows SLFs to prepare adequately to meet any competition they may face.
- 7.52 At the same time, the RFP model allows Singapore to retain control over the number and quality of the FLFs permitted to practise Singapore law. Each proposal will be assessed on a case-by-case basis by a committee that includes the key stakeholders in the legal and financial services sectors. It is the Committee’s recommendation that FLFs applying to practise Singapore law must demonstrate a concrete commitment to enhance Singapore’s status as a regional legal hub. FLFs approved under the RFP scheme can practise in all areas except commercial litigation and general practice. The number of Singapore lawyers that they can employ will be on a practice-needs basis, which should be assessed on a case-by-case basis. Approved FLFs should commit to making Singapore their regional hub to service the region, particularly ASEAN and India.
- 7.53 The method of liberalisation is not new to Singapore. The banking and accounting sectors have undergone liberalisation in a broadly similar fashion without the negative consequences initially feared.

(c) Litigation and General Practice

- 7.54 There is no reason to allow FLFs to engage in any aspect of litigation, at least certainly not in the initial phase of liberalisation. This can perhaps be reviewed at an appropriate juncture when the impact of limited liberalisation can be better calibrated.
- 7.55 Internationally, general civil practice in areas such as criminal, property and family law have always been the domain of domestic law firms. In any event, most international firms do not engage in a domestic civil and criminal practice and are unlikely to be interested in competing with the small SLFs for this slice of the pie.

7.56 The Committee therefore recommends that the practice of criminal law, retail conveyancing, family law, and administrative law as well as all aspects of criminal and commercial litigation be ring-fenced.

8 CONCLUSION

8.1 The recommendations contained in this report are aimed at ensuring the continued sustainability, vibrancy, growth and development of all aspects of the legal services sector.

8.2 When approved, the recommendations should be implemented as soon as practicable. It is suggested that an Implementation Committee be established with the task of detailing and following through with the recommendations.

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TABLE OF DIFFERENCES BETWEEN CURRENT JLV AND PROPOSED ENHANCED JLV

	Feature	Current JLV	Enhanced JLV
1.	Sharing of Profits	Areas of legal practice permitted to JLV include banking law, finance law, corporate law, and any other area of legal or regional work as may be approved by the Attorney-General.	Permitted areas of cooperation from which profits may be shared to be expanded to include arbitration.
		The constituent FLF in an existing JLV is not allowed to share in the profits of the constituent SLF.	The constituent FLF in an existing JLV is allowed to share up to 49% of the profits of the constituent SLF in the permitted areas of cooperation.
		The FLF and SLF may only share in the profits of the JLV in such proportion as may be mutually agreed upon. However, the FLF's share of the JLV's profits cannot exceed the total profits of the JLV arising from those areas of legal practice permitted to the JLV.	No change.
2.	Experience of FLF and SLF	The FLF and SLF must have relevant legal expertise and experience in banking law, finance law, corporate law, arbitration, intellectual property law, maritime law, or any other area of legal or regional work as may be approved by the Attorney-General.	No change.
3.	Type of FLF	- FLF has five or more foreign lawyers resident in Singapore, at least two of whom shall be equity partners in the foreign law firm or, in the case of	No change.

	Feature	Current JLV	Enhanced JLV
		<p>a foreign law firm constituted as a corporation, at least two of whom shall be directors of such corporation.¹¹¹</p> <ul style="list-style-type: none"> - The foreign lawyers in the FLF must have at least five years of relevant legal expertise and experience in any of the areas of legal practice referred to in item (2). 	
4.	Type of SLF	<ul style="list-style-type: none"> - SLF has five or more Singapore lawyers, at least two of whom shall be equity partners in the Singapore law firm or in the case of a law corporation; at least two of whom shall be directors of such law corporation. - The Singapore lawyers in the SLF must have at least five years of relevant legal expertise and experience in any of the areas of legal practice referred to in item (2). 	No change.
5.	Partners and Directors	<ul style="list-style-type: none"> - If JLV is constituted as a partnership, the number of equity partners in the FLF and resident in Singapore shall not at any time be greater than the number of equity partners in the SLF. - If the JLV is constituted as a 	No change.

¹¹¹ Under both the United States-Singapore Free Trade Agreement (USSFTA) and the Singapore-Australia Free Trade Agreement (SAFTA), both US and Australian law firms are entitled to preferential treatment in the formation of JLVs, that is, the conditions have been modified as follows: 3 foreign lawyers, with an aggregate experience of 15 years, at least two of whom must be either equity partners or members of the board of directors of the foreign law firm, must be resident in Singapore.

	Feature	Current JLV	Enhanced JLV
		corporation, the number of directors nominated by the FLF shall not at any time be greater than the number of directors nominated by the SLF.	
6.	Written agreement	The FLF and the SLF must have entered into a written agreement to jointly manage the JLV and, if requested by the Attorney-General, have submitted a copy of such agreement to the Attorney-General and no material modification shall be made to the agreement without the prior written approval of the Attorney-General.	No change.
7.	Insurance policies	The JLV shall maintain throughout the period of its registration adequate insurance policies concerning indemnity against loss arising from its provision of legal services in or from Singapore and which are of a value not less than that required under any rules made under section 75A of the Legal Profession Act in respect of Singapore law firms, or of such other value as may be specified by the Attorney-General.	No change.
8.	Agreed Business plan	The FLF and SLF shall submit an agreed written business plan describing the objectives of the JLV and the implementation of the business plan, and no material modification shall be	No change.

	Feature	Current JLV	Enhanced JLV
		made to the written plan without the prior written approval of the Attorney-General.	
9.	Permitted areas of legal practice	<p>FLF may only practise foreign law and Singapore law, where applicable, through the JLV.</p> <p>JLV may practise in areas of legal practice mutually agreed between the constituent SLF and FLF, who may also agree among themselves the parameters of the practice areas; and</p> <p>JLV shall not practise Singapore law except through a Singapore lawyer who has in force a practising certificate and is practising in the constituent SLF of the JLV, or a foreign lawyer registered to practise Singapore law in the JLV under section 130I of the Legal Profession Act or in the constituent SLF of the JLV under section 130J of the same Act.</p>	Permit constituent FLF to employ Singapore lawyers to give Singapore law advice.
10.	Ratio of S'pore lawyer vs Foreign lawyer	No specified restriction.	FLFs may hire up to one Singapore lawyer for every foreign lawyer in the FLF constituent.
11.	Experience of S'pore lawyers	No specified restriction.	Singapore lawyers in constituent FLF to have minimum of three years Singapore law practice experience in Singapore

	Feature	Current JLV	Enhanced JLV
			law firm.
12.	Role of local partners	A SLF lawyer in the JLV may not become an equity or profit sharing partner in the FLF. If he does so, he will be regarded as a FLF lawyer in the JLV. However, a SLF lawyer is permitted to play an active role in the regional or international management framework of the JLV, for <i>eg.</i> he may become part of the FLF's regional management team.	Local partners be allowed to concurrently hold partnership and administrative positions in the FLF constituent.
13.	Regulatory control of S'pore lawyer	Singapore practicing solicitors are subject to the control of the Supreme Court and Law Society (Part VII of the Legal Profession Act on Disciplinary Proceedings applies).	The Singapore lawyers hired by the constituent FLFs in the JLVs will come under the regulatory and disciplinary control of the Attorney-General as the current regulatory authority for the JLV scheme. [Note: In this regard, section 130O of the Legal Profession Act will have to be amended to require the Attorney-General to work together with the Law Society when a complaint relates to a Singapore lawyer registered by the Attorney-General to practise Singapore law in the permitted JLV areas of legal practice before he exercises his disciplinary control over such a Singapore lawyer, and also confer a discretion on the Attorney-General to refer such a Singapore lawyer to the Law Society's Inquiry Committee or Disciplinary Committee for

	Feature	Current JLV	Enhanced JLV
			necessary action if he deems it appropriate.]

GLOSSARY OF TERMS

AAA	American Arbitration Association
ADR	Alternative Dispute Resolution
AGC	Attorney-General's Chambers
ASLI	Asian Law Institute
BCICAC	British Columbia International Commercial Arbitration Centre
CEDR	Centre for Effective Dispute Resolution
CIETAC	China International Economic and Trade Arbitration Commission
CLE	Continuing Legal Education
DIFC	Dubai International Financial Centre
DTD	Double Tax Deduction
EDB	Economic Development Board
FIDIC	International Federation of Consulting Engineers
FLA	Formal Law Alliance
FLF	Foreign Law Firm
ICC	International Chamber of Commerce
ICDR	International Centre for Dispute Resolution
IDRC	Integrated Dispute Resolution Complex
IE SINGAPORE	International Enterprise Singapore
ILE	Institute of Legal Education

JCAA	Japan Commercial Arbitration Association
JLV	Joint Law Venture
KCAB	Korean Commercial Arbitration Board
KLRCA	Kuala Lumpur Regional Centre for Arbitration
LCIA	London Chamber of International Arbitration
MNC	Multinational Corporation
NUS	National University of Singapore
PDRC	Philippine Dispute Resolution Center
QFLF	Qualifying Foreign Law Firm
SAL	Singapore Academy of Law
SCC	Stockholm Chamber of Commerce
SCCA	Singapore Corporate Counsel Association
SIAC	Singapore International Arbitration Centre
SIArb	Singapore Institute of Arbitrators
SLF	Singapore Law Firm
SMC	Singapore Mediation Centre
SMU	Singapore Management University
WTO	World Trade Organization