

SUBMISSION TO

THE LEGAL SERVICES REVIEW COMMITTEE

OF SINGAPORE

inquiring into

Singapore's Strategic Legal Needs in the Financial
Sector

International Legal Services Advisory Council
Attorney-General's Department
Australia

January 1998

CONTENTS

	PAGE
Summary of submission	3
1. Introduction	4
2. Financial services: a brief overview	5
3. Australia-Singapore trade and investment	6
3.1 Singapore: legal services sector	7
3.2 Australia: legal services sector	8
3.3 Australia-Singapore links in law and legal services	10
4. Globalisation of legal services and legal practice	11
4.1 Multilateral developments	12
4.2 Regional developments	13
4.3 Developments in Australia: regulation of foreign legal practice	15
5. Australian law firms in Asia	15
6. Measures that could be expected to assist the more efficient delivery of cross-border legal services in Singapore	17
6.1 Anticipated benefits to Singapore and its financial and legal services sectors	19
7. Conclusions	20

Appendix A: International Legal Services Advisory Council membership	22
Appendix B: Australia: uniform regulation of foreign lawyers	23

SUMMARY OF SUBMISSION

Singapore has developed a major role as a trade and financial services centre in the Asia Pacific region. Together with Hong Kong, Singapore is recognised as one of the most liberal and outward-looking economies. Trade and competition policies consistent with this philosophy have served Singapore well. However, compared to Hong Kong, Singapore's regulation of foreign legal services is less liberal.

Financial and Business Services (FBS) has emerged as the key sector of the Singapore economy, overtaking manufacturing and growing by 12 percent in 1997 over year earlier figures. A significant part of the sector's growth is due to offshore operations from Singapore.

Further liberalisation of the regulation of the practice of law by foreign lawyers and law firms in Singapore is necessary for Singapore to realise its aspirations for its financial services sector. Ready access to first class, internationally competitive legal services is a *sine qua non* for all of the major financial centres of the world. Such services can be provided most effectively by international lawyers and firms working in free association with local lawyers and law firms. They also facilitate the exchange of goods and other services and encourage innovation and the development of new services.

Communications and computer technology are profoundly influencing the development of banking and financial services as well as business and legal services. The recent successful conclusion of the basic telecommunications and financial services negotiations under the auspices of the World Trade Organization (WTO) and progress announced at Vancouver towards the Bogor Declaration targets as part of the Asia Pacific Economic Cooperation (APEC) process will create significant opportunities for the growth of world services trade.

Introduction by Singapore of more liberal regulation of foreign lawyers and law firms to stimulate the development domestically of world class legal services, together with

other appropriate trade and investment-enhancing policies, should enable Singapore to capitalise on the opportunities and to expand its role as a regional capital market and leading financial services centre.

1 INTRODUCTION

This submission discusses the need for Singapore to liberalise the regulation of legal services in order for it to increase its competitiveness as a regional financial centre. The submission compares the legal services regulatory environment in Singapore with Australia and points to the linkages between the two countries' legal services sectors. It discusses global, multilateral and regional developments in legal services, and outlines the way in which Australia has begun to meet these challenges through liberalisation. The final part of the submission outlines the anticipated benefits to Singapore and its financial and business services sector of less restrictive foreign law firm regulation.

The submission has been prepared by Australia's International Legal Services Advisory Council (ILSAC). ILSAC is an advisory Council to the Australian Government. It undertakes research, disseminates information and provides a consultative forum for private and public sector interest on issues relevant to international legal services. It is chaired by the Hon Sir Laurence Street AC KCMG and reports to the Australian Attorney-General and the Minister for Trade. ILSAC is serviced by a small Secretariat in the Attorney-General's Department, Canberra.

ILSAC's interests include the globalisation of legal services, domestic and overseas regulation of legal services, trade in legal services and the developing links between the Australian legal profession and lawyers from the Asia-Pacific region. The Council's 18 members are drawn from private and public legal practice in Australia, commercial dispute resolution centres, the Law Council of Australia and legal education institutions. A list of members is given at [Appendix A](#).

ILSAC has made submissions and presentations in Australia and overseas concerning the regulation of professional legal services with the object of promoting freer and fairer trade in such services.¹ This submission is made in response to the review of Singapore's strategic legal needs in the financial sector and the conditions under which foreign law firms and lawyers are allowed to operate in Singapore, in the context of ensuring Singapore's international competitiveness in financial services.

2 FINANCIAL SERVICES: A BRIEF OVERVIEW

Trade in financial services is part of the fastest growing category of world trade. Global services trade in 1996 was estimated at US\$1.4 trillion or 20.1 per cent of total world trade, compared to 16% of total world trade in 1985.² The recently concluded WTO negotiations on financial services, which resulted in new commitments by 70 countries and around 92 per cent of the global financial services market (as measured in revenue), are expected to lead to significant liberalisation of barriers to trade and investment in the sector. The major regional financial centres in Asia are Tokyo, Hong Kong, Singapore and Sydney. Singapore and Hong Kong are leaders in the export of financial services in the region. In Singapore the financial and business services sector is the largest sector of the economy and the Government intends for it to be even larger. Singapore attracts foreign companies to set up operations and local and many multinational companies coordinate their regional business activities from Singapore.

The APEC Capital Markets Working Group³ defined 'regional financial centres' as those where financial service providers concentrated on one or more of the following functions:

- issuance and trading of equity in foreign businesses;
- issuance and trading of debt instruments denominated in foreign currencies;
- management of foreign stock and bond portfolios;

¹ For example, ILSAC's submission to the Study Commission of Japan on the Issue of Foreign Lawyers (1993); papers and briefing to the Australian Parliament's Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry "Australia's Relations with Thailand"(1995) and "The Implications of Australia's Services Exports to Indonesia and Hong Kong"(1996).

² International Monetary Fund "Balance of Payments Yearbook" (1997).

³ APEC Capital Markets Working Group "An Increased Role in APEC Financial Markets" (1995), page 7.

- clearing, settlement, custody and other post-trade operations associated with the above;
- regional headquarters activities, especially treasury operations;
- offshore-banking activities;
- markets related to the above, including foreign exchange, derivatives and insurance; and
- specialist legal and corporate advisory services.

Financial and business services (FBS) in Singapore in 1996 became the key sector of the Singapore economy, displaced manufacturing, and contributing S\$30 billion (estimated S\$32 billion in 1997) towards, and accounting for 27 per cent of, GDP. FBS output rose by 8.2 per cent in 1996 and in the third quarter of 1997 FBS grew by 12 per cent over third quarter 1996 figures and 3 percent since the second quarter.⁴ Singapore's strategic location and its promotion as a total business centre has resulted in an increasing number of multinational organisations establishing or relocating overseas headquarters in Singapore. At the end of 1995, 243 financial institutions were operating in Singapore including 134 banks, 79 merchant banks and 22 finance companies.⁵ The recent regional currency instability in Asia will have some effect on the sector as much of the sector operates offshore from Singapore.

Australia's financial sector is probably the most efficient and competitive in the region at the wholesale market level, where trade in international financial services takes place.⁶ However, there is a strong local currency focus in Australian trading. In the Singapore and Hong Kong markets, local currency trading represents less than 15 per cent of total trading (compared to 34 per cent in Australia). The Prime Minister of Australia has recently announced new steps to create a more competitive and efficient financial services sector in Australia by liberalising regulation of the sector.⁷

In 1996/97 property and business services in Australia grew by 4.1 per cent, representing 8.3 per cent of GDP. The finance and insurance sector grew by 1.9 per

⁴ Data sourced from the Australian Department of Foreign Affairs and Trade.

⁵ Australian Department of Foreign Affairs and Trade "Country Economic Brief - Singapore" (1996), page 33.

⁶ Australian Government "Financial System Inquiry Discussion Paper" (November 1996), page 323.

cent in the same year, representing 5.3 per cent of GDP. Both sectors grew by 3.2 per cent representing 13.7 per cent of GDP in 1996/97.⁸ In 1995 there were 50 banks operating in Australia, 25 of which were foreign-owned entities, representing 13 per cent of the assets of the Australian banking sector, and 324 money market corporations, finance companies and general financiers⁹. While the Hong Kong and Singapore Stock exchanges outperformed Australia for most of the 1990s, the turmoil over the past 12 months has led to a decline in these markets, relative to the Australian market.¹⁰

3. AUSTRALIA-SINGAPORE TRADE AND INVESTMENT

Singapore is Australia's largest trade and investment partner in the ASEAN group of countries and Australia's eighth largest trading partner overall. Australia is Singapore's 12th largest export market. Two way trade was valued at A\$6.022 billion in 1996/97. Australia imported services from Singapore valued at A\$581 million in 1995/96. Exports of Australian services to Singapore were valued at A\$1.35 billion in 1995/96, showing growth of 10 percent on 1994/95.¹¹

Two way investment continues to grow with total Singaporean investment in Australia recorded at A\$8.87 billion as of June 1996. Australian investment in Singapore totalled A\$4.2 billion in 1995/96 (Australia's sixth largest investment destination). Singapore investment in Australia as of June 1996 is mainly in finance and insurance (A\$5.2 billion); manufacturing (A\$1.10 billion); property and business services (A\$760 million); metal products (A\$760 million); mining (A\$429 million); wholesale trade (A\$3494 million); and transport and storage (A\$223 million).¹²

⁷ Speech by the Prime Minister of Australia to the APEC CEO Summit on 23 November 1997 in Vancouver.

⁸ Data supplied by the Australian Department of Foreign Affairs and Trade. There is no equivalent to FBS in the Australian National Accounts.

⁹ Australian Government "Financial System Inquiry Discussion Paper (November 1996), page 15.

¹⁰ Data supplied by the Australian Stock Exchange, January 1998.

¹¹ Trade in Services, Australian Department of Foreign Affairs and Trade (1996/97).

¹² Data supplied by the Australian Department of Foreign Affairs and Trade.

There are strong business connections between Australia and Singapore. Singapore's Thakral Holdings is Australia's leading hotel group. The Government of Singapore has a strategic stake in a number of companies listed on the Australian Stock Exchange through the Government of Singapore Investment Corporation (GIC) and Temasek Holdings. These include Village Roadshow and AMP Office Trust (GIC) and Brierley Investments (Temasek Holdings). Major Australian firms with a business presence in Singapore include BHP, Boral, Clough Engineering Group, F H Faulding, James Hardie, Lend Lease, Mincom, Pioneer, Qantas, QBE Insurance, Telstra, Village Roadshow and the major Australian banks. Australian and Singaporean companies are increasingly undertaking joint investment in third countries in the Asia-Pacific region.¹³

3.1 SINGAPORE: LEGAL SERVICES SECTOR

In preparing this submission, ILSAC has sought to understand the essential characteristics of the legal sector of Singapore. Its information is that, as of May 1996, there were about 2,950 practising lawyers in Singapore who held membership of the Law Society of Singapore and approximately 4,500 legally-trained persons who held membership of the Academy of Law. Singapore has a high practising lawyer-to-population ratio (approximately 80 lawyers per 100,000 of population). There were about 660 local law firms and 35 foreign firms registered with the Law Society of Singapore in May 1996. About 84 per cent of the law firms registered with the Law Society are sole practitioners and many of these are involved in general legal services, with an emphasis on criminal law, for a walk-in clientele.¹⁴

The larger local law firms, that is having 30 or more lawyers, number about six. They provide commercial and civil legal services for corporate, banking, government and other institutional clients. Many of these are involved in international work and provide a range of legal services, including project finance. The presence of international financial institutions and off-shore law firms has necessitated that the

¹³ Australian Department of Foreign Affairs and Trade "Country Economic Brief - Singapore" (1996), page 43.

large Singapore law firms provide increasingly sophisticated legal services. The largest law firm in Singapore has more than a hundred lawyers and there are at least two other firms with more than 60 lawyers. A downturn in conveyancing and property work has meant firms specialising in this work have reduced their size. Several Singapore law firms have opened overseas offices, principally in Vietnam and China but also Indonesia and Burma, supporting offshore Singapore and other investment in these and other countries in Asia.¹⁵

Foreign law firms have been barred from practising local law since a change in Singapore regulation in 1988.¹⁶ The number of English, New York and other North American law firms establishing in Singapore has increased in the last 18 months. The firms are mainly those having a significant project finance practice. This work is expected to grow over time as the largest corporations across the region look to international banks and markets to supply their financing needs.

3.2 AUSTRALIA: LEGAL SERVICES SECTOR

The Australian legal services sector has undergone substantial change over the last decade. Some services provided by lawyers have been deregulated, advertising is allowed in most jurisdictions, multi-disciplinary practices are permitted in New South Wales, and lawyers and law firms are now subject to the competition rules in the *Federal Trade Practices Act 1974*. In line with WTO principles, entry by foreign lawyers and law firms to the Australian legal services market is possible without a condition of reciprocal market access.

In March 1997 there were 32,576 lawyers¹⁷ admitted to practice in Australia and as at June 1996 nearly 9,800¹⁸ legal services practices. While 95 per cent of practices employed fewer than 20 people, there were 64 practices which employed 100 or more

¹⁴ ILSAC Legal Services Country Profile: Singapore (1998 - forthcoming).

¹⁵ International Financial Law Review (8th edition, 1998), page 162.

¹⁶ International Financial Law Review (8th edition, 1998), page 23.

¹⁷ Data provided by the Law Council of Australia.

¹⁸ Data published by the Australian Bureau of Statistics "Legal and Accounting Services, Australia" Cat No. 8678.0 (November 1997).

persons and these firms accounted for 21 per cent of sector employment and 30 per cent of total income. Commercial, finance and business services comprised about 32 per cent of Australian legal services practices' income. Australian law firms involved in international trade and investment provide a wide range of services to corporations, financial institutions, and government clients. The firms offer innovative, flexible and value-added services in such areas as:

- complex project financing;
- resource, telecommunications and private infrastructure development;
- privatisation of state-owned enterprises; and
- intellectual property and technology licensing.

In Australia, regulation of the legal services sector is relatively liberal and foreign lawyers and law firms are able to practise foreign law, international law, third country law and local law, where duly qualified. To date, around ten foreign law firms have established a presence in Sydney and Melbourne, which is a reflection of the extremely competitive international legal services market in Australia and the specialised range of services already available from Australian law firms.¹⁹

In 1994 about 1.3 per cent of firms in the Australian legal services sector (ie around 120 Australian legal practices) were involved in export.²⁰ These firms include the large national practices as well as “boutique” and medium size firms. Most of the large Australian practices have established one or more overseas offices and/or associated firm arrangements. Increasingly, Australian law firms include lawyers admitted in non-Australian jurisdictions. The most important markets for Australian exports of legal services in 1995/96 were, in order, the United States, United Kingdom, Hong Kong, Japan, and other Asia-Pacific countries.

¹⁹ The law firms in Australia with overseas origins include Baker & McKenzie (US), Chadbourne & Parke (US), Collier Shannon Rill & Scott (US), Coudert Brothers (US), Howard, Darby & Levin (US), Jones, Day, Reavis & Pogue (US), Skadden, Arps, Slate, Meagher & Flom LLP (US), Stikeman, Elliot (Canada), and Sullivan & Cromwell (US). Sly & Weigall, an Australian law firm, adopted the name Deacons Graham & James in 1995 after entering into a network arrangement with Graham & James (US) and Deacons (Hong Kong).

²⁰ LEK Partnership “Intelligent Exports and the Silent Revolution in Services” (1994), page 42.

3.3 AUSTRALIA-SINGAPORE LINKS IN LAW AND LEGAL SERVICES

Australia and Singapore share the common law heritage of England and, as a consequence, the general legal systems of both countries are similar. Major legislative changes have taken place in both countries, many of which serve to strengthen each country's legal provision for international transactions. Some of Singapore's recent legislation draws on Australian statutes.²¹ Australian case law, particularly in the areas of taxation and company law, may be cited in the judgements of Singapore Courts and other judicial bodies, and vice versa. The laws of Australia and Singapore are also substantially the same as they relate to typical financial market transactions.

Australian law firms have had a direct commercial presence in Singapore since 1981 when a major Australian bank established operations in Singapore.²² A number of Australian law firms have opened a representative or branch office in Singapore since that time but have subsequently closed due to the restrictions on direct association (or profit-sharing) between local and foreign firms. At present, one Australian law firm maintains a full-service office in Singapore with others having representative or referral arrangements.²³ Other Australian firms service client needs in Singapore on a "fly-in, fly-out" basis.

A number of Singapore law firms have correspondent or representative arrangements with law firms in Australia and one Singapore law firm (David Chong & Co) has a representative office in Sydney. Singapore commercial practitioners are understood to occasionally service client needs in Australia on a "fly-in, fly-out" basis. Several Singapore-admitted lawyers are also understood to work in Australia with Australian law firms, particularly in facilitating Singapore investment into Australia.

²¹ For example, the Singapore Companies Act, Chapter 50, the Land Titles Act, the Securities Industry legislation, the Copyright Act 1987, and the Patent Act 1997.

²² Westpac Banking Corporation.

²³ Allens Arthur Robinson Group, since 1981. Deacons Graham & James, an international network of law firms, has recently announced establishment of an office in Singapore (October 1997). Freehill Hollingdale & Page maintains an office in Singapore which is staffed according to client demand.

Australia-Singapore legal education and training links are strong, with academic lawyers from each country holding teaching positions at universities in the other country. There is growing interest in overseas post-graduate education in law in both countries and also in short or intensive courses. Undergraduate study of law in Australia by Singapore students has declined as a result of Singapore withdrawing recognition with effect from 1996 of the law degrees of Sydney, Melbourne and Monash universities for the purpose of admission to practice in Singapore (15 English law degrees are still recognised by Singapore for local admission). In 1997 there were 39 Singaporeans studying law in Australian universities and an unknown number of Australians studying law in Singapore.

The Law Council of Australia has well-established links with the Law Society of Singapore. In April 1996 a Law Council delegation visited Singapore and met with the President and other members of the Law Society, senior officials of the Ministry of Law and the Attorney-General's Chambers and Australian lawyers working in Singapore. A Memorandum of Understanding was signed with the objective of strengthening legal exchange and friendly cooperation between the legal professions of Singapore and Australia.

4 GLOBALISATION OF LEGAL SERVICES AND LEGAL PRACTICE

International legal services are increasingly being influenced by the growth of 'borderless' markets and multi-jurisdictional transactions. The increasing sophistication of clients is driving the globalisation of legal practice. It is no longer sufficient for firms to offer expertise in the law of only one jurisdiction. Instead, firms have to offer unprecedented breadth of knowledge, levels of expertise and geographic coverage.²⁴ Lawyers and law firms from Europe and Asia, including Australia, are also active in international advising and offer specialised services and expertise, for example in innovative financial structuring, energy and resources law, environmental law and other fields of law.

²⁴ International Financial Law Review (8th edition, 1998), page 28.

Globalisation is compelling many international law firms to localise their operations where permitted by local regulations and bar rules, either through employment of local lawyers or through integrated firm associations. The catalysts include an increasing need for transactional expertise in the local law, cost pressures, expansion of regional “hub” operations (as in Singapore, Hong Kong and Australia) and the expectations of multinational clients for a fully integrated service.²⁵

The process of globalisation is also making the demarcation between ‘national’ law firms less clear as, for example, more American law firms employ English lawyers and English firms employ American lawyers. In Australia, two international law firms that have their origin in the United States, Baker & McKenzie and Coudert Brothers, practise the law of Australia as well as the law of the United States and other jurisdictions.

Australian law firms have adopted a variety of strategies to meet the challenge of globalisation. In addition to opening stand-alone offices overseas, the strategies include employing lawyers admitted in overseas jurisdictions, establishing alliances, network arrangements, or forms of profit-sharing with other international firms where these are permitted, or by seconding professional staff to law firms overseas.

While legal services can be supplied through several different modes of delivery, commercial establishment of foreign law firms by opening a stand-alone office is usually considered essential to providing the range and depth of legal services required by international financial institutions and corporate clients in the major financial centres.²⁶ However, for the reasons mentioned above, constraints to international legal practice, such as the prohibition of forms of association between local and foreign law firms which would allow profit sharing and/or the practise of local law by foreign law

²⁵ International Financial Law Review (8th edition, 1998), page 24-27.

²⁶ The WTO General Agreement on Trade in Services (GATS) addresses four modes of service delivery in international trade: (i) cross-border, ie via telecommunications or postal services; (ii) consumption abroad, ie movement of the consumer; (iii) the presence of natural persons, ie movement of the supplier, and (iv) commercial presence, ie establishment of an overseas office (Article 1(2)).

firms, bring a cost to efficiency in those financial centres imposing the restrictions, and inevitably, a loss of international competitiveness.²⁷

4.1 MULTILATERAL DEVELOPMENTS

Trade in international services, and legal services in particular, is inhibited by a range of regulatory and other barriers, many of which have been put in place in recent years as cross-border services trade has developed. The work of the WTO in multilateral trade negotiations and in trade liberalisation is important to reducing these market access barriers. Australia and Singapore are strong supporters of the WTO. The introduction of the first set of multilateral trading rules for the services sector on 1 January 1995 with the establishment of the WTO General Agreement on Trade in Services (GATS) has underpinned the growth of traded services. Further work is being undertaken by the GATS Working Party on Professional Services (WPPS) on the development of disciplines to ensure that regulatory measures do not constitute unnecessary barriers to the supply of professional services. While the focus of the WPPS is currently on accountancy services, it is anticipated that the Working Party will examine the scope for transferring the disciplines developed to other professions engaged in world trade.

Australia made wide-ranging commitments on services in the WTO context, including in the area of legal services, and is moving to achieve uniform liberal regulation in respect of foreign lawyers in Australia (see Section 4.3). Japan also undertook commitments to allow market access for foreign legal practitioners and did not seek an exemption from the most-favoured nation (MFN) rule. Hong Kong has since liberalised its regulation of foreign and domestic legal practice so that most foreign firms now practise local and foreign law separately or in association with local Hong Kong firms. As a result, Hong Kong remains the premier Asian legal jurisdiction with its access to China adding to its attraction.²⁸

²⁷ Forms of association between local and foreign law firms allowing profit sharing and/or the practice of local law by foreign law firms are generally permitted in London, New York, Hong Kong, and Tokyo.

²⁸ International Financial Law Review (8th edition, 1998), page 99.

Recognising that the application of MFN treatment is a core principle in the liberalisation of trade in services, Australia along with other countries continues to place considerable importance on securing MFN treatment in the foreign legal services sector.

4.2 REGIONAL DEVELOPMENTS

An agenda to liberalise trade and investment in the Asia Pacific region is also being pursued in several regional organisations. In the Asia Pacific Economic Forum (APEC) as part of the Osaka Action Agenda adopted by APEC ministers and leaders in 1995, all APEC members are required to prepare Individual Action Plans (IAPs) outlining the steps they will take to achieve free and open trade and investment by 2010 for developed economies and 2020 for developing economies. In the area of legal services, Australia and other economies have already announced trade liberalising or facilitating measures. The APEC Committee on Trade and Investment adopted in 1997 a Services Collective Action Plan with elements relating to liberalisation measures for services trade, enhanced transparency and the development of common professional standards to contribute, where possible, to the WTO's work on services.²⁹ The APEC Business Advisory Council (ABAC) in its 1997 report to APEC Economic Leaders contains recommendations concerning the promotion of capital market development, liberalising rules for foreign financial service firms, and cooperation among stock exchanges.³⁰

In 1997 the Association of South East Asian Nations (ASEAN) concluded a Services Agreement under which ASEAN Member Countries will accord preferential treatment in market access for trade in services from 31 March 1998. ASEAN's intention is to establish a free trade area in services as well as goods under the ASEAN Free Trade Area (AFTA).

²⁹ APEC Committee on Trade and Investment "Annual Report to Ministers" (November 1997), pages 63-66.

³⁰ APEC Business Advisory Council "Report to the APEC Economic Leaders" (November 1997), pages 26-29.

The initial package includes commitments from all ASEANs in the tourism sector, as well as from individual members in certain other sectors, including business services.³¹ ASEAN members have agreed to accord national treatment in market access to like services sectors from other ASEAN members, where this treatment is better than Member Countries' commitments under the WTO GATS agreement. Negotiations will commence in 1998 for a final package of commitments, to be completed by 31 December 1998. This will be a more substantive package and will include the financial and construction sectors.

The above developments are also hastening the move towards the freer flow of trade and investment throughout the region which will bring benefits for all Asia-Pacific economies. Singapore, an important regional trade and business centre in the Asia-Pacific region, has already become the regional hub for projects work in the ASEAN countries. American and English and law firms have shown increasing interest in establishing a branch office in Singapore, particularly since 1995. However, to maintain its regional financial centre role in South East Asia, Singapore will need to ensure that its regulatory environment supports the availability and growth of world class legal services demanded by international financial institutions and multinational corporations.

4.3 DEVELOPMENTS IN AUSTRALIA: REGULATION OF FOREIGN LEGAL PRACTICE

As noted above, Australia is moving to provide a uniform statutory basis for practice by foreign lawyers. Australian Ministers have agreed that legislation providing for uniform rules for the practice of foreign law should be enacted. Following a series of discussion papers, draft legislation was prepared in 1995 and a draft model Bill endorsed by a number of Ministers in 1996.³²

³¹ Only the Philippines has offered commitments in the business services sector.

³² Model Practice of Foreign Law Bill 1996.

The model Bill does not require reciprocal market access in an overseas country/ jurisdiction as a condition for access to the legal services market of Australia.

The model Bill permits the registration of foreign lawyers to provide services in matters which specifically relate to or are governed by the law of their country and to appear in prescribed arbitration, conciliation or mediation proceedings. The model Bill allows a foreign lawyer to practice the law of Australia where it is necessarily incidental to the practice of foreign law. A foreign lawyer may practise on his/her own accord, in partnership with other registered foreign lawyers, or with Australian lawyers (or both), or as a member of an incorporated legal practice permitted by a law of the relevant Australian State or Territory. As well, a registered foreign lawyer may employ Australian lawyers. Currently, two law firms with overseas origins practise the law of Australia in addition to foreign and international law.

The two Australian States of greatest economic significance have initiated action: Victoria has introduced a Bill based on the model provisions whilst New South Wales is currently considering implementation of legislation. It is anticipated that the other Australian States and Territories will do so, in due course.

Details of the model Bill are given at [Appendix B](#).

5. AUSTRALIAN LAW FIRMS IN ASIA

Australian law firms have been operating branch offices in the Asia-Pacific region since 1981. The establishment of overseas offices was initially in response to business needs in the banking and financial services sector. Most of the major Australian law firms have offices in one or more overseas centres, including Singapore, Hong Kong, Tokyo, Bangkok, Beijing, Shanghai, Guangzhou, Taipei, Hanoi, Ho Chi Minh City, Port Moresby, Auckland, Wellington and Vanuatu. Australian law firms also have a commercial presence and other forms of representation in a number of overseas centres, including London, New York, San Francisco, Los Angeles, Brussels, Jakarta,

Seoul and Port Vila. Along with American, English and European law firms, Australian law firms have very wide representation outside their home jurisdiction.

Australian law firms act for a broad range of Australian, Asian, European and North American corporations and financial institutions and provide advice in a range of industries covering the banking, insurance, telecommunications, mining, construction, property and manufacturing industries. The services tend to cover the full ambit of commercial legal practice ranging from basic tax and structured planning, through to business and joint venture establishment, to the preparation of finance, licensing and trading documentation.³³ Australian law firms have advised on privatisation projects in the transportation and energy sectors and a large number of capital market transactions, particularly in securitisation, an area of legal practice which is expected to expand. A number of Australian firms are able to provide expertise and “know-how” in major project development, for example in infrastructure, resources and telecommunications.³⁴ Typically, such value-added expertise involves projects which are long-term, cross-border and technically complex.

Legal services provided by Australian law firms to international clients may relate to one or more of the following :

- the law of Australia;
- international law; and
- third country law (where a lawyer is duly qualified).

Legal advice involving the law of another country or overseas jurisdiction is provided in association with a lawyer or law firm from that overseas country or jurisdiction or by Australian lawyers where they are able to be admitted to practice in the overseas jurisdiction.

³³ Warneke, Andrea “Legal Profiles” (1996), page 24.

³⁴ D’Aloisio, Tony “Australian Lawyers and Law Firms Overseas - Building on the Competitive Edge” - paper to the Law Council of Australia’s 29th Legal Convention (September 1995).

Australian law firms are regarded as internationally competitive in billing rates. International Financial Law Review's 1998 Guide to the World's leading international business law firms lists the following hourly billing rates:³⁵

Country	Per Partner (\$US)	Per Associate (\$US)
Australia	200 - 300	125 - 200
Singapore	250 - 300	100 - 150
United Kingdom	375 - 575	150 - 350
United States	225 - 450	100 - 250

Australian law firms are regarded by some clients as more attuned to working in Asian jurisdictions, having a different legal 'culture' to American law firms in addition to often possessing considerable professional experience in Asia. It is noteworthy that some of the large foreign international law firms seek to employ Australian lawyers in Asian jurisdictions and the English law firms regularly recruit Australian lawyers for work in England and their overseas offices in Asia.

As noted in Section 3.2, one Australian law firm currently has a commercial presence in Singapore where local legal services cannot be provided by foreign law firms. There are four Australian law firms with a commercial presence in Hong Kong which provide a full range of legal services, including local law. Two other Australian legal practices with American origins also have an office in Hong Kong. In addition, a number of Australian law firms have forms of association with local and foreign law firms in Singapore, Hong Kong and in other jurisdictions or countries.

6. MEASURES THAT COULD BE EXPECTED TO ASSIST THE MORE EFFICIENT DELIVERY OF CROSS-BORDER LEGAL SERVICES IN SINGAPORE

³⁵ International Financial Law Review (8th edition, 1998), page 36.

The Governments of Singapore and Australia both place strong policy emphasis on encouraging the growth of their services sectors and, in respect of legal services, on the development of high quality, value-added business and financial law services to corporate and institutional users of such services.

The 1986 report of the Economic Committee of Singapore's Ministry of Trade & Industry recognised that international services provide strong potential for growth. Amongst other strategies, it articulated a strong vision for Singapore's legal services sector, including the addition of more well-qualified and experienced legal personnel in both the government and private sectors and the attraction of foreign legal professionals and firms to Singapore.³⁶ However, while most of the goals identified for the legal services sector in the report have been achieved, Singapore still needs to expand the pool of legal expertise in Singapore to support the international markets for financial services, securities and futures trading.³⁷

With a slightly different focus, the 1988 report to the Australian Attorney-General by the Working Group on the Globalisation of Legal Services and the 1992 report to the Australian Department of Industry, Technology & Commerce "Australian Business Law Services"³⁸ identified a number of liberal, regulatory measures to promote the development of internationally competitive, world class legal services in Australia. The Federal Government, through the Standing Committee of Attorneys-General and the Coalition of Australian Governments (COAG), has encouraged greater competition in professional legal services and State and Territory Governments in Australia have also implemented measures to achieve this objective (see Sections 3.2 and 4.3 and Appendix B).

The International Bar Association (IBA) has prepared draft proposed Guidelines on Foreign Legal Consultants which are comprehensive and would permit a liberal scope

³⁶ Economic Committee of Singapore's Ministry of Trade & Industry "The Singapore Economy: New Directions" (1986), page 189.

³⁷ *ibid.* This view is supported by foreign law firms and financial institutions.

³⁸ Report to the Australian Department of Industry, Technology & Commerce "Australian Business Law Services" (the Jenkins Report) (1992), see pages 38-39 and 44-47.

of practice for international lawyers. These draft proposed Guidelines have not been supported by all members of the IBA and are still under consideration.³⁹

At the international practitioner level, the managing partner of an Australian law firm has set out his view of what international lawyers are seeking in terms of practice rights.⁴⁰ In summary, these are:

- formal recognition, on reasonable terms, of the right to practise one's home law and international law, and to prepare and to appear in international commercial arbitration;
- profit-sharing arrangements, preferably partnership, be permitted between international and local lawyers;
- foreign law firms be permitted to employ local lawyers and enjoy the right to establish more than one office in a country and to use the international name of the law firm; and
- that the right to practise local law be granted on knowledge and ability only (assuming professional fitness).

The ability of foreign lawyers and foreign law firms to provide professional legal and related services within these parameters would contribute strongly to the development and wider availability of internationally competitive, cost-effective services to financial institutions, corporations and other users of services in the field of banking, finance and commercial law.

6.1 ANTICIPATED BENEFITS TO SINGAPORE AND ITS FINANCIAL AND LEGAL SERVICES SECTORS

Legal input in the financial services area is viewed by market participants as an integral transaction element. The benefits of more liberal foreign legal practice regulation in Singapore, at least in respect of financial services, are likely to flow

³⁹ See International Bar Association, draft proposed Guidelines on Foreign Legal Consultants (FLCs).

through quickly to the financial and business services sector as whole, lifting Singapore's international competitiveness in these services and increasing its attractiveness to international lenders, borrowers and financial intermediaries. Those Singaporean law firms engaged in servicing the financial markets and their international users could also be expected to benefit directly if local firms are free to enter into forms of association that permit profit sharing and integrated practice. Singaporean firms would have the scope to develop legal practices that are more internationally competitive in size, resources and the range of legal expertise they are able to offer to clients. Also, Singapore would be able to more easily market and deliver financial services on a truly regional basis, with consequent benefits for the Singaporean economy.

Specifically, the benefits of more liberal foreign lawyer and law firm regulation in Singapore are likely to include:

- access by banks and financial institutions to a wider pool of specialised advice and services to support the continued development of Singapore as a major regional capital market & financial services centre;
- innovation in legal services, arising out of the experience of integrated practice of foreign and local firms;
- increased competition in the Singapore legal profession, giving improved service turnaround and cost efficiencies to institutional, commercial and other users;
- transfer of professional skills from foreign international firms to local firms, leading to a higher standard of professional practice and professional services in Singapore; and
- enhanced prospects for the export of legal services by Singaporean law firms to other countries of the Asia Pacific region.

⁴⁰ Mr Martin Przybylski, Managing Partner, Deacons Graham & James, Sydney, in a presentation given at the 21st International Trade Law Conference, Sydney, 17-18 October 1994 (see conference papers, page 94).

7 CONCLUSIONS

Growth in trade in financial and professional (business) services is expected to continue to out-pace growth in world trade. In response of the globalisation of economic activity, the WTO, APEC and other international forums and organisations are working to make markets more competitive and to remove trade barriers. This work will also lead to further liberalisation in the cross-border regulation of professional services.

Capital markets and financial institutions, as well as the financial and business services infrastructure needed to support their operations, will gravitate to the centres most conducive to their growth and development.

Hong Kong and Singapore, apart from Tokyo, are the main regional financial centres in Asia. Hong Kong and Singapore have open economies that support international trade and investment. However, at present, the regulation of foreign legal services in Singapore is significantly less liberal than Hong Kong.

Expansion of investment and capital markets transactions requiring multi-jurisdictional and other specialised legal expertise will favour law firms providing integrated legal services in local and foreign law. Those law firms which are able to draw on a network of international offices will have a further competitive advantage.

Singapore and Hong Kong already have, and are attracting more of the large international law firms. Although these firms have impressive resources, globalisation of legal practice has substantially increased competition. As a result, the large practices continually review the cost-effectiveness of their overseas branch and representative offices.

The inability of the international firms to support multinational banking and corporate clients efficiently through an integrated practice involving foreign and local law imposes costs, and some international firms, including Australian law firms, have closed their office in Singapore.

International law firms including, in particular, Australian law firms, are able to make a strong contribution to local firms where profit-sharing and other forms of integrated practice are permitted. These contributions include the transfer of specialised expertise and development and expansion of international work.

There would be benefits for the users of international legal services from more liberal regulation of foreign law firms in Singapore. The benefits would include increased efficiencies in the delivery of legal services, the availability of a wider and deeper range of legal services relevant to financial services and, over time, service innovation. All of these developments would enhance Singapore's attractiveness as a regional financial sector.

As competition to attract international financial operations and regional headquarters in Asia becomes more intense, it is submitted that it is in Singapore's interests to consolidate its advantages as a regional financial centre by promoting the growth of supporting legal services through a more liberal regulatory regime.

-oo0oo-

**International Legal Services Advisory Council (ILSAC)
Membership (1996-99)**

Chairman

The Hon Sir Laurence Street, AC, KCMG, QC, Sydney

Private Practice

Mr Michael Ahrens, Senior Partner, Baker & McKenzie, Sydney

Mr David Bailey, Special Counsel, KPMG Solicitors, Melbourne

Mr Patrick Brazil, AO, Consultant, Allens Arthur Robinson Group, Canberra

Mr Tony D'Aloisio, Chief Executive Partner, Mallesons Stephen Jaques, Melbourne

Ms Elizabeth Hallett, Partner, Deacons Graham & James, Melbourne

Mr David Laidlaw, Chairman of Partners, Maddock Lonie & Chisholm, Melbourne

Ms Carmel McClure, Barrister-at-Law, Perth

Mr Brian Wilson, National Chairman, Clayton Utz, Sydney

Universities

Professor Paul Redmond, Dean, Faculty of Law, University of New South Wales

Professor Malcolm Smith, Director, Asian Law Centre, University of Melbourne

Professor Alice Tay, Centre for Asian and Pacific Law, University of Sydney

Profession

The Law Council of Australia

Government Representation

Australian Agency for International Development (AusAID)

Australian Trade Commission (Austrade)

Attorney-General's Department

Department of Foreign Affairs and Trade

Australia : Uniform Regulation of Foreign Lawyers

The practice of foreign law in Australia by foreign lawyers is currently regulated in States and Territories by a variety of regulatory means. These include legislation in one jurisdiction, guidelines in four jurisdictions and in the remaining three jurisdictions foreign law may be practised provided the practitioner observes the prohibitions on unqualified practice.

The model Bill does not require reciprocal market access in an overseas country/ jurisdiction as a condition for access to the legal services market of Australia.

The model Bill aims to provide a uniform regulatory scheme, the objectives of which are:

- to clarify the power of regulatory bodies with respect to the practice of foreign law in Australia;
- to create the means by which the right to practise foreign law in Australia can be obtained, the scope of permissible practice and the conditions under which practice may be conducted; and
- to create a uniform, Australia-wide, transparent regime of regulation.

The model Practice of Foreign Law Bill sets out two alternative regulatory measures:

Part A. Model provisions for restricted practice

This part sets out a detailed scheme for regulating the practice of foreign law. As such, it deals with all issues likely to arise in respect of the practice of foreign law in Australia, including:

- scope of practice;
- registration procedures;
- professional ethical and practice standards;

- disciplinary measures; and
- indemnity insurance and fidelity fund matters.

Part A is drafted in sufficient detail to enable the foreign lawyer to determine precisely the scope of practise permitted to them in Australia and the regulatory regime that has to be adhered to. As such, its principal target is the foreign lawyer wishing to practise in Australia, not Australian domestic lawyers, and it is intended to satisfy the objectives set out above, as well as provide a single, uniform piece of legislation which is readily accessible to a foreign lawyer.

The detailed approach adopted in Option A is consistent with the approach taken in a number of other jurisdictions, including Canada, the USA, and by the International Bar Association.

Part B. Model provisions for unrestricted practice

This provision provides that a foreign lawyer does not commit an offence by practising foreign law in Australia. Option B has been included as a minimum approach to clarify the basic position that foreign law could be practised in Australia.