Introduction to Southeast Asia

History, Geography, and Livelihood

by Barbara Watson Andaya

Southeast Asia consists of eleven countries that reach from eastern India to China, and is generally divided into “mainland” and “island” zones. The mainland (Burma, Thailand, Laos, Cambodia, and Vietnam) is actually an extension of the Asian

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continent. Muslims can be found in all mainland countries, but the most significant populations are in southern Thailand and western Burma (Arakan). The Cham people of central Vietnam and Cambodia are also Muslim.

Island or maritime Southeast Asia includes Malaysia, Singapore, Indonesia, the Philippines, Brunei, and the new nation of East Timor (formerly part of Indonesia). Islam is the state religion in Malaysia and Brunei. Although 85 percent of Indonesia's population of over 234,000,000 are Muslims, a larger number than any other country in the world, Islam is not the official state religion. Muslims are a minority in Singapore and the southern Philippines.

Geography, Environment, and Cultural Zones

Virtually all of Southeast Asia lies between the tropics, and so there are similarities in climate as well as plant and animal life throughout the region. Temperatures are generally warm, although it is cooler in highland areas. Many sea and jungle products are unique to the region, and were therefore much desired by international traders in early times. For example, several small islands in eastern Indonesia were once the world's only source of cloves, nutmeg, and mace. The entire region is affected by the monsoon winds, which blow regularly from the northwest and then reverse to blow from the southeast. These wind systems bring fairly predictable rainy seasons, and before steamships were invented, these wind systems also enabled traders from outside the region to arrive and leave at regular intervals. Because of this reliable wind pattern, Southeast Asia became a meeting place for trade between India and China, the two great markets of early Asia.

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There are some differences in the physical environment of mainland and island Southeast Asia. The first feature of mainland geography is the long rivers that begin in the highlands separating Southeast Asia from China and northwest India. A second feature is the extensive lowland plains separated by forested hills and mountain ranges. These fertile plains are highly suited to rice-growing ethnic groups, such as the Thais, the Burmese, and the Vietnamese, who developed settled cultures that eventually provided the basis for modern states. The highlands were occupied by tribal groups, who displayed their sense of identity through distinctive styles in clothing, jewelry, and hairstyles. A third feature of mainland Southeast Asia is the long coastline. Despite a strong agrarian base, the communities that developed in these regions were also part of the maritime trading network that linked Southeast Asia to India and to China.

The islands of maritime Southeast Asia can range from the very large (for instance, Borneo, Sumatra, Java, Luzon) to tiny pinpoints on the map (Indonesia is said to comprise 17,000 islands). Because the interior of these islands were jungle clad and frequently dissected by highlands, land travel was never easy. Southeast Asians found it easier to move by boat between different areas, and it is often said that the land divides and the sea unites. The oceans that connected coasts and neighboring islands created smaller zones where people shared similar languages and were exposed to the same religious and cultural influences. The modern borders created by colonial powers—for instance, between Malaysia and Indonesia—do not reflect logical cultural divisions.

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A second feature of maritime Southeast Asia is the seas themselves. Apart from a few deep underwater trenches, the oceans are shallow, which means they are rather warm and not very saline. This is an ideal environment for fish, coral, seaweeds, and other products. Though the seas in some areas are rough, the region as a whole, except for the Philippines, is generally free of hurricanes and typhoons. However, there are many active volcanoes and the island world is very vulnerable to earthquake activity.

Lifestyle, Livelihood, and Subsistence

A distinctive feature of Southeast Asia is its cultural diversity. Of the six thousand languages spoken in the world today, an estimated thousand are found in Southeast Asia. Archeological evidence dates human habitation of Southeast Asia to around a million years ago, but migration into the region also has a long history. In early times tribal groups from southern China moved into the interior areas of the mainland via the long river systems. Linguistically, the mainland is divided into three important families, the Austro-Asiatic (like Cambodian and Vietnamese), Tai (like Thai and Lao), and the Tibeto-Burmese (including highland languages as well as Burmese). Languages belonging to these families can also be found in northeastern India and southwestern China.

Around four thousand years ago people speaking languages belonging to the Austronesian family (originating in southern China and Taiwan) began to trickle into island Southeast Asia. In the Philippines and the Malay-Indonesian archipelago this migration displaced or absorbed the original inhabitants, who may have been related to groups in Australia and

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Angkor Wat in Cambodia, today known as a World Heritage Site, is also a vestige of a great inland SE Asian empire.

New Guinea. Almost all the languages spoken in insular Southeast Asia today belong to the Austronesian family.

A remarkable feature of Southeast Asia is the different ways people have adapted to local environments. In premodern times many nomadic groups lived permanently in small boats and were known as orang laut, or sea people. The deep jungles were home to numerous small wandering groups, and interior tribes also included fierce headhunters. In some of the islands of eastern Indonesia, where there is a long dry season, the fruit of the lontar palm was a staple food; in other areas, it was sago. On the fertile plans of Java and mainland Southeast Asia sedentary communities grew irrigated rice; along the coasts, which were less suitable for agriculture because of mangrove swamps, fishing and trade were the principal occupations. Due to a number of factors—low populations, the late arrival of the world religions, a lack of urbanization, descent through both male and female lines—women in Southeast Asia are generally seen as more equal to men that in neighboring areas like China and India.

Cultural changes began to affect Southeast Asia around two thousand years ago with influences coming from two directions. Chinese expansion south of the Yangtze River eventually led to the colonization of Vietnam. Chinese control was permanently ended in 1427, but Confucian philosophy had a lasting influence when Vietnam became independent. Buddhism and Taoism also reached Vietnam via China. In the rest of mainland Southeast Asia, and in the western areas of the Malay-Indonesian archipelago, expanding trade across the Bay of Bengal meant Indian influences were more pronounced. These influences were most

obvious when large sedentary populations were engaged in growing irrigated rice, like northern Vietnam, Cambodia, Thailand, Burma, Java, and Bali. Rulers and courts in these areas who adopted Hinduism or forms of Buddhism promoted a culture which combined imported ideas with aspects of local society.

Differences in the physical environment affected the political structures that developed in Southeast Asia. When people were nomadic or semi-nomadic, it was difficult to construct a permanent governing system with stable bureaucracies and a reliable tax base. This type of state only developed in areas where there was a settled population, like the large rice-growing plains of the mainland and Java. However, even the most powerful of these states found it difficult to extend their authority into remote highlands and islands.

The Arrival of Islam in Southeast Asia

Islamic teachings began to spread in Southeast Asia from around the thirteenth century. Islam teaches the oneness of God (known to Muslims as Allah), who has revealed his message through a succession of prophets and finally through Muhammad (ca. 570-632 CE). The basic teachings of Islam are contained in the Qur'an (Koran), the revelation of Allah's will to Muhammad, and in the hadith, reports of Muhammad's statements or deeds. There are several specific requirements of a Muslim, which are known as the "Five Pillars". These are: 1) the confession of faith. "I testify that there is no god but Allah and Muhammad is his Prophet"; 2) prayers five times a day, at daybreak, noon, afternoon, after sunset and early evening; 3) fasting between sunrise

and sunset in the month of Ramadan, the ninth month of the lunar year; 4) pilgrimage to Mecca (in modern Saudi Arabia), or hajj, at least once in a lifetime if possible; and 5) payment of ¼º of income as alms, in addition to voluntary donations. There are no priests in Islam, but there are many learned teachers, known as ‘ulama, who interpret Islamic teachings according to the writings and commentaries of scholars in the past, and the teachings of the four schools of law practiced within the majority Sunni tradition. Sunni Muslims, who comprise about 85 percent of all Muslims, recognize the leadership of the first four Caliphs and do not attribute any special religious or political position to descendants of the Prophet’s son-in-law Ali.

After the Prophet’s death, Islam continued to expand. At the height of its power between the eighth and fifteenth centuries, a united Muslim Empire included all North Africa, Sicily, Egypt, Syria, Turkey, western Arabia, and southern Spain. From the tenth century CE Islam was subsequently brought to India by a similar moment of conquest and conversion, and its dominant political position was confirmed when the Mughal dynasty was established in the sixteenth century.

The chronology of Islam’s arrival in Southeast Asia is not known exactly. From at least the tenth century, Muslims were among the many foreigners trading in Southeast Asia, and a few individuals from Southeast Asia traveled to the Middle East for study. In the early stages of conversion, trade passing from Yemen and the Swahili coast across to the Malabar Coast and then the Bay of Bengal was also influential, as well as the growing connections with Muslims in China and India. Muslim traders from western China also settled in coastal towns on the Chinese coast, and Chinese Muslims developed

important links with communities in central Vietnam, Borneo, the southern Philippines, and the Javanese coast. Muslim traders from various parts of India (e.g. Bengal, Gujarat, Malabar) came to Southeast Asia in large numbers and they, too, provided a vehicle for the spread of Islamic ideas.

As a result of its multiple origins, the Islam that reached Southeast Asia was very varied. The normal pattern was for a ruler or chief to adopt Islam—sometimes because of a desire to attract traders, or to be associated with powerful Muslim kingdoms like Mamluk Egypt, and then Ottoman Turkey and Mughal India, or because of the attraction of Muslim teaching. Mystical Islam (Sufism), which aimed at direct contact with Allah with the help of a teacher using techniques such as meditation and trance, was very appealing.

The first confirmed mention of a Muslim community came from Marco Polo, the well-known traveler, who stopped in north Sumatra in 1292. Inscriptions and graves with Muslim dates have been located in others coastal areas along the trade routes. A major development was the decision of the ruler of Melaka, on the west coast of the Malay Peninsula, to adopt Islam around 1430. Melaka was a key trading center, and the Malay language, spoken in the Malay Peninsula and east Sumatra, was used as a lingua franca in trading ports throughout the Malay-Indonesian archipelago. Malay is not a difficult language to learn, and it was already understood by many people along the trade routes that linked the island world. Muslim teachers therefore had a common language through which they could communicate new concepts through oral presentations and written texts. A modified Arabic script displaced the previous Malay script. Arabic

words were incorporated into Malay, particularly in regard to spiritual beliefs, social practices, and political life.

Change over Time

Islam's success was primarily due to a process that historians term "localization," by which Islamic teachings were often adapted in ways that avoided avoid major conflicts with existing attitudes and customs. Local heroes often became Islamic saints, and their graves were venerated places at which to worship. Some aspects of mystical Islam resembled pre-Islamic beliefs, notably on Java. Cultural practices like cockfighting and gambling continued, and spirit propitiation remained central in the lives of most Muslims, despite Islam's condemnation of polytheism. Women never adopted the full face veil, and the custom of taking more than one wife was limited to wealthy elites. Law codes based on Islam usually made adjustments to fit local customs.

The changes that Islam introduced were often most visible in people's ordinary lives. Pork was forbidden to Muslims, a significant development in areas like eastern Indonesia and the southern Philippines where it had long been a ritual food. A Muslim could often be recognized by a different dress style, like chest covering for women. Male circumcision became an important rite of passage. Muslims in urban centers acquired more access to education, and Qur'anic schools became a significant focus of religious identity.

Reforming tendencies gained strength in the early nineteenth century when a group known as the Wahhabis captured Mecca. The Wahhabis demanded a stricter observance of Islamic law. Although their appeal was limited in Southeast Asia,

some people were attracted to Wahhabi styles of teaching. There was a growing feeling that greater observance of Islamic doctrine might help Muslims resist the growing power of Europeans. Muslim leaders were often prominent in anti-colonial movements, especially in Indonesia. However, the influence of modernist Islamic thinking that developed in Egypt meant educated Muslims in Southeast Asia also began to think about reforming Islam as a way of answering the Western challenge. These reform-minded Muslims were often impatient with rural communities or “traditionalists” who maintained older pre-Islamic customs. Europeans eventually colonized all Southeast Asia except for Thailand. Malaya, Burma, Singapore, and western Borneo were under the British; the Dutch claimed the Indonesian archipelago; Laos, Cambodia, and Vietnam were French colonies; East Timor belonged to Portugal; and the Spanish, and later the Americans, controlled the Philippines.

After these countries gained their independence following World War II, the major question for politically active Muslims has concerned the relationship between Islam and the state. In countries where Muslims are in a minority (like Thailand and the Philippines) this relationship is still causing tension. In Malaysia, Muslims are only around 55 percent of the population and there must be significant adjustments with the largest non-Muslim group, the Chinese. In Indonesia, Muslims are engaged in a continuing debate about different ways of observing the faith, and hether Islam should assume a greater role in government.

ADDITIONAL BACKGROUND READING

Southeast Asia: Heartland of Our Times

The name is new but the heartland that it refers to was already celebrated in eras primeval. Ancient Chinese and Indians as well as the ancient Arabs, Greeks and Romans had a fairly clear idea of Southeast Asia, the mass of land and islands west of India and south of China. To the ancient Chinese, it was Nan Yang ; to their Indian contemporaries, it was Savarnadvipa; and to the Arabs of antiquity, it was Qumr. To these ancients, Southeast Asia was the alternative passage of traders to the vast China market, an archipelagic highway that flourished each time the caravans of the “silk route” could not get through the passes of Central Asia. During the long night when most of it was under colonial rule, the European powers, of course, called it “India Orientalis,” East India.

The term “Southeast Asia” is of recent vintage. German writers of the late 19th century occasionally used the term. It gained some currency when the British during the second world war created Lord Louis Mountbatten’s Southeast Asia Military Command which included Ceylon, now Sri Lanka. It became more or less a household term when the Cold War was already raging in earnest in the mid-50s and the West was impelled by regional events to create a military alliance called the Southeast Asia Treaty Organization (SEATO).

Today the term Southeast Asia refers to that mass of land and archipelagos that are covered by the states of Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

Stretching across three time zones which makes it about as wide as Europe, Southeast Asia shares the monsoon climate with India. Except for a small part of Myanmar, all the countries within this region are between the tropics. Before the advent of Indian and Chinese cultural influences in the region, it definitely had an indigenous culture which was neither homogenous nor evenly spread but nevertheless bore many common characteristics, being part of a vast network of animist cultures that also took into its fold the Melanesian, Micronesian and Polynesian cousins of the Southeast Asians. Southeast Asian mythology was cosmologically oriented and social organization was a product of the monsoon climate and an irrigated system of agriculture. The Southeast Asians were great seafarers and, powered by the monsoon winds, they regularly reached Madagascar, the Middle East and the eastern coasts of Africa in their voyages of trade.

The peoples who came in contact with them brought various cultural influences into Southeast Asia, including

the great universalistic religions that are widespread today in the region. Thus, Malaysia, Indonesia (except Bali which is Hindu), Brunei and the southernmost parts of the Philippines are a realm of Sunni Islam; Myanmar, Laos, Thailand and Cambodia adhere to Theravada Buddhism; while Mahayana Buddhism prevails among many in Vietnam. The Philippines, except for its southern part which is predominantly Muslim, is a bastion of Roman Catholicism. Underneath all the layers of religion and cultural influences, a common Southeast Asian culture survives to this day, unobtrusive but real.

The Southeast Asians speak some 1,000 languages, classified by scholars into Sinitic, which are the languages of the Chinese communities of the region, Tibeto-Burman, Karen, Miao-Yao, Tai which includes the national languages of Thailand and Laos, Malayo-Polynesian which is easily the largest and most widely-distributed group as it ranges from Madagascar to the South Pacific, Mon-Khmer, Viet-Muong and Papuan which is limited to eastern Indonesia. The colonial languages have persisted in the region: French is still spoken in the mainland Southeast Asia but is losing ground. Many Indonesians still speak Dutch. Spanish is no longer spoken in the Philippines but a large Spanish vocabulary has been embedded in the various Philippine languages. Portuguese is still spoken in East Timor. English is fast gaining popularity all over Southeast Asia.

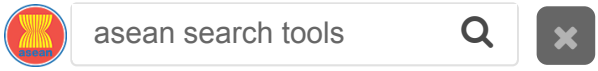
Economically, Southeast Asia belongs to the developing world, even if some of the countries within it have been hailed as among the most dynamic economies in the world today. Four of the 10 Southeast Asian countries have joined the world's top 20 most competitive economies.

This region produces nearly all of the world's supply of abaca, more than 85 percent of its natural rubber, some 85 percent of its palm oil and more than 70 percent of its tin. Just two of the countries within it, the Philippines and Indonesia, account for well over two thirds of the world's supply of copra. Three of the countries within it_Brunei Darussalam, Indonesia and Malaysia_are petroleum producers. It has also huge deposits of gold, copper and other economically important minerals. It is a major exporter of textiles, garments, electronics, sugar and tropical fruits. A major source of the world's timber supply, it boasts some of the few remaining tropical forests, the lungs of the world. The immense combined marine territories of the countries, already rich with catch fishery and other marine resources, are being diligently explored for petroleum and natural gas deposits. Its population of about 500 million constitutes a huge market with a steadily increasing purchasing power. One of every ten persons in the world today is a Southeast Asian.

Apart from its obvious economic importance and the fabulous mineral wealth that its marine territories are supposed to hold, Southeast Asia is also of global strategic importance. It is the bridge between the Indian and Pacific Oceans and controls vital sea-lanes that give China, Japan and the US Pacific Coast access to the Middle East and the eastern coasts of Africa. The oil tankers and freighters that pass daily without fail through these sea-lanes, to a significant extent, buttress Japan's status as an industrial power.

Conscious of its economic achievements, its successes in community-building, and its strategic importance to global security, Southeast Asia today assumes its role in world affairs with confidence and a great deal of hope. As such, it richly deserves the appellation that some scholars have given it: "the heartland of our times."

July 9th, 2012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The Founding of ASEAN

On 8 August 1967, five leaders _ the Foreign Ministers of Indonesia, Malaysia, the Philippines, Singapore and Thailand _ sat down together in the main hall of the Department of Foreign Affairs building in Bangkok, Thailand and signed a document. By virtue of that document, the Association of Southeast Asian Nations (ASEAN) was born. The five Foreign Ministers who signed it _ Adam Malik of Indonesia, Narciso R. Ramos of the Philippines, Tun Abdul Razak of Malaysia, S. Rajaratnam of Singapore, and Thanat Khoman of Thailand _ would subsequently be hailed as the FoundingFathers of probably the most successful inter-governmental organization in the world today. And the document that they signed would be known as the ASEAN Declaration.

It was a short, simply-worded document containing just five articles. It declared the establishment of an Association for Regional Cooperation among the Countries of Southeast Asia to be known as the Association of Southeast Asian Nations (ASEAN) and spelled out the aims and purposes of that Association. These aims and purposes were about cooperation in the economic, social, cultural, technical, educational and other fields, and in the promotion of regional peace and stability through abiding respect for justice and the rule of law and adherence to the principles of the United Nations Charter. It stipulated that the Association would be open for participation by all States in the Southeast Asian region subscribing to its aims, principles and purposes. It proclaimed ASEAN as representing “the collective will of the nations of Southeast Asia to bind themselves together in friendship and cooperation and, through joint efforts and sacrifices, secure for their peoples and for posterity the blessings of peace, freedom and prosperity.”

It was while Thailand was brokering a reconciliation among Indonesia, the Philippines and Malaysia over certain disputes that it dawned on the four countries that the moment for regional cooperation had come or the future of the region would remain uncertain. Recalls one of the two surviving protagonists of that historic process, Thanat Khoman of Thailand : “At the banquet marking the reconciliation between the three disputants, I broached the idea of forming another organization for regional cooperation with Adam Malik… Malik agreed without hesitation but asked for time to talk with his government and also to normalize relations with Malaysia now that the confrontation was over. Meanwhile, the Thai Foreign Office prepared a draft charter of the new institution. Within a few months, everything was ready. I therefore invited, the two former members of the Association for Southeast Asia (ASA), Malaysia and the Philippines, and Indonesia, a key member, to a meeting in Bangkok. In addition, Singapore sent S. Rajaratnam, then Foreign Minister, to see me about joining

the new set-up. Although the new organization was planned to comprise only the ASA members plus Indonesia, Singapore's request was favorably considered".

And so in early August 1967, the five Foreign Ministers spent four days in the relative isolation of a beach resort in Bang Saen, a coastal town less than a hundred kilometers southeast of Bangkok. There they negotiated over that document in a decidedly informal manner which they would later delight in describing as "sports-shirt diplomacy". Yet it was by no means an easy process: each man brought into the deliberations a historical and political perspective that had no resemblance to that of any of the others. But with goodwill and good humor, as often as they huddled at the negotiating table, they finessed their way through their differences as they lined up their shots on the golf course and traded wisecracks on one another's game, a style of deliberation which would eventually become the ASEAN ministerial tradition.

Now, with the rigors of negotiations and the informalities of Bang Saen behind them, with their signatures neatly attached to the ASEAN Declaration, also known as the Bangkok Declaration, it was time for some formalities. The first to speak was the Philippine Secretary of Foreign Affairs, Narciso Ramos, a one-time journalist and long-time legislator who had given up a chance to be Speaker of the Philippine Congress to serve as one of his country's first diplomats. He was then 66 years old and his only son, the future President Fidel V. Ramos, was serving with the Philippine Civic Action Group in embattled Vietnam. He recalled the tediousness of the negotiations that preceded the signing of the Declaration that "truly taxed the goodwill, the imagination, the patience and understanding of the five participating Ministers". That ASEAN was established at all in spite of these difficulties, he said, meant that its foundations had been solidly laid. And he impressed it on the audience of diplomats, officials and media people who had witnessed the signing ceremony that a great sense of urgency had prompted the Ministers to go through all that trouble. He spoke darkly of the forces that were arrayed against the survival of the countries of Southeast Asia in those uncertain and critical times.

"The fragmented economies of Southeast Asia," he said, "(with) each country pursuing its own limited objectives and dissipating its meager resources in the overlapping or even conflicting endeavors of sister states_carry the seeds of weakness in their incapacity for growth and their self-perpetuating dependence on the advanced, industrial nations. ASEAN, therefore, could marshal the still untapped potentials of this rich region through more substantial united action."

When it was his turn to speak, Adam Malik, Presidium Minister for Political Affairs and Minister for Foreign Affairs of Indonesia, recalled that about a year before, in Bangkok, at the conclusion of the peace talks between Indonesia and Malaysia, he had explored the idea of an organization such as ASEAN with his Malaysian and Thai counterparts. One of the "angry young men" in his country's struggle for independence two decades earlier, Adam Malik was then 50 years old and one of a Presidium of five led by then General Soeharto that was steering Indonesia from the verge of economic and political chaos. He was the Presidium's point man in Indonesia's efforts to mend fences with its neighbors in the wake of an unfortunate policy of confrontation. During the past year, he said, the Ministers had all worked together toward the realization of the ASEAN idea, "making haste slowly, in order to build a new association for regional cooperation."

Adam Malik went on to describe Indonesia's vision of a Southeast Asia developing into "a region which can stand on its own feet, strong enough to defend itself against any negative influence from outside the region." Such a vision, he stressed, was not wishful thinking, if the countries of the region effectively cooperated with each other, considering their combined natural resources and manpower. He referred to differences of outlook among the member countries, but those differences, he said, would be overcome through a maximum of goodwill and understanding, faith and realism. Hard work, patience and perseverance, he added, would also be necessary.

The countries of Southeast Asia should also be willing to take responsibility for whatever happens to them, according to Tun Abdul Razak, the Deputy Prime Minister of Malaysia, who spoke next. In his speech, he conjured a vision of an ASEAN that would include all the countries of Southeast Asia. Tun Abdul Razak was then concurrently his country's Minister of Defence and Minister of National Development. It was a time when national survival was the overriding thrust of Malaysia's relations with other nations and so as Minister of Defence, he was in charge of his country's foreign affairs. He stressed that the countries of the region should recognize that unless they assumed their common responsibility to shape their own destiny and to prevent external intervention and interference, Southeast Asia would remain fraught with danger and tension. And unless they took decisive and collective action to prevent the eruption of intra-regional conflicts, the nations of Southeast Asia would remain susceptible to manipulation, one against another.

"We the nations and peoples of Southeast Asia," Tun Abdul Razak said, "must get together and form by ourselves a new perspective and a new framework for our region. It is important that individually and jointly we should create a deep awareness that we cannot survive for long as independent but isolated peoples unless we also think and act together and unless we prove by deeds that we belong to a family of Southeast Asian nations bound together by ties of friendship and goodwill and imbued with our own ideals and aspirations and determined to shape our own destiny". He added that, "with the establishment of ASEAN, we have taken a firm and a bold step on that road".

For his part, S. Rajaratnam, a former Minister of Culture of multi-cultural Singapore who, at that time, served as its first Foreign Minister, noted that two decades of nationalist fervor had not fulfilled the expectations of the people of Southeast Asia for better living standards. If ASEAN would succeed, he said, then its members would have to marry national thinking with regional thinking.

"We must now think at two levels," Rajaratnam said. "We must think not only of our national interests but posit them against regional interests: that is a new way of thinking about our problems. And these are two different things and sometimes they can conflict. Secondly, we must also accept the fact, if we are really serious about it, that regional existence means painful adjustments to those practices and thinking in our respective countries. We must make these painful and difficult adjustments. If we are not going to do that, then regionalism remains a utopia."

S. Rajaratnam expressed the fear, however, that ASEAN would be misunderstood. "We are not against anything", he said, "not against anybody". And here he used a term that would have an ominous ring even today: balkanization. In Southeast Asia, as in Europe and any part of the world, he said, outside powers had a vested interest in the balkanization of the region. "We want to ensure," he said, "a stable Southeast Asia, not a balkanized Southeast Asia. And those countries who are interested, genuinely interested, in the stability of Southeast Asia, the prosperity of Southeast Asia, and better economic and social conditions, will welcome small countries getting together to pool their collective resources and their collective wisdom to contribute to the peace of the world."

The goal of ASEAN, then, is to create, not to destroy. This, the Foreign Minister of Thailand, Thanat Khoman, stressed when it was his turn to speak. At a time when the Vietnam conflict was raging and American forces seemed forever entrenched in Indochina, he had foreseen their eventual withdrawal from the area and had accordingly applied himself to adjusting Thailand's foreign policy to a reality that would only become apparent more than half a decade later. He must have had that in mind when, on that occasion, he said that the countries of Southeast Asia had no choice but to adjust to the exigencies of the time, to move toward closer cooperation and even integration. Elaborating on ASEAN objectives, he spoke of "building a new society that will be responsive to the needs of our time and efficiently equipped to bring about, for the enjoyment and the

material as well as spiritual advancement of our peoples, conditions of stability and progress. Particularly what millions of men and women in our part of the world want is to erase the old and obsolete concept of domination and subjection of the past and replace it with the new spirit of give and take, of equality and partnership. More than anything else, they want to be master of their own house and to enjoy the inherent right to decide their own destiny …"

While the nations of Southeast Asia prevent attempts to deprive them of their freedom and sovereignty, he said, they must first free themselves from the material impediments of ignorance, disease and hunger. Each of these nations cannot accomplish that alone, but by joining together and cooperating with those who have the same aspirations, these objectives become easier to attain. Then Thanat Khoman concluded: "What we have decided today is only a small beginning of what we hope will be a long and continuous sequence of accomplishments of which we ourselves, those who will join us later and the generations to come, can be proud. Let it be for Southeast Asia, a potentially rich region, rich in history, in spiritual as well as material resources and indeed for the whole ancient continent of Asia, the light of happiness and well-being that will shine over the uncounted millions of our struggling peoples."

The Foreign Minister of Thailand closed the inaugural session of the Association of Southeast Asian Nations by presenting each of his colleagues with a memento. Inscribed on the memento presented to the Foreign Minister of Indonesia, was the citation, "In recognition of services rendered by His Excellency Adam Malik to the ASEAN organization, the name of which was suggested by him."

And that was how ASEAN was conceived, given a name, and born. It had been barely 14 months since Thanat Khoman brought up the ASEAN idea in his conversations with his Malaysian and Indonesian colleagues. In about three more weeks, Indonesia would fully restore diplomatic relations with Malaysia, and soon after that with Singapore. That was by no means the end to intra-ASEAN disputes, for soon the Philippines and Malaysia would have a falling out on the issue of sovereignty over Sabah. Many disputes between ASEAN countries persist to this day. But all Member Countries are deeply committed to resolving their differences through peaceful means and in the spirit of mutual accommodation. Every dispute would have its proper season but it would not be allowed to get in the way of the task at hand. And at that time, the essential tasks were to lay the practical foundations for working together and to nurture the solidarity that is so eloquently symbolized in the logo that they would soon adopt.

The original ASEAN logo presented five brown sheaves of rice stalks, one for each founding member. Beneath the sheaves is the legend "ASEAN" in blue. These are set on a field of yellow encircled by a blue border. Brown stands for strength and stability, yellow for prosperity and blue for the spirit of cordiality in which ASEAN affairs are conducted. As ASEAN celebrates its 30th Anniversary this year, the sheaves on the logo have increased to ten – representing all ten countries of Southeast Asia and reflecting the colors of the flags of all of them. In a very real sense, ASEAN and Southeast Asia would then be one and the same, just as the Founding Fathers had envisioned.

July 9th, 2012


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OVERVIEW

SECTION 1 INTRODUCTION

1.1.1 The Singapore legal system is a rich tapestry of laws, institutions, values, history and culture. Like the Singapore-made quilt, each strand of the legal system is woven together to form a jurisprudential kaleidoscope bounded by a unique national identity.

1.1.2 The legal system will inevitably undergo tension as socio-economic and politico-legal changes unfold with increased globalisation and regionalisation. Thus, Singapore has to respond swiftly and deftly in creating new laws and institutions or adapting existing ones.

1.1.3 In this regard, Singapore is and has been ready and willing to learn from the legal developments taking place in foreign jurisdictions with similar aspirations. Sometimes, old solutions may have to be discarded and new fangled ideas tested with appropriate modifications to suit local circumstances. In this process of the (sometimes) rigorous adaptation, learning and constant change, however, history remains a useful (though not infallible) guide for the present and the future path of Singapore law (see **Section 2**).

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SECTION 2 CONSTITUTIONAL AND LEGAL HISTORY

1.2.1 From its founding by Sir Thomas Stamford Raffles of the British East India Company in 1819 to its independence in 1965, Singapore´s legal development had been intricately linked with its British colonial master. Often, English legal traditions, practices, case law and legislation were adopted without much consideration as to whether they suited the local circumstances.

1.2.2 With independence, there has been a gradual - and increasing - movement towards developing an autochthonous legal system. The guiding principle is that the adoption of any legal practice or norm must be compatible with Singapore´s cultural, social and economic requirements. In this regard, the economic success of Singapore can be attributed, amongst others, to the wisdom of its leadership, its use of laws and the legal system to build a new society and to entrench its economic survival while ensuring that the legal system is attuned to the needs and demands of the international community. What follows is a sketch of the milestones in Singapore´s legal and constitutional development.

Arrival of the British - Singapore in the British Realm (1819)

1.2.3 Early 19th century: Singapore was under the rule of the Sultan of Johor, who was based in the Riau-Lingga archipelago. A mixture of Malay customary and adat laws (localised traditional laws and customs in Indonesia and Malaysia) formed the basis of a rudimentary legal system.

1.2.4 29 January 1819: Founding of modern Singapore by Raffles, then Bencoolen´s Lieutenant-Governor. Raffles presciently determined Singapore´s strategic geopolitical location: it gave the British a good measure of control over the entrance to the Straits of Malacca as well as the main shipping route between South Asia and Northeast Asia. Singapore rapidly evolved into a key trading port.

1.2.5 30 January 1819: Raffles concluded a preliminary treaty with Temenggong Abdu'r Rahman, the Johor Sultan´s representative in Johor and Singapore, to set up a trading factory in Singapore.

1.2.6 6 February 1819: A treaty was concluded with Sultan Hussein of Johor and the Temenggong, the de jure and de facto rulers of Singapore respectively, to formalize the earlier agreement. Raffles placed Singapore under Bencoolen´s jurisdiction, which in turn was administered by the Governor-General in Calcutta, India.

1.2.7 1819 -1823: For the proper administration of the island, Raffles promulgated a code of law known as the `Singapore Regulations´ and put in place a basic but functional legal system with a uniform law that was applicable to all inhabitants.

1.2.8 March 1824: Singapore's status as a British possession was confirmed by the Anglo-Dutch Treaty and

the Treaty of Cession. The Dutch withdrew all objections to the British occupation of Singapore and ceded Malacca in exchange for the British relinquishing control of its factories in Bencoolen and Sumatra to the Dutch. Later that year, a second treaty was entered into with Sultan Hussein and Temenggong Abdu'r Rahman, by which the Johor Sultanate ceded Singapore to the British in return for increased cash payments and pensions.

The Fledgling Legal System - A Fitful & Chaotic Start

1.2.9 27 November 1826: The Second Charter of Justice was granted by the British Parliament on the petition of the East India Company. It provided for the establishment of the Court of Judicature of Prince of Wales´ Island (Penang), Singapore and Malacca with civil and criminal jurisdictions on par with similar courts in England. Singapore, together with Malacca and Penang, the two other British settlements in the Malay Peninsula, collectively became the Straits Settlements in 1826, under the control of British India. The Charter did not explicitly state that English law was to be applied in Singapore but it was assumed to provide the legal basis for the general reception of English law in Singapore. Local case law since the nineteenth century, following the landmark case of *R v Willans* (1858) in Penang, had adopted the legal position that English law (both common law and equity as it stood in 1826 as well as pre-1826 English legislation) was introduced to Singapore via the Second Charter of Justice.

1.2.10 1833: With the re-organisation of the East India Company´s possessions by the British Parliament in 1833, the Governor-General of India was empowered to legislate for the Straits Settlements. During this period, there was much dissatisfaction with the legal system. The local business community was unhappy with the inadequate judicial framework which meted out justice infrequently and poorly.

1.2.11 1855: On the petition of the East India Company, the Third Charter of Justice was granted to help ease the increasing legal workload. However, the Third Charter did not improve the state of affairs. With the abolition of the East India Company in 1858, the Straits Settlements was transferred to the Indian Government. However, there were pockets of unhappiness with the Straits Settlements being administered out of India as it tended to result in their interests being relegated, if not neglected.

1.2.12 1 April 1867: The Straits Settlements became a Crown Colony under the direct jurisdiction of the Colonial Office in London.

1.2.13 1868: The Supreme Court of the Straits Settlements was established following the abolition of the Court of Judicature. In 1873, there was further re-organisation with the Supreme Court given the jurisdiction to sit as a Court of Appeal. Prior to this, appeals were to the King-in-Council. In 1878, as a result of the changes to the judicial system in England, the local courts were restructured accordingly to mirror those of the English High Court.

1.2.14 1934: The Court of Criminal Appeal was added to the Supreme Court structure.

From the British to the Japanese to the British (1942 - 1945)

1.2.15 February 1942 - September 1945: The Japanese Occupation of Singapore. Singapore was renamed Syonan (Light of the South) and operated under the dictates of the Japanese military administration. The end of the Second World War resulted in the temporary administration of Singapore by the British Military Administration (BMA). By this time, the imperial powers encouraged and promoted self-determination and decolonisation.

1.2.16 1946: The Straits Settlements were disbanded. Penang and Malacca became part of the Malayan Union in 1946, and later the Federation of Malaya in 1948. Singapore was made a Crown Colony with its own constitution. The real powers to govern and legislate were vested in the Governor and the colonial officials with a modicum of local participation and representation through limited elected seats on the Legislative Council. The first such elections were conducted in 1948.

The Path to Self-Government (1948 - 1959)

1.2.17 1948-1960: The Emergency period. The authorities in Singapore and Malaya (after 1957, Malaysia) clamped down on the Communist Party of Malaya which had the declared goal of taking over Malaya and Singapore through violence. Draconian laws were enacted (including detention without trial) in an attempt to control communist united front activity.

1.2.18 1953: A Constitutional Commission, headed by the Sir George Rendel (the `Rendel Commission´), was formed to review the Colony´s constitution and to enlarge the public participation in self-governance. The government accepted most of the Commission´s report including the transformation of the Legislative Council into a chamber comprising mainly of directly elected members. However, the real power continued to be vested in the Governor and the Official Members of the Council of Ministers rather than the elected Assembly members. By this time, the Progressive Party was the leading political party in Singapore having won the Legislative Council elections in 1948 and 1951.

1.2.19 1955: In the first Legislative Assembly elections, the Labour Front - led by David Saul Marshall - displaced the Progressive Party as the leading party, winning 10 of the available 25 seats. The People´s Action Party (hereafter the `PAP´), founded in the same year, won 3 seats. Marshall was made Singapore's first Chief Minister and was adamant on accelerating the movement towards self-government. Constitutional talks on self-government began in 1956 in London with a non-partisan mission comprising representatives

from all the parties in the Assembly.

1.2.20 1956: Marshall resigned on 6 June as Chief Minister after the breakdown of constitutional talks over whether the British High Commissioner in Singapore should have the casting vote on the proposed Defence Council. Lim Yew Hock, Marshall's deputy and Minister for Labour, became the Chief Minister. Lim led the March 1957 constitutional mission, which was successful in negotiating the main terms of a new Singapore Constitution.

1.2.21 8 May 1958: The Constitutional Agreement was signed in London. The British Parliament passed the State of Singapore Act (6 & 7 Eliz. 2 Ch. 59 (1958)) on 1 August marking Singapore´s transition from a colony to a self-governing state in 1959.

1.2.22 May 1959: The PAP won 43 seats, garnering 53.4 per cent of the total votes, in the elections to choose 51 representatives to the first fully elected Legislative Assembly. On 3 June, the new State Constitution was brought into force by the proclamation of the Governor, Sir William Goode, who became the first Yang di-Pertuan Negara (Head of State). Lee Kuan Yew became Singapore's first Prime Minister. This marked the culmination of the road to self-government and the beginning of the arduous road to independence via merger with Malaysia.

Lead-up to Merger with Malaysia and Singapore in Malaysia (1961 - 1965)

1.2.23 27 May 1961: The Malayan Prime Minister, Tunku Abdul Rahman, proposed closer political and economic co-operation between the Federation of Malaya, Singapore, Sarawak, North Borneo and Brunei through merger. The PAP favoured merger with the Federation of Malaya for reasons of economic survival and as a means of achieving political independence from the British. The pro-communists took the merger proposal as an imperialist plot.

1.2.24 1 September 1962: A referendum on the terms of the merger was conducted and approved the PAP's merger plan. The main terms of the merger provided for the federal government in Kuala Lumpur to have responsibility for defence, foreign affairs and internal security. However, it provided for local autonomy in matters pertaining to finance, education and labour. Singapore was also to have her own executive state government.

1.2.25 16 September 1963 ("Malaysia Day"): Malaysia - consisting of the Federation of Malaya, Singapore, Sarawak and North Borneo (now Sabah) - was formed. Indonesia and the Philippines opposed the merger. Indonesia´s President Sukarno subsequently launched the violent Konfrontasi campaign (Confrontation) against Malaysia. With merger, Singapore´s court system became part of Malaysia´s. Singapore´s Supreme Court was replaced by the High Court of Malaysia in Singapore. The final court of appeal was the Federal Court in Kuala Lumpur.

Disengagement from Malaysia and Independence (1965)

1.2.26 1965: Within two years of merger, the union was failing for a variety of reasons ranging from the racial politics of Malaysia to personality clashes. All of these, coupled with the threat and eruption of racial violence, as well as the receding threat of communism, prompted a negotiated departure of Singapore from Malaysia on 9 August. The Independence of Singapore Agreement of 9 August 1965 declared that "...Singapore shall be forever a sovereign democratic and independent nation, founded upon the principles of liberty and justice and ever seeking the welfare and happiness of her people in a more just and equal society".

1.2.27 December 1965: Yusof bin Ishak was appointed as the Republic's first President on 22 December 1965. The Singapore Parliament completed the constitutional and legal procedures and formalities to accord with Singapore´s independent status on 22 December 1965, including rectifying the anomaly of the Singapore High Court being part of the Malaysian judiciary.

1.2.28 Singapore´s second constitutional commission, headed by Chief Justice Wee Chong Jin, was established to examine how the rights of the minorities (racial, linguistic and religious) could be constitutionally safeguarded. In its 1966 report, the Wee Commission recommended that the constitutional provisions on fundamental liberties, the judiciary, the legislature, the general elections, minority rights, the special position of the Malays and the amendment procedures be entrenched (that is amending these provisions require a two-step process: a two-thirds majority in Parliament followed by a two-thirds majority at a national referendum). One recommendation that was accepted was the creation of the State Council, an advisory body, to offer advice to Parliament on proposed legislation and their impact on the minorities. This body is now known as the Presidential Council for Minority Rights.

The Development of an Autochthonous Legal System

1.2.29 In the 1970s and 1980s, there was an implicit casual comfort with the inherited traditions, practices and laws of England. The drive to create an autochthonous legal system gained increased momentum in the late 1980s and accelerated with the appointment of Yong Pung How as Chief Justice in September 1990. This coincided with the period of intensive constitutional remaking to develop an autochthonous government and parliamentary system of Singapore. The departure from the Westminster-inspired parliamentary system was evident through the innovations, which attempted to cater to the unique political circumstances here.

1.2.30 Constitutional provisions were made (in 1979) for the creation of Judicial Commissioners to facilitate the disposal of business in the Supreme Court for limited renewable periods of between 6 months and 3

years. Judicial Commissioners may also be appointed to hear and determine a specified case only. Except for the fact that there is no security of tenure, Judicial Commissioners exercise the same powers, perform the same functions, and enjoy the same immunities as a High Court Judge. Earlier, in 1971, the Constitution was amended to allow for the appointment of supernumerary judges, which enables High Court Judges who have reached the mandatory retirement age of 65 years to remain on the Bench for further periods on a contract basis.

1.2.31 1993: Abolition of all appeals to the Privy Council (by 1989, however, appeals to the Privy Council were already severely restricted). A permanent Court of Appeal, presided by the Chief Justice and two Justices of Appeal (JAs), was designated Singapore´s highest court. In November 1993, the Application of English Law Act (Cap 7A, 1994 Rev Ed) came into force and specified the extent to which English law was applicable in Singapore.

1.2.32 11 July 1994: The landmark Practice Statement on Judicial Precedent declared that the Privy Council, Singapore´s predecessor courts, as well as the Court of Appeal´s prior decisions no longer bound the permanent Court of Appeal. The Practice Statement reasoned that `[t]he development of our law should reflect these changes [that political, social and economic circumstances have changed enormously since Singapore´s independence] and the fundamental values of Singapore society´. Increasing confidence in the growing maturity and international standing of Singapore´s legal system as well as the concern that Britain´s increasing links with the European Union would render English law incompatible with local developments and aspirations gave impetus to the legal autochthony effort.

Reception of English Law

1.2.33 Prior to the enactment of the Application of the English Law Act (Cap 7A, 1994 Rev Ed), the Second Charter of Justice provided the legal basis for the general reception of the principles and rules of English common law and equity and pre-1826 English statutes (only those of general application) into Singapore. This was subject to suitability and modification to local conditions. However, the specific difficulty flowing from this was that no one knew for certain which English statutes (even those that have been repealed in England) applied here.

1.2.34 This problem presented itself manifestly with the specific reception of English law under the former section 5 (now repealed) of the Civil Law Act (Cap 43, 1988 Rev Ed) which provided that if a question or issue on specific categories of law or in general mercantile law arose in Singapore, the law to be administered shall be the same as that administered in England at the corresponding period, unless other provision is made by any law having force in Singapore. Until its repeal in 1993, this was the most significant reception provision in Singapore´s statute books. The repeal has also removed much of the uncertainty and unsatisfactory state of affairs arising from a sovereign state which was, until recently, heavily dependent on the laws of the former colonial master.

1.2.35 The Application of the English Law Act states that the common law of England (including the principles and rules of equity), so far as it was part of the law of Singapore before 12 November 1993, shall continue to be part of the law of Singapore. Section 3 of the Act provides that the common law, however, shall continue to be in force in Singapore as long as it is applicable to the circumstances of Singapore and subject to such modifications as those circumstances may require. Section 4, read with the First Schedule, specifies the English enactments (in toto or in parts), with the necessary modifications, that apply or continue to apply in Singapore. Section 7 effects miscellaneous amendments to local Acts, incorporating relevant English statutory law into local legislation.

1.2.36 Under the direction of Chief Justice Sundaresh Menon, Singapore has been a driver of the effort to promote the harmonisation (or, at least, convergence) of commercial laws in the Asia-Pacific region. The efforts include the catalysing of the development of a consistent body of transnational commercial law. This necessarily entails dialogue among stakeholders in the regional and international sphere.

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SECTION 3 COMMON LAW IN SINGAPORE

A. Common Law Roots

1.3.1 The Common Law is one important strand of the Singapore politico-legal fabric. Singapore has inherited the English common law tradition and thus enjoys the attendant benefits of stability, certainty and internationalisation inherent in the British system (particularly in the commercial sphere). She shares similar English common law roots with some of her neighbours (such as India, Malaysia, Brunei and Myanmar) though the details of the application and implementation will differ according to each country´s specific needs and policies.

B. The Doctrine of Judicial Precedent

1.3.2 In essence, the common law system of Singapore is characterised by the doctrine of judicial precedent (or stare decisis). According to this doctrine, the body of law is created incrementally by judges via the application of legal principles to the facts of particular cases. In this regard, the judges are only required to apply the ratio decidendi (or the operative reason for the decision) of the higher court within the same

hierarchy. Thus, in Singapore, the ratio decidendi found in the decisions of the Singapore Court of Appeal are strictly binding on the Singapore High Court, the District Court and the Magistrate´s Court. The court decisions from England and other Commonwealth jurisdictions are, on the other hand, not legally binding on Singapore. Other judicial statements (obiter dicta) made by the higher court in the judgment which do not directly affect the outcome of the case may be disregarded by the lower court.

1.3.3 The lower court is able, in some cases, to avoid having to apply the ratio decidendi in a prior higher court's decision if it can distinguish the material facts of the case before the lower court from those in the prior case.

C. Influences of and Departures from English Common Law

1.3.4 The influence of the English common law on the development of Singapore law is generally more evident in certain traditional common law areas (such as Contract, Tort and Restitution) than in other statute-based areas (such as Criminal Law, Company Law and the Law of Evidence).

1.3.5 The Singapore courts have made significant departures from the decisions of the English courts (even in the traditional common law areas). There has been also a greater recognition of local jurisprudence in the development of the common law in Singapore.

1.3.6 The judicial approach of the Singapore courts to English common law precedents is based on two main factors: (1) the logic and reasoning underlying the case precedents; and (2) the need for adaptability to local circumstances and conditions. Hence, the courts, in their judgements, examine closely both the legal principles as well as public policy considerations that may vary from one jurisdiction to another.

D. Brief Comparisons: Common Law and Civil Law Systems

1.3.7 The common law system in Singapore bears material differences from some Asian countries which have imbibed the civil law tradition (the People´s Republic of China, Vietnam and Thailand) or those with a mixture of civil and common law traditions (the Philippines).

1.3.8 Firstly, the civil law systems place relatively less weight on prior judicial decisions and do not abide by the doctrine of stare decisis, unlike the common law system as described in **Section 1.3.2** and **1.3.3** above. The common law courts in Singapore generally adopt an adversarial approach in litigation between the disputing parties whilst the civil law judges tend to take a more active role in the finding of evidence to decide the outcome of the case. Thirdly, whilst numerous legal principles have been developed by common law judges, the civil law judges are more reliant on general and comprehensive codes governing wide areas.

1.3.9 However, the divergence between the common law and civil law systems is now less marked than in the past. Common law jurisdictions have, for instance, embarked upon legislative programmes to fill the perceived gaps of the common law. In this regard, Singapore has enacted various statutes to govern specific areas of law (such as the Competition Act 2004 (No 46 of 2004), Consumer Protection (Fair Trading) Act) (Cap 52A, 2004 Rev Ed) and Protection from Harassment Act 2014 (No 17 of 2014)).

E. Common Law and Equity

1.3.10 Historically, in England, Equity (or the body of principles of fairness or justice) has been employed by the courts to ameliorate the defects or weaknesses inherent in a rigid common law system. In England, in the past, Chancery courts administered Equity in a manner separate from the common law courts. However, such a historical demarcation is not important in Singapore today.

1.3.11 According to the Singapore Civil Law Act (Cap 43, 1999 Rev Ed), the Singapore courts are empowered to administer the Common Law as well as Equity concurrently. The practical effect is that a claimant can seek both common law remedies (Damages) and equitable remedies (including Injunctions and Specific Performance) in the same proceeding before the same court. Notwithstanding the abolition of the Common Law-Equity divide, Equity has played a decisive role in the development of specific doctrines in the law of contract, including the Doctrine of Undue Influence and Promissory Estoppel.

F. Publication of Law Reports and Legal Scholarship

1.3.12 Without the regular publication of judicial precedents accessible to the judges and lawyers, the common law in Singapore would not have developed as quickly and extensively. The Singapore Law Reports constitute the major publication of Singapore court decisions since 1992. Prior to that, the Malayan Law Journal was responsible for the publication of local cases beginning in 1932. The Singapore Academy of Law has published the Singapore Law Reports (Reissue) from 1965 through 2009 with re-written headnotes. To make Singapore case law more accessible to Singaporeans and legal communities overseas, recent judgements of the Supreme Court and the Subordinate Courts can be accessed free of charge at **http://www.supcourt.gov.sg/** and **http://www.subcourts.gov.sg/** respectively.

1.3.13 Local law books and journal articles on important areas have also contributed to the burgeoning common law in Singapore. The contribution to the Singapore jurisprudence has been catalysed by the establishment of Academy Publishing under the auspices of the Singapore Academy of Law. Academy Publishing aims to provide an additional publication channel for Singapore legal scholarship and to make such publications affordable. It also seeks to disseminate Singapore's laws to a wider audience beyond Singapore.

1.3.14 The Chief Justice has urged the Singapore Bar to cite local court decisions in support of their

arguments especially when the relevant points of law have been considered by the courts. He has also urged local law academics to write on Singapore law to help develop Singapore's jurisprudence. The courts have been receptive to and have adopted academic writings in their judgements.

G. Muslim Law (in Personal Legal Matters)

1.3.15 Apart from the Common Law and Equity, the Syariah Court also administers Muslim law in specific personal legal matters governing marriages, divorces, the nullity of marriages and judicial separations under the Administration of Muslim Law Act (AMLA) (Cap 3, 2009 Rev Ed) in respect of Muslims or parties married under Muslim law (though the High Court has concurrent jurisdiction with the Syariah Court on specific matters relating to maintenance, custody and division of property). Significantly, with respect to issues of inheritance and succession, the AMLA expressly accepts particular Islamic texts as proof of Muslim law.

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SECTION 4 THE CONSTITUTION

Supreme Law

1.4.1 The Constitution (1999 Reprint) is the supreme law of the land. It is mandated that any legislation contrary to the Constitution shall, to the extent of the inconsistency, be void.

1.4.2 The provisions of the Constitution may only be amended by the votes of two-thirds of the total number of elected Members of Parliament. (However, as and when Article 5(2A) comes into force, in respect of specific constitutional amendments seeking to amend the discretionary powers of the Elected President and the provisions on fundamental liberties, at least two-thirds of the total number of votes cast by the electorate in a national referendum is also required.)

Fundamental Rights

1.4.3 Part IV of the Constitution entrenches certain fundamental rights, such as the freedom of religion, freedom of speech and equal rights. These individual rights are not absolute but qualified by public interests such as the maintenance of public order, morality and national security. Apart from the general protection of racial and religious minorities, the special position of Malays, as the indigenous people of Singapore, is constitutionally mandated.

Powers and Functions of Organs of State

1.4.4 The Constitution contains express provisions delineating the powers and functions of the various organs of state, including the Legislature (**Section 5 below**), the Executive (**Section 6 below**) and the Judiciary (**Section 7 below**).

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SECTION 5 THE LEGISLATURE

Function

1.5.1 The Legislature comprises the Singapore Parliament and the Elected President. The main function of the Singapore Parliament is the enactment of laws governing the State.

A. The Law-Making Process

1.5.2 The law-making process begins with a Bill, normally drafted by the Government legal officers. Private members´ Bills are rare in Singapore. During the parliamentary debates on important Bills, the Ministers often make speeches to defend the Bill and answer pointed queries raised by the backbenchers. The Members of Parliament (MPs) may, in some cases, decide to refer the Bill to a Select Committee to deliberate upon and submit a report to the Parliament. If the report is favourable or the proposed amendments to the Bill are approved by Parliament, the Bill is accepted by the Parliament and passed.

1.5.3 The Presidential Council for Minority Rights (PCMR) established under the Singapore Constitution is tasked, except for certain exempted Bills, to scrutinise Bills for any measures which may be disadvantageous to persons of any racial and religious communities without being equally disadvantageous to persons of other such communities, either by directly prejudicing persons of that community or indirectly by giving advantage to persons of another community. If the report of the PCMR is favourable or a two-thirds majority in Parliament has been obtained to override any adverse report of the PCMR, the Bill proceeds for the Elected President´s assent. Upon assent, the Bill is formally enacted as `law´.

B. Composition

1.5.4 In terms of composition, the Singapore Parliament consists of both elected and non-elected Members of Parliament (MPs).

C. Elected MPs

1.5.5 The elected MPs are drawn from candidates who have emerged victorious in general elections held every 4 to 5 years. They are drawn from a combination of single-member constituencies as well as Group Representation Constituencies (GRCs). Established in 1988, each GRC consists of 4 to 6 members, at least one of whom must be of a designated minority race. The underlying aim for the GRC is to entrench multiracialism in Singapore politics. As at 12 September 2015, the Parliament is dominated by the ruling Peoples' Action Party (83 elected members) with a minority representation from the Workers' Party (6 elected members).

D. Non-Elected MPs

1.5.6 The non-elected MPs, on the other hand, do not enjoy voting rights on constitutional amendments, money Bills and votes of no-confidence in the Government. They consist of two different categories: the Non-Constituency Members of Parliament (NCMPs) and the Nominated Members of Parliament (NMPs). The Constitution provides for the appointment of up to 9 NCMPs and NMPs respectively.

1.5.7 To offer an alternative political voice in Parliament, NCMPs are appointed from the candidates who have polled the highest percentage of votes amongst the `losers´ in the general election. The NMPs, in contrast, are non-politicians who have distinguished themselves in public life and have been nominated to provide a greater variety of non-partisan views in Parliament.

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SECTION 6 THE EXECUTIVE

A. Eligibility, Functions and Powers of the Elected President

1.6.1 The head of the Executive is the Elected President. The qualifications for presidential office are stringent. Apart from integrity, good character and reputation, the presidential candidate must have held one of the following positions for not less than three years:

- as a Minister, Chief Justice, Speaker of Parliament, Attorney-General, Chairman of Public Service Commission, Auditor-General, Accountant-General or Permanent Secretary;
- as chairman or chief executive officer of a statutory board;
- as chairman of the board of directors or chief executive officer of a company with a paid-up capital of at least S$100million; or
- a "similar or comparable position of seniority and responsibility" in an organisation or department of equivalent size or complexity (whether in the public or private sector) which has given him or her the requisite experience and ability in managing financial affairs so as to handle the responsibilities of the job of the Elected President.

The Presidential Elections Committee has been set up to ensure the requirements are adhered to.

1.6.2 The Elected President's term of office is 6 years. He or she shall act in accordance with the advice of the Cabinet in discharging the Elected President's constitutional functions except in specified areas. The areas in which Elected President may act in his discretion are as follows:

- the veto against the government's attempts to draw on past reserves (*eg*, in relation to a guarantee or loan given or raised by the government and the budgets of specified statutory boards and government companies that draw on past reserves);
- the appointment of the Prime Minister, specified constitutional appointees (*eg*, the Chief Justice and the Attorney-General) and other key civil service appointments (*eg*, Commissioner of Police);
- the concurrence with the Director of Corrupt Practices Investigation Bureau to make any inquiries or to carry out any investigations into any information received by the Director, notwithstanding the Prime Minister's refusal to consent;
- the withholding concurrence to the detention of persons under the Internal Security Act (Cap 143, 1985 Rev Ed);
- the exercise of certain powers pertaining to restraining orders made under the Maintenance of Religious Harmony Act (Cap 167A, 2001 Rev Ed) where the Cabinet's advice is contrary to that of the Presidential Council for Religious Harmony.

There are also counter-checks on the presidential discretion (*eg*, Parliament overruling, via a two-thirds majority of the total number of elected MPs, the presidential decision in certain instances). In discharging certain specified constitutional functions, the President is required to consult the Council of Presidential Advisers, a body set up under the Singapore Constitution. In other cases, the Elected President may in his discretion consult the Council of Presidential Advisers.

B. The Cabinet

1.6.3 The Cabinet, under the helm of the Prime Minister, is collectively responsible to the Parliament. The Prime Minister is appointed by the Elected President from among the Members of Parliament who, in the Elected President's judgment, is likely to command the confidence of the majority of the Members of Parliament. The other Ministers in the Cabinet are appointed from among the Members of Parliament by the Elected President on the advice of the Prime Minister.

1.6.4 There is no complete separation of powers between the Executive and Legislature. In terms of composition, the Ministers from the Cabinet are drawn from the MPs. Parliamentary Secretaries are further appointed from amongst the MPs to assist the Ministers. Moreover, the Ministers and the relevant government agencies are responsible for enacting subsidiary legislation to supplement the parent legislation passed by the Parliament.

C. Government´s Legal Advisers

1.6.5 On the legal front, the Government is advised and represented by the Attorney General, the Deputy Attorney-General and the Solicitor-General in both civil and criminal matters. The Attorney-General possesses wide prosecutorial discretion (ie, to institute, conduct or discontinue any proceedings for any offence). There are also special divisions within the **Attorney General´s Chambers** dealing with the drafting of legislation, law reform, economic crimes and international affairs.

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SECTION 7 THE JUDICIARY

A. International Reputation

1.7.1 The great efficiency and strength of the Singapore Judiciary has won her several accolades and a strong international reputation (see the rankings of the world´s legal systems by Political and Economic Risk Consultancy (PERC) and the Institute for Management Development (IMD)). Strict case management and Alternative Dispute Resolution methods (see **Section 9** below) have reduced drastically the backlog of cases which had plagued both the Supreme Court and Subordinate Courts in the 1980s. The Honourable Chief Justice Sundaresh Menon, since his appointment with effect from November 2012, has attained several notable achievements and undertaken important institutional reforms related to the administration of justice. One major innovation is the setting up of the Singapore International Commercial Court to hear transnational commercial disputes with a view to establishing Singapore as an international and regional hub for dispute resolution in commercial matters. The new Singapore Judicial College provides continuing training and development for the judges, and shares Singapore courts' experiences in the use of technology, organisational excellence and active case management with their counterparts in the region. Retired judges of the Supreme Court with a wealth of judicial expertise and experience have been appointed as Senior Judges of the Supreme Court to ease the hearing load and mentor younger judges. The new Family Justice Courts have also been set up under the leadership of Sundaresh Menon CJ to provide a non-adversarial approach to resolving family-related disputes. The Centre for Dispute Resolution was launched in 2015 at the State Courts to consolidate the ADR services.

B. Function and Powers

1.7.2 The judge is the arbiter of both law and fact in Singapore. The jury system had been severely limited in Singapore and was entirely abolished in 1970. Judicial power is vested in the Supreme Court (comprising the Singapore Court of Appeal and the High Court) as well as the State Courts (formerly the Subordinate Courts).

C. The Court of Appeal

1.7.3 The highest court of the land is the permanent Court of Appeal which hears both civil and criminal appeals emanating from the High Court and the Subordinate Courts. As a significant watermark of Singapore ´s legal history, appeals to the Privy Council in England were abolished in 1994. The Practice Statement on Judicial Precedent issued by the Supreme Court on 11 July 1994 clarified that the Singapore Court of Appeal is not bound by its own decisions as well as prior decisions of the Privy Council. However, it would continue to treat such prior decisions as normally binding, though it may depart from the prior precedents where it appears right to do so.

D. The High Court

1.7.4 The High Court Judges enjoy security of tenure whilst the Judicial Commissioners are appointed on a short-term contract basis. Both, however, enjoy the same judicial powers and immunities. Their judicial powers comprise both original and appellate jurisdiction over both civil and criminal matters. Some of the High Court judges are specially designated to hear cases in specific legal areas such as arbitration admiralty and intellectual property.

E. The Singapore International Commercial Court (SICC)

1.7.5 The SICC is a division of the High Court and part of the Supreme Court of Singapore. It hears international and commercial disputes where the litigants have submitted to its jurisdiction under a written jurisdiction agreement and do not seek any relief in the form of, or connected with, a prerogative order. The Chief Justice is the President of the SICC and the other SICC judges include the Judges of Appeal, High Court judges, Senior Judges as well as International Judges of the Supreme Court. Foreign counsel are entitled to appear before the SICC and Court of Appeal on appeals from the SICC in offshore cases which have no substantial connection to Singapore.

F. The Constitutional Tribunal

1.7.6 A special Constitutional Tribunal was also established, within the Supreme Court, to hear questions referred to by the Elected President on the effect of constitutional provisions.

G. The State Courts

1.7.7 The State Courts (consisting of the District Courts, Magistrates´ Courts, Juvenile Courts, Coroners Courts as well as the Small Claims Tribunals), led by the Presiding Judge, have also been set up within the Singapore judicial hierarchy to administer justice amongst the people. With the increased sophistication in business transactions and law, the Commercial Civil and Criminal District Courts have recently been established within the State Courts to deal with the more complex cases. Specialist judges have also been appointed on an ad-hoc basis to hear specific complex cases.

H. The District and Magistrates´ Courts

1.7.8 The District Courts and the Magistrates´ Courts share the same powers over specific matters such as in contractual or tortious claims for a debt, demand or damage and in actions for the recovery of monies. However, the jurisdictional monetary limits in civil matters for the Magistrates´ Courts and District Courts are $60,000 and $250,000 respectively. The courts also differ in terms of criminal jurisdiction and sentencing powers. Under the new Criminal Procedure Code 2010(Act 15 of 2010), the Magistrates' Courts have the power to try any offence for which the maximum term of imprisonment provided by law does not exceed 5 years or which is punishable with a fine only. As for the Districts Courts, the stipulated maximum term of imprisonment is 10 years. A District Court may pass a sentence of imprisonment not exceeding 10 years; fine not exceeding $30,000; caning not exceeding 12 strokes; and any other lawful sentence. The sentencing powers of a Magistrates' Courts are as follows: imprisonment not exceeding 3 years; fine not exceeding $10,000; caning not exceeding 6 strokes; and any other lawful sentence.

I. The Small Claims Tribunals

1.7.9 The Small Claims Tribunals, on the other hand, afford a speedier, less costly and more informal process for the disposition of certain specified small claims (*ie*, claims relating to disputes arising from contract for the sale of goods or the provision of services, tort in respect of property damage and any contract for the lease of residential premises that does not exceed 2 years) with a monetary limit of $10,000 only or $20,000 (where the disputing parties consent in writing).

J. Family Justice Courts

1.7.10 The Family Justice Courts, set up in 2014 under the Family Justice Act 2014, comprise the High Court (Family Division), the Family Court and the Youth Court. The Family Court deal with family-related matters including divorces and other ancillary matters (maintenance, custody, care, control and access to children and the division of matrimonial property), adoptions and personal protection orders. The Youth Court, which is presided over by a District Judge or a Magistrate, has jurisdiction over children or young persons charged with offences.

K. The Courts and Information Technology

1.7.11 The Judiciary has also taken major strides in utilising information technology in the courts which has, in part at least, enhanced its efficiency. The Technology Courts were, for instance, set up to enable the sharing of information by lawyers and judges and the giving of evidence by witnesses via video conferencing. The Electronic Filing System (EFS), a joint project by the Judiciary, Singapore Network Services and the **Singapore Academy of Law** to enable the filing, extraction and service of court documents as well as the tracking of case information by electronic means, has undergone further refinements to upgrade services to end-users. It was reconstituted as the Electronic Litigations Systems (ELS) in order to further integrate technology into the litigation processes. eLitigation has since been launched in 2013 to provide for the management of case files through short message services (SMS) reminder alerts, calendaring and hearing management to select hearing dates as well as a secure form of access to the web-based service via SingPass. Various information technology innovations have also been utilised to facilitate and streamline various criminal processes, namely the registration and management of criminal cases (SCRIMS), the processing of traffic charges between the police and the courts (TICKS 2000) and the payment of fines for minor traffic offences (ATOMS).

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SECTION 8 LEGAL EDUCATION AND LEGAL PROFESSION

A. Functions of Lawyers in Singapore

1.8.1 The legal profession in Singapore is 'fused' - the Singapore lawyer may act as both an Advocate as well as a Solicitor. As an Advocate and Solicitor of the Supreme Court of Singapore, he or she has the right to appear and plead before the Singapore courts of justice. The opportunities of a Singapore lawyer are fairly varied - he or she may, for example, wish to serve as a legal or judicial officer in the Singapore Legal Service, an in-house counsel of a company or practise law in a local or international law firm. In the local set-up, the lawyer may handle litigation, corporate work, real estate and intellectual property work. Outstanding litigators, practitioners and law academics have been appointed as Senior Counsel in recognition of their lofty

professional standards. The legal profession has, like the courts, undergone increased specialisation of functions in recent years.

B. Admission to the Singapore Bar

1.8.2 A sound legal education is instrumental to the `birth´ and subsequent development of the Singapore lawyer. The Singapore Institute of Legal Education was established in May 2011 to maintain and improve the standards of legal education in Singapore. To be admitted to the Singapore Bar, an aspirant has to first attain the status of a 'qualified person' by obtaining a law degree from the **National University of Singapore** (NUS) or the **Singapore Management University** (SMU), or from one of the approved overseas universities of the United Kingdom, United States, Australia, Canada and New Zealand. In addition to the LL.B. programme, SMU offers a Juris Doctor (J.D.) Program for graduates with a first degree from other disciplines as well as law graduates from civil law jurisdictions and non-gazetted universities in common law jurisdictions. Apart from a four-year LL.B. program, NUS also offers a three-year graduate LL.B. program for graduates with a first degree.

1.8.3 Law graduates from the approved foreign universities will be required to pass Part A of the Bar Examination (a short conversion course on Singapore law). Overseas graduates with Lower Second Class honours and above from the approved universities are eligible to take the Bar Examination. Law graduates from NUS and SMU are not required to undertake Part A of the Bar Examination. The law graduates from both the local and approved foreign universities would have to undergo and pass the full-time Preparatory Course leading to Part B of the Singapore Bar Examinations (consisting of a list of both compulsory and elective subjects). Finally, the law graduate must serve a practice training period with a Singapore law practice pursuant to a practice training contract or through work as a Legal Service officer or under the supervision of a qualifying legal officer. Upon fulfilment of the above requirements, he or she can be admitted to the Singapore Bar.

1.8.4 Foreign-qualified lawyers may apply for a Foreign Practitioner Certificate from the Attorney-General to practise in limited areas of Singapore law such as banking and finance, mergers and acquisitions and intellectual property law subject to passing the Foreign Practitioner Examinations (FPE). One prerequisite for taking the FPE is that the foreign lawyer must have at least three years of relevant legal practice or work in Singapore or overseas. Queen's Counsel from the United Kingdom may be admitted on an ad-hoc basis for a particular case provided the court is satisfied that it is of sufficient difficulty and complexity.

1.8.5 Queen's Counsel from the United Kingdom may be admitted on an ad-hoc basis for a particular case based on the following considerations:

a. the nature of the factual and legal issues involved in the case;
b. the necessity for the services of a foreign senior counsel;
c. the availability of any senior counsel or other advocate and solicitor with appropriate experience; and
d. whether, having regard to the circumstances of the case, it is reasonable to admit a foreign senior counsel for the purpose of the case.

C. Legal Education

1.8.6 With the increased internationalisation of legal services, legal education in Singapore has placed greater emphasis on the need for law undergraduates to acquire knowledge of and exposure to foreign legal systems and international law. To ensure that Singapore lawyers keep abreast of significant legal developments, a Mandatory Continuing Professional Development scheme applies to newly-qualified lawyers with less than 5 years experience as well as senior lawyers of between 5 and 15 years' standing. The Government also reviews the supply of lawyers periodically to ensure that the supply of lawyers meets the growing demand for legal talent. The Fourth Committee on the Supply of Lawyers (2013) has recommended that the intake of students at SMU Law School be increased and that a new law school be set up which focuses on legal training for those persons who are interested to practise community law as well as similarly interested mature students who have worked as paralegals, social workers, or law enforcement officers.

D. Forms of Legal Practice

1.8.7 There are various vehicles for the setting up of legal practices and cooperative alliances amongst the law firms. Apart from the erstwhile sole proprietorships and partnerships, the legal profession has also seen the creation of the law corporation with the associated benefits of limited liability as well as limited liability partnerships. Singapore law firms are entitled to employ appropriately qualified foreign lawyers to practise law subject to certain criteria, including appropriate qualifications, expertise and experience and the areas of legal practice of the lawyer and the law firm.

1.8.8 There also exists the avenue of forming Joint Law Ventures and Formal Law Alliances between foreign and local law firms (subject to the approval of the Attorney General) with the attendant advantages of marketing the venture or alliance as a single service provider and centralised billing for clients. Foreign lawyers who are employed by, or who are partners or directors of, the Joint Law Ventures may practise Singapore law, subject to certain requirements such as qualifications, expertise and experience and the restrictions on the areas of legal practice. Qualifying Foreign Law Practice (QFLP) licences have been granted by the Ministry for Law to selected foreign law firms to allow them to practise Singapore law in permitted areas of legal practice through Singapore-qualified solicitors employed by them.

1.8.9 The Legal Services Regulatory Authority, headed by the Director of Legal Services, has been established under the Ministry for Law to register law practices and regulate the business of the law practices in Singapore. A new vehicle, the Legal Disciplinary Practice, is permitted in which non-lawyer managers or employees will be allowed to own a stake in the business of the practice.

1.8.10 In recent years, there is a concern that a sizeable proportion of the Singapore lawyers are leaving legal practice for in-house counsel positions and other non-legal fields. One limited measure to stem the tide of such lawyers leaving practice is the locum practising lawyers´ scheme which enables locum lawyers to be engaged by law firms and corporations for projects on a temporary or freelance basis.

E. Discipline of the Legal Profession and Professional Ethics

1.8.11 Singapore-qualified and foreign-qualified lawyers practising law in Singapore are subject to the same professional disciplinary processes which require a Review Committee, Inquiry Committee, Disciplinary Tribunal as well as the oversight of the Supreme Court.

1.8.12 To maintain discipline within the legal profession, the Supreme Court are empowered to impose sanctions including striking the lawyer off the Roll, suspension for a specified period and censure. The precise sanction administered depends on the severity of the lawyer´s misconduct, defect of character and other acts and omissions.

1.8.13 In order to bolster the public's confidence in the law and the legal profession, the Judiciary has emphasised the imperative of ethical and socially responsible conduct of lawyers. They are mindful that the errant behaviour of a few members of the bar, if left unchecked, can have a detrimental effect on professional values and ethics as well as the public confidence in the legal profession.

F. Lawyers´ Fees, Legal Aid an Pro Bono Work

1.8.14 Whilst lawyers' fees in Singapore are relatively modest compared to those in the United Kingdom and Australia, they can still constitute a hefty proportion of the income earned by an average Singaporean. In Singapore, the losing party generally has to pay the costs (including lawyers´ fees) reasonably incurred by the victorious party. Singapore lawyers are not permitted to charge contingency fees under the Legal Profession Act (Cap. 161, 2009 Rev Ed). In this regard, the Report of the Committee to Develop the Singapore Legal Sector (2007) has recommended reforms to allow conditional fee agreements with a view to, *inter alia*, enhance access to justice. The **Singapore Legal Aid Bureau** has been established under the Legal Aid and Advice Act (Cap 160, 1996 Rev Ed) for the purposes of providing legal advice and legal services in civil matters to the needy.

1.8.15 In recognition of the legal profession's social responsibility in making legal services accessible to the public, the Law Society's Pro Bono Services Office, established on 1 August 2007, coordinates and administers all of its pro bono initiatives such as the Criminal Legal Aid Scheme (CLAS - for needy accused persons), Project Law Help, Community Organisation Clinics (for non-profit organisations such as a charity, voluntary welfare organisation and social enterprise), Community Legal Clinics at the Community Development Councils as well as initiatives to raise public awareness of the law. Singapore-qualified lawyers are obliged to report the number of hours they have spent each preceding year on pro bono work. This was recommended by the Committee to Study Community Legal Services Initiatives in November 2013.

G. Professional Bodies

1.8.16 Apart from the law schools, law firms and corporations as well as the Singapore Institute of Legal Education, two other important statutory bodies serve the legal community in Singapore. The **Law Society** primarily upholds the interests of the practising lawyers whilst the **Singapore Academy of Law** seeks to advance the legal profession as a whole. The **Singapore Corporate Counsel Association** was established in 2002 to represent and cater to the increasing number of in-house legal counsel.

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SECTION 9 ALTERNATIVE DISPUTE RESOLUTION

1.9.1 Alternative dispute resolution (ADR) is growing rapidly in importance in Singapore as a means of dispute resolution for matters ranging from domestic and social conflicts to large-scale cross-border legal disputes. ADR, with negotiation, mediation and arbitration as the main modes practised in Singapore, is widely promoted as an effective, efficient and economical means of resolving a spectrum of disputes in a variety of settings. ADR began tentatively in the 1980s when the government envisaged Singapore as a major dispute resolution centre, capitalizing on its geographic position as well as its goal of developing Singapore into a total, one-stop business centre. Another explicit goal is to prevent Singapore from becoming a litigious society. Mediation was singled out as being in accord with Singapore´s Asian traditions and cultures.

1.9.2 In tandem with Singapore´s quest to be a total business centre, great efforts have been expended towards making Singapore a major centre for dispute resolution (similar to London, New York and Paris). The Singapore Government is a strong proponent of ADR and has put in place substantive institutional and infrastructural framework to support this endeavour. The Judiciary is also firmly behind the ADR initiatives in settling disputes and its Rules of Court (Cap 322, Rule 5, 1999 Rev Ed) provide ample opportunity for ADR even within a litigation setting. Various modes of ADR could still be relied upon even if litigation proceedings have begun. For instance, litigants or their legal representatives may either apply to the court for the matter to

be referred to mediation, or directly to the Singapore Mediation Centre itself.

1.9.3 In 1986, Singapore acceded to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Under this Convention, each contracting State is required to recognise and enforce arbitral awards made in another contracting State. Arbitral awards rendered in Singapore are potentially enforceable in more than 140 jurisdictions. The International Arbitration Act (Cap 143A, 2002 Rev Ed), which incorporates the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, gives effect to the Convention.

1.9.4 In 1991, the **Singapore International Arbitration Centre (SIAC)** was established. This was followed by the establishment of the **Singapore Mediation Centre (SMC)** in 1997. In 1994, mediation of civil disputes was first introduced in the Subordinate Courts through the Court Mediation Centre. Since then, mediation is routinely conducted in the **Small Claims Tribunals**, the **Family Court**, the **Juvenile Courts**, and the Ministry of Community, Youth and Sports´ Maintenance of Parents Tribunal (Maintenance of Parents Act, Cap 167B, 1996 Rev Ed). The Law Society Arbitration Scheme (LSAS), launched on 1 August 2007, is a scheme that is designed to provide a simple and cost-effective process to resolve disputes via arbitration. The LSAS has its own set of arbitration rules, panel of arbitrators as well as a prescribed scale for arbitrators' fees.

1.9.5 Taking advantage of its efficient and effective legal system and ADR framework, Singapore has sought to capitalise on these attributes to secure foreign partners to Singapore. For instance, the American Arbitration Association has entered into a joint venture agreement with SIAC to set up an arbitral institution in Singapore. In September 2007, the Permanent Court of Arbitration (PCA) established its first Asian centre in Singapore to cater to the growing demand and importance of arbitration in resolving international disputes in which at least one party is a state, state-entity, or inter-governmental organisation.

1.9.6 To further advance Singapore's aspirations as a dispute resolution hub, particularly in Asia, the Maxwell Chambers, developed as the first integrated dispute resolution complex housing both best-of-class hearing facilities and top international ADR institutions, has been in operation since August 2009. Located in the Central Business District, this integrated arbitration complex with state-of-the-art facilities is available for use round the clock to meet the needs of high-end arbitration work. This complex is located in the heart of the Central Business District. To further enhance Singapore's attractiveness for high-end arbitration work, the government grants 50 per cent tax exemption on a (local and foreign) law firm's incremental qualifying income on international arbitration activity for cases which result in hearings in Singapore. Since 2004, foreign lawyers can represent parties in arbitration proceedings governed by the Arbitration Act or the International Arbitration Act.

1.9.7 As part of the national effort to foster a mediation culture, the Community Mediation Centres Act (Cap 49A, 1998 Rev Ed) was enacted in 1997 to spearhead the community mediation endeavour, which is seen as an effective means of settling relational disputes on the ground, especially in multi-racial, multi-religious Singapore. Four regional **Community Mediation Centres (CMCs)** and several satellite mediation venues were set up. The emphasis is to develop an Asian model of mediation drawing on the customary and influential role of the traditional leaders of the various races such as the penghulu (Malay kampong headman), the panchayat (the Indian community council) and the senior clansmen of the Chinese clan associations in mediating conflicts within those communities. Efforts to promote non-litigious forms of resolution of community/relational disputes have been aided by the passing of the Community Disputes Resolution Bill in March 2015. This Act provides for the establishment of the Community Disputes Resolution Tribunal.

1.9.8 Another innovation in the ADR arena is the setting up of the Singapore International Mediation Centre (SIMC) in 2014. The SIMC may appoint a mediator from a panel of experienced mediators from various jurisdictions to deal with cross-border commercial disputes. In tandem with this development, the Singapore International Mediation Institute was established in the same year to provide for the certification of mediation competency and to further the professional development of mediators.

1.9.9 Within Singapore´s legal fraternity, efforts, led by the Judiciary, are being made to encourage lawyers´ and their clients´ reception of ADR as a more satisfactory, faster and cheaper way of settling disputes. Since April 2003, the Chief Justice has appointed selected Judges of the Supreme Court to preside over arbitration matters brought before the High Court. This was part of the Judiciary´s goal of ensuring that Judges with the requisite expertise and experience preside over cases involving specialised areas of law and commercial practice.

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SECTION 10 PROMOTION OF SINGAPORE LAW

1.10.1 To promote the Singapore legal industry, the *SingaporeLaw* initiative, supported by the Singapore Academy of Law and the Ministry of Law, was launched in 2006. This initiative seeks to increase the international profile and use of Singapore law and to promote Singapore as a centre for dispute resolution as well as an international provider of legal services. In particular, recent efforts are directed at attracting Indian and Chinese parties in their disputes with foreign parties to use Singapore as a neutral seat of arbitration.

1.10.2 The thrust of these efforts is to ensure that Singapore remains and enhances its cachet as an international centre for the provision of (inward and outbound) legal services. In particular, the emphasis is on

encouraging foreign parties to choose Singapore as a partner for `legal solutions in Asia´ with the following significant platforms promoted: (1) Singapore law as the law of choice governing contracts involving Asian parties; and (2) Singapore as the `natural choice´ venue for dispute resolution, especially mediation and arbitration.

1.10.3 In tandem with the promotion of Singapore law is the liberalization of the legal services sector. The grantin g of the Qualifying Foreign Law Practice (QFLP) licences to selected foreign law firms in December 2008 to allow them to practise Singapore law in selected areas is part of the overall efforts to enhance the legal talent pool available in Singapore, meet the needs and demands of Singapore´s economy, to adapt to the changing global legal landscape, and to attract and retain legal talent.

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SECTION 11 CONCLUSION

1.11.1 The drive towards legal autochthony continues and the legal innovations will continue in the never-ending quest for the legal system to be both effective and efficient while according justice on the basis of fairness, equity and impartiality. For the Singapore legal system to maintain its relevance, legal innovation will be needed. Such innovation will be guided by compatibility with Singapore´s needs and local conditions. With trade and investments being Singapore´s economic lifeblood, the legal system must continue to provide adequate protection to all and inspire confidence within the international business community. Indeed, Singapore aspires to increase the international profile of Singapore law and to promote Singapore as a centre for dispute resolution. The current endeavour in enhancing Singapore´s standing as an international centre for the provision of legal services is to encourage parties to choose Singapore law as the governing law for their international commercial transactions.

1.11.2 The Government recognises the importance of law in maintaining political and social order as well as engendering conducive conditions for economic activity. Indeed, law is regarded as a fundamental economic value, which must be carefully nurtured and harnessed to enhance Singapore´s aspiration to be a total business centre. Although critics argue that the human rights regime and legal protection for individuals is not on par with the legal regime for economic activity, the government´s success in generating economic wealth have legitimised and lent credence to the state´s and society´s preference for tough laws, social discipline and a low incidence of corruption as an integral part of good governance.

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