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Overview of Legal Systems in the Asia-Pacific Region: Singapore

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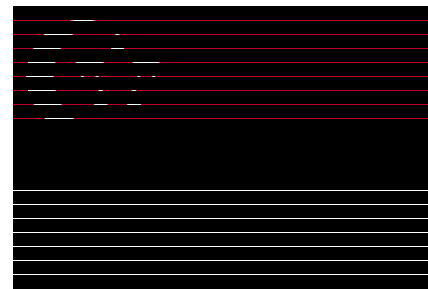
OVERVIEW OF LEGAL SYSTEMS IN THE ASIA-PACIFIC REGION

Jointly Presented By
THE ASIAN AMERICAN LAW STUDENTS' ASSOCIATION
and **LL.M. ASSOCIATION**

Saturday, April 10, 2004
Harriet Stein Mancuso Amphitheater (G90)
Myron Taylor Hall ~ Cornell Law School

Prepared by

Calvin WL Ho



Two equal horizontal bands of red (top) and white; near the hoist side of the red band, there is a vertical, white crescent (closed portion is toward the hoist side) partially enclosing five white five-pointed stars arranged in a circle

SINGAPORE
Founding Member of ASEAN

Singapore was founded as a British trading colony in 1819. It joined the Malaysian Federation in 1963 but separated two years later and became independent. It subsequently became one of the world's most prosperous countries with strong international trading links (its port is one of the World's busiest) and with per capita GDP equal to that of the leading nations of Western Europe.

- *GEOGRAPHIC DATA* – total: 692.7 sq km; water: 10 sq km; land: 682.7 sq km; slightly more than 3.5 times the size of Washington, DC
- *RACE* – Chinese 76.7%, Malay 14%, Indian 7.9%, other 1.4%

- *LANGUAGE AND LITERACY* – Chinese (official), Malay (official and national), Tamil (official), English (official); age 15 and over can read and write
- *GOVERNMENT TYPE* – Parliamentary Republic
- *LEGAL SYSTEM* – Based on English common law; has not accepted compulsory ICJ jurisdiction
- *ECONOMY* – Singapore, a highly developed and successful free market economy, enjoys a remarkably open and corruption-free environment, stable prices, and one of the highest per capita GDPs in the world. The economy depends heavily on exports, particularly in electronics and manufacturing. It was hard hit in 2001-2002 by the global recession and the slump in the technology sector. The government hopes to establish a new growth path that will be less vulnerable to the external business cycle than the current export-led model but is unlikely to abandon efforts to establish Singapore as Southeast Asia's financial and high-tech hub.

[Information adapted from the World Fact Book 2003 published by the Central Intelligence Agency of the US Government.]

Additional Information on Two of the Key Economic Sectors of Singapore:

Financial Sector

- The Monetary Authority of Singapore (<http://www.mas.gov.sg/mas/mcm/bin/pt1Home.htm>) is the principal regulator of the financial sector and the de facto central bank of Singapore.
- There are 202 banks, merchant banks and financial companies operating in Singapore (<http://www.bis.org/cpss/paysys/Singapore.pdf>), many of which operate as regional headquarters. Some useful information at the website of the Association of Banks in Singapore (<http://www.abs.org.sg/index.html>).
- More than 1,300 American companies have a presence in Singapore, and about 330 of these have made Singapore their regional business headquarters (<http://www.us-asean.org/ussfta/index.asp>). Total American investment in Singapore stands now at \$23 billion and US exports to Singapore at \$18 billion.
- The Singapore Exchange (SGX) (<http://www.ses.com.sg/>) is the principal regulator of the stock market in Singapore.

Biomedical Sciences & Pharmaceuticals Sector

- Singapore Government committed to promote this sector. Important governmental bodies include the Agency for Science Technology and Research, Economic Development Board and Trade Development Board (see http://www.biomed-singapore.com/bms/sg/en_uk/index/about_biomedical_sciences.html).
- Important regulator/quasi-regulators are the Ministry of Health, ECs and IRBs of Hospitals and Research Institutes, the Bioethics Advisory Committee of Singapore (<http://www.bioethics-singapore.org/>) and the Intellectual Property Office of Singapore (<http://www.ipos.gov.sg>).

DRAFT (APRIL 2004)

A Description of the Legal System of Singapore

The Early Years

Singapore was established by Sir Thomas Stamford Raffles for the East India Company as a trading port in 1819. In 1826, it became a British Crown Colony and, together with Penang and Malacca, was generally referred to as the Straits Settlement of Great Britain. Of legal significance is the issuance of Letters Patent (commonly referred to as the Second Charter of Justice) on 27 November 1826 by the British Crown that year. As of the date of the Charter, all English law – essentially the common law, equity and statutory law – became part of the laws of Singapore. The inherent flexibility of the common law system allowed a fair degree of adaptation to local circumstances although the highest appellate court in Singapore was the Privy Council in London until 1994.

It was during this period that immigrants from China, India and surrounding countries were drawn to Singapore essentially for commerce. After the Second World War, Singapore was granted self-governance within the British Commonwealth until it gained independence from British rule in June 1963 by joining with the Federation of Malaya, Sarawak and Sabah to form Malaysia. Two years later, on August 9, 1965, Singapore separated from Malaysia to become an independent nation.

The manner in which English law was applied in Singapore may perhaps be described as essentially “gap-filling” and was in certain circumstances complex, particularly in the reception of English commercial law. Nevertheless, the application of English law by Singaporean courts ensured sufficient certainty and stability necessary for nation building. Within the broad framework of English law applied by the Singaporean courts, however, are categories of law of non-English origin. The Penal Code and the Evidence Act were derived from Indian law while the Singapore Companies Act draws extensively from Australian legislation. In addition, strict laws directed at drug offenses, corruption and Chinese secret societies are in essence local laws addressing problems that were “local” to Singapore.

Foreign Assessment of the Legal System in Singapore

The impartial enforcement of strict laws have been effectively in addressing many of the social problems that afflicted the nation in its early stages of development.

Political and Economic Risks Consultancy (PERC)

The PERC is an international consulting firm specialising in strategic business information and analysis for companies doing business in East and Southeast Asia. PERC publishes Comparative Country Risk Reports. The Comparative Country Risk Reports, by surveying expatriates working in Asia, rates the quality of the legal system and the

Judiciary in Singapore relative to other countries in the Asia Region, such as Hong Kong, Japan and Malaysia. In 2003, Singapore maintained its top position in Asia for the overall integrity and quality of the legal system and showed a significant improvement from a score of 3.28 in 2001 and 1.7 in 2002 to 1.38 in 2003. Singapore's score surpassed the score for the United States (1.98) and Australia (1.70). This signified that foreign investors and businesses are confident that the Singapore Judiciary will match if not surpass the standards of the legal systems in their home countries.

International Institute for Management Development (IMD)

The Swiss-based IMD World Competitiveness Yearbook provides a world-wide reference point on the competitiveness and performance of countries. In the World Competitiveness Yearbook 2003, a total of 59 countries were ranked compared to 49 in the last two years. These 59 countries were divided into two groups according to whether they have a population of more or less than 20 million. In the 2003 assessment of the national legal framework and justice, Singapore was ranked 1st (for legal framework) and 6th (for Justice; after Finland, Denmark, Iceland, Austria and New Zealand) respectively among the countries in its group.

(From the 2003 Annual Report of the Subordinate Courts of Singapore available at http://www.subcourts.gov.sg/annual_report/2003/AnchoringJustice.pdf.)

In 1993, the Application of English Law Act was passed to limit the future application of English law and to clarify the extent to which English law continued to apply. In this connection, the First Schedule to the Act specifies English legislation that continues to apply in Singapore (subject to necessary modifications to the extent that any provisions is inconsistent with local legislation). The following year, appeal to the Judicial Committee of the Privy Council as the highest appellate court was abolished. The present Chief Justice of the Republic of Singapore, Yong Pung How CJ, has stated the reason as “the fact that the European Community Law is now binding on English courts will progressively change the outlook of English court and judges’ and hence, the then reliance on the Judicial Committee of the Privy Council as the highest appellate court could not be continued ‘indefinitely’”. Yong CJ further noted that it was necessary for Singapore to develop a legal system that is autochthonous although recognizing at the same time that Singapore was fortunate to have inherited from the British a system of law which is familiar to most, if not all, international businessmen and corporations.

Existing along side this system of law is Shariah Law that governs the Muslim community. Shariah Law relates essentially to religious, matrimonial and related matters, and is administered by a separate court system (see Shariah Court below).

The Constitution of Singapore

The Constitution is the supreme law of Singapore and any law enacted after the effective date of the Constitution is void to the extent that it is inconsistent with the provisions of the Constitution.

Part III of the Constitution provides that:

- There shall be no surrender or transfer of the sovereignty of the republic as an independent nation whether by way of merger or incorporation with any other sovereign state or territory; and
- There shall be no relinquishment of control over the Singapore Police Force or the Singapore Armed Forces.
- Both the above provisions cannot be amended unless supported at a national referendum by at least two-thirds of the voters.

Except for Part III, the Constitution can only be amended by an Act of Parliament which has been supported by at least two-thirds of the Members of Parliament.

Legislative Process

Singapore has a unicameral ("one chamber") legislature unlike the United States which has a bicameral legislature. A piece of legislation is usually first introduced by a Minister concerned as a Bill. Under the Interpretation Act, every Act must be a public Act affecting the whole community.

A Bill in Singapore must be subject to three readings. The first reading occurs when the Bill is introduced to Parliament. The objects and reasons of the Bill are then explained by the Minister at the second reading. A debate on the Bill may follow and a Bill with important implications may be sent to a Select Committee for further study. The Select Committee is required to report its findings to Parliament. At the final reading, amendments may be proposed for the Bill. The Bill becomes law when it is published in the Gazette.

Subsidiary (or Delegated) Legislation

Subsidiary or delegated legislation usually takes the form of regulations issued by a Minister or such persons or entities authorized by an Act of Parliament to do so.

Under the Interpretation Act, an Act of Parliament is intended to provide the basic legal framework leaving delegated or subsidiary legislation to deal with detailed regulations that may be required for day-to-day implementation. Subsidiary legislation also allows Parliament to function more efficiently without being caught up in inconsequential details. In addition, subsidiary legislation has relatively greater flexibility in that it may be modified from time to time without the need for Parliament to pass a new Act of Parliament.

Administration of Justice

Article 93 of the Constitution vests judicial power in the Supreme Court. The Constitution further requires that judicial power be exercised independently of the Executive and the Legislature.

Structure of the Supreme Court

Supreme Court

The Supreme Court consists of the High Court and the Court of Appeal.

The Court of Appeal comprises the Chief Justice and two Judges of Appeal. The Chief Justice and the other Judges of the Supreme Court are appointed by the President, acting on the advice of the Prime Minister.

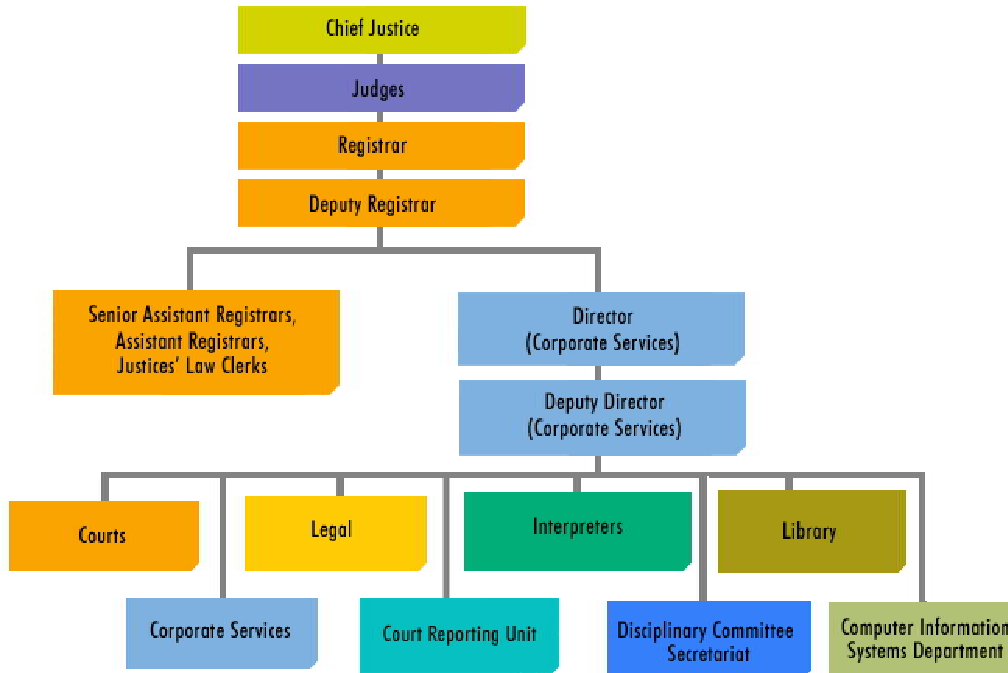
The Court of Appeal is the final appellate court of Singapore with jurisdiction over any judgment or order of the High Court in any civil matter whether made in the exercise of its original or appellate jurisdiction. It hears appeals from decisions of the High Court in the exercise of its original criminal jurisdiction and determines questions of law reserved for its decision by the High Court.

High Court

The High Court comprises Judges and Judicial Commissioners although the Chief Justice and the Judges of Appeal may also hear cases in the High Court. Judges are appointed by the Prime Minister in consultation with the Chief Justice. A Judicial Commissioner has the powers of a High Court Judge and is appointed for such period or periods as the President deems fit. This judicial office was created to alleviate the workload of the Judges.

The High Court has unlimited original jurisdiction in civil and criminal cases and try all criminal cases involving capital punishment.

Organisation Chart



(Derived from <http://www.supcourt.gov.sg/>)

Structure of the Subordinate Courts

The Subordinate Courts were established under the Subordinate Courts Act. The Subordinate Courts consist of District Courts and Magistrates' Courts. These courts hear civil as well as criminal cases. In addition, there are also specialized courts such as the Coroners' Court, the Family Court, the Juvenile Court, the Traffic Court, the Criminal Mentions Court, the Sentencing Courts, the Filter Court and the Small Claims Tribunals.

Shariah Court

The Shariah Court was established under the Administration of Muslim Law Act. It is presided by a President who is appointed by the President of the Republic of Singapore and has jurisdiction over members of the Islamic faith (subject to jurisdiction limitations which is essentially dependent on the applicability of Malay customs) and those married under the provisions of the Muslim Law Act. Disputes relating to matters such as marriage, divorce, betrothal, disposition or division of assets on divorce, wedding gift and compensation for a divorced wife falls within the jurisdiction of the Court.

Appeal against a decision of the Shariah court may be made to an Appeal Board but delivered through the Council of Muslim Religion (Shariah Ugama Islam or "Majlis"), a statutory entity created under the Administration of Muslim Law Act. The Appeal Board is constituted by not less than seven members nominated annually by the President of the

Republic of Singapore acting on the advice of Majlis, of which three members would sit on the Board on a rotation basis. The decision of the Appeal Board is final.

Technology and the Courts

Since the late 1999, information technology was incorporated into the Singapore legal system to improve efficiency. Changes in this regard include the use of video conferencing facilities and the filing of court documents through LawNet, a comprehensive network with the following components:

- **Legal Workbench**: LawNet Legal Workbench maintains a comprehensive and up-to-date repository of on-line legal research information such as statutory and case law.
- **Litigation**: The Litigation Module is a system linking databases provided by the Supreme Court and the Subordinate Courts.
- **InteReg**: Allows rapid processing of conveyancing transactions with the latest version of Integrated Legal Requisition System ("InteReq") on the Internet.
- **BizNet**: BizNet is an electronic information database service provided by the Registry of Companies and Businesses, offering users instantaneous access to information relating to Singapore registered companies and businesses.
- **Intellectual Property Law**: Facilitates reply to legal requisitions applications can be received via the Internet, thus providing greater cost savings.
- **STARS**: A computerised land titles registration information system providing information on owners, property, encumbrances, instruments and caveats.
- **Electronic Filing System (EFS)**: The Electronic Filing System paves the way for the World's first nation-wide paperless court system. Facilities include electronic filing, electronic extracts, electronic service of documents and the provision of electronic information services.

Arbitration and Mediation

The Singapore Judiciary and the Singapore Academy of Law have been active promoters of the use of alternative dispute resolutions (including mediation) in Singapore.

Singapore International Arbitration Centre

The Singapore International Arbitration Centre (SIAC) was established in 1991 as a non-profit organization to promote Singapore as a centre for dispute resolution. In 1997, the Singapore Academy of Law took over the role of guarantor of the SIAC from the Economic Development Board and the Trade Development Board.

Arbitration rules developed by UNCITRAL were first adopted by the SIAC until they were encapsulated as law in the International Arbitration Act passed by Parliament in 1995. Nevertheless, parties to an arbitration proceeding are free to adopt their own procedures and the SIAC's arbitral award is enforceable in more than 100 countries (including the United States and the United Kingdom).

SIAC maintains panels of arbitrators, consisting of eminent local and foreign practitioners with expertise in the fields of:

- Shipping/maritime and marine insurance;
- Construction/engineering contracts;
- Corporate law, banking and insurance ; and
- International trade and commercial transactions.

Singapore Mediation Centre

The Singapore Mediation Centre (SMC) was set-up in 1997 to promote the use of mediation in dispute resolution. The SMC is a non-profit and non-partisan organization and is funded by the Singapore Government through the Ministry of Law and guaranteed by the Singapore Academy of Law. At its launch, Yong CJ indicated that mediation is a form of dispute resolution that is deeply embedded in the Asian culture.

A Code of Ethics has been issued to govern the conduct of mediators and the mediation. Outside of the Courts, the Singapore Academy of Law provides facilities for non-court based mediation.

Legal Education and Legal Practice

The main institution for the academic training of lawyers is the Faculty of Law at the National University of Singapore. In recent years, the Faculty of Law admits about 200 students a year. Admission is based on results from the candidate's:

- GCE "A" level examination (or Advance level General Certificate of Education administered by the University of Cambridge);
- Personal statement and letters of recommendation (the latter is optional);
- Oral interview by two or more faculty members;
- Written examination administered by the Faculty of Law; and
- As of 2003, SAT results.

The Faculty of Law was established in 1957 and is widely regarded as one of Asia's leading law school. Many of the permanent faculty members have graduate law degrees from law schools in the United States, including Columbia Law School, Cornell Law School, Harvard Law School, NYU Law School, Stanford Law School, Yale Law School and the University of Chicago Law School. The strength of the NUS law school is seen in the broad and diverse range of subjects that it offers. Students at the law school can choose subjects from many clusters including Asian legal studies, banking and finance, biomedical law, commercial law, comparative law, corporate law, criminal law, intellectual property, international law, law and social justice, legal jurisprudence, legal process and skills, public law, and transportation law. While the subjects range from the theoretical to the practical, the overriding objective is to provide students with a liberal education through the medium of law that will allow them to maximise their potential to the fullest degree.

Sources of Academic and Quasi-Academic Writings on Singapore Law:

- Legal Workbench via LawNet (Electronic Database)
- Halsbury's Laws of Singapore (Butterworths Asia)
- Singapore Law Review (Student-Managed Law Journal)
- Singapore Journal of Legal Studies (Faculty-Managed Law Journal)
- Singapore Journal of International and Comparative Law (Faculty-Managed Law Journal)
- Singapore Academy of Law Journal (Managed by the Singapore Academy of Law)
- Law Gazette (Managed by the Law Society of Singapore)
- Law Link (Alumni magazine managed by the Law Faculty)

Although graduates from certain UK and four Australian universities (following the signing of the Australia-Singapore Free Trade Agreement) can also be admitted to the Singapore Bar, they must satisfy the pre-requisites of:

- Having graduated with at least a Second Class (Upper Division) Honours degree; and
- Successfully completed the Graduate Diploma in Singapore Law course (of the duration of a year) conducted by the local Law Faculty. In addition, qualified graduates would have to undergo a Practice Law Course (conducted by the Board of Legal Education over the course of 4 to 5 months) as well as pupillage which is essentially legal training at a law firm for the duration of about 5 months.

The legal profession in Singapore is a fused one so that each lawyer who is called to the Bar bears the title "Advocate and Solicitor". A legal practitioner in Singapore must hold a practicing certificate in order to practice law.

Foreign law firms with offices in Singapore are not allowed to practice Singapore law. In addition, they cannot employ Singaporean lawyers to practice Singapore law, and cannot litigate in local courts. However, foreign law firms and foreign lawyers are generally allowed to advise clients on the laws of their home country or international law. In October 2000, the Singapore Government allowed a small number of foreign law firms to practice Singapore law by forming joint ventures with prominent local firms. The initial foreign firms included Allen & Overy, Baker & McKenzie, Clifford Chance, Freshfields Bruckhaus Deringer, Linklaters, Lovells, Orrick, Herrington & Sutcliffe and White & Case.

Between 1999 and 2001, the Ministry of Law and the Department of Statistics reported that 624 young lawyers left practice citing long working hours and work stress as reasons for their departure (see <http://www.singstat.gov.sg/press/media/st14032003.pdf>). Several studies have been conducted since then to determine ways in which the legal work culture may be made more conducive.

Useful References:

Kevin Y.L. Tan (ed.), THE SINGAPORE LEGAL SYSTEM. 2d Edition. Singapore: Singapore University Press, 1999

A Phang, *The Singapore Legal System – History, Theory and Practice* (2000-1) 21 Singapore Law Review 23

CASE ANALYSIS AND STATUTORY INTERPRETATION: CASES AND MATERIALS, 2nd ed. Faculty of Law, National University of Singapore, 1992, 482 pages (with B S Coleman & J T B Lee)

A. Phang, *Cementing the Foundations: The Singapore Application of English Law Act 1993* (1994) 28 University of British Columbia Law Review 205.

Statutes available at: <http://www.agc.gov.sg/> (Attorney General's Chamber) and online resources (including practice directions) from <http://www.supcourt.gov.sg/> (Supreme Court) and <http://www.subcourts.gov.sg/> (Subordinate Courts)

Some useful information is available at <http://www.minlaw.gov.sg> (Ministry of Justice), <http://www.sal.org.sg/> (Singapore Academy of Law), <http://www.lawsoc.org.sg/> (Law Society of Singapore) and <http://law.nus.edu.sg/> (Faculty of Law, NUS)

Law Net (<http://www.lawnet.com.sg/lawnetweb/lawnet/index.jsp>)

Mr. C. Chandrasegar at <http://www.tpclaw.com.sg/sls/sls.htm> (A good write-up of the legal system in Singapore)