

**LEGAL PROFESSION (AMENDMENT) ACT 2008
LEGAL PROFESSION (INTERNATIONAL SERVICES) RULES 2008
LEGAL PROFESSION (MODIFIED APPLICATION OF ACT FOR
INTERNATIONAL SERVICES) RULES 2008**

This brief outlines the key changes that will apply to foreign lawyers and Singapore solicitors who practise or plan to practise in Foreign Law Practices, Joint Law Ventures and Qualifying Foreign Law Practices when the Legal Profession (Amendment) Act 2008 and the Legal Profession (International Services) Rules 2008 and the Legal Profession (Modified Application of Act for International Services) Rules 2008, enacted pursuant to the Act, come into force.

[Note to Users: This outline has been updated as of 19 September 2008 and supercedes the earlier version posted on Minlaw's website.]

Introduction

1. To provide for greater flexibility to respond to changing business needs, section 53 of the Legal Profession (Amendment) Act 2008 repeals and re-enacts a substantially different Part IXA of the Legal Profession Act (the "main Act"). Part IXA now devolves the details prescribing business conditions from the main Act to the Rules made under that Part, so that amendments may be made easily to respond to developments in the legal market.
2. Three main changes effected by the legislative amendments are: (i) to introduce the vehicle of the Qualifying Foreign Law Practice; (ii) to enhance the existing Joint Law Venture structure; and (iii) to further liberalise the practice of Singapore law in international commercial arbitration. These changes are detailed below.
3. For greater flexibility, better alignment, and greater consistency in regulation for the various foreign law practice vehicles, the registration regime applicable to existing foreign law practice vehicles (namely, Joint Law Venture ("JLV"), Formal Law Alliance ("FLA"), Foreign Law Practice ("FLP") and Representative Office) has been changed to a licensing regime. The registration structure for foreign lawyers continues, with the requisite modification for solicitors as detailed below.

(A) Qualifying Foreign Law Practice Scheme

4. The key provisions relevant to the QFLP scheme can be found in Rules 10 – 12 of the Legal Profession (International Services) Rules 2008 (LPIS

2008). A QFLP may practise Singapore law in “permitted areas of legal practice”¹ through Singapore solicitors holding practising certificates (PCs) and registered with the Attorney-General to so practise (Rule 11(1)).

5. Apart from licence conditions which will specify, *inter alia*, performance targets that the QFLP must meet, the QFLP will also be required to submit an annual report to the Attorney-General (Rule 11(7)) and maintain adequate insurance policies which provide indemnity against loss arising from claims in respect of civil liability (Rule 11(5) and (6)). The relevant local Rules governing professional conduct and publicity and the keeping of accounts, will apply (with necessary modifications) to the QFLP insofar as it pertains to the practice of Singapore law by the QFLP (Rule 12).

6. Under the LPIS 2008, the ratio of PC holders to non-PC holders in a QFLP may not exceed 4:1, and only non-PC holders of at least 3 years’ experience may be considered when calculating the ratio (Rule 11(2), (3)).

(B) Enhanced Joint Law Venture Scheme

7. The JLV scheme will be significantly enhanced. In the enhanced framework, the constituent FLP of a JLV may directly hire Singapore solicitors to practise Singapore law in “permitted areas of legal practice”² (Rule 5(2)). The ratio of PC holders to non-PC holders may not exceed 1:1, and only non-PC holders of 3 years’ experience or more may be considered when calculating the ratio: (Rule 5(4) and 5(5)). The constituent FLP of a JLV may also share up to 49% of the profits of the constituent Singapore Law Practice (SLP) in the “permitted areas of legal practice” (Rule 5(6) and (7)). Singapore solicitors of the constituent SLP may hold concurrent posts as partners and directors in the constituent SLP and constituent FLP of the JLV (Rule 5(8)). The rule that the constituent FLP must practise through the JLV remains (Rule 5(3)).

(C) Augmentation of open international commercial arbitration regime

8. The regime for practice of Singapore law in the context of international commercial arbitration will be augmented to allow the practice of Singapore law where international commercial arbitration is proposed in a transaction. Rule 14 of the LPIS sets out the extent to which Singapore law may be practised by a licensed FLP through a Singapore solicitor in the area of international arbitration. The relevant local Rules governing professional conduct and publicity will apply (with necessary modifications) to the licensed FLP insofar as it pertains to the practice of Singapore law by the licensed FLP (Rule 15).

¹ “Permitted areas of legal practice” is defined in section 130A(1) of the Legal Profession (Amendment) Bill 2008 to mean “all areas of legal practice other than any area of legal practice prescribed as an area to be excluded from the ambit of this definition”. Rule 3 details the areas of legal practice to be excluded from the ambit of this definition.

² See note 1 above.

(D) Regulatory regime for Practice of Singapore Law

(i) Regulation of Practice of Singapore law by Foreign Entities

9. Foreign entities may now practise Singapore law in two new contexts:
- (a) JLVs and QFLPs may practise Singapore law in the “permitted areas of legal practice”³; and
 - (b) all licensed FLPs may practise Singapore law through Singapore solicitors where international commercial arbitration is proposed (Rule 14).

10. Foreign entities (i.e. JLVs, QFLPs and licensed FLPs) practising Singapore law in these two contexts will be regulated by the Attorney-General. All foreign entities which practise Singapore law in these 2 contexts will also be subject to modified versions of the reporting and other requirements applicable to SLPs.

(ii) Regulation of Singapore solicitors employed in foreign entities who hold practising certificates

11. The arrangement whereby the Attorney-General regulates the discipline and conduct of all foreign lawyers in foreign law practices, while the Law Society of Singapore regulates the discipline and conduct of Singapore solicitors, in particular, practising certificate (PC) holders will remain substantially unchanged. However, there will be the following modifications:

- (a) With the exception of the category of PC holders described in sub-paragraph (b) below, PC holders in foreign entities will be subject to the same regime as PC holders in SLPs. However, as it would not be practical for both the Law Society and the Attorney-General to subject PC holders in foreign entities to onerous overlapping disciplinary jurisdictions, the Legal Profession (Amendment) Act 2008 and the Legal Profession (Modified Application of Act for International Services) Rules 2008 provide for the Attorney-General to be the primary regulator where it relates to issues concerning:
 - (i) Disciplinary proceedings (the new sections 85(3A) and 130R(5) of the Legal Profession Act as amended by the Legal Profession (Amendment) Act 2008);
 - (ii) Inadequate professional services (section 75B of the Legal Profession Act as amended by the Legal Profession (Amendment) Act 2008) read together with the modifications to the Second Schedule of that Act and the

³ See note 1 above.

modifications to the rules made under paragraph 11 of that Schedule set out in the Legal Profession (Modified Application of Act for International Services) Rules 2008;

- (iii) Accountant's Report⁴ (section 73 of the Legal Profession Act as modified by the Legal Profession (Modified Application of Act for International Services) Rules 2008); and
 - (iv) Powers of intervention in a solicitor's practice (section 74 of the Legal Profession Act as amended by the Legal Profession (Amendment) Act 2008) read together with the modifications to the First Schedule of that Act set out in the Legal Profession (Modified Application of Act for International Services) Rules 2008.
- (b) For PC holders in an SLP who hold concurrent posts in the constituent FLP of a JLV, the Law Society will remain primarily responsible for all matters relating to the solicitor's legal practice in the context of the constituent SLP. For matters relating to the solicitor's legal practice in the context of the constituent FLP, the Attorney-General will act as the primary regulator.

For PC applications, such PC holders with concurrent positions will be required to submit, in accordance with section 73 of the Legal Profession Act as modified by the Legal Profession (Modified Application of Act for International Services) Rules 2008:

- (i) Accountant's reports pertaining to the constituent SLP, in the usual manner applicable to PC holders in SLPs, to the Law Society and the Registrar, Supreme Court; and
- (ii) Accountant's reports pertaining to the JLV and its constituent FLP (in respect of the practice of Singapore law by the JLV and its constituent FLP) to the Attorney-General.

⁴ This pertains to the Accountant's Report referred to in section 73 of the current Legal Profession Act.