

CHAPTER 1 THE SINGAPORE LEGAL SYSTEM

Section 1	Introduction
Section 2	Constitutional and Legal History
Section 3	Common Law in Singapore
Section 4	The Constitution
Section 5	The Legislature
Section 6	The Executive
Section 7	The Judiciary
Section 8	Legal Education and Legal Profession
Section 9	Alternative Dispute Resolution
Section 10	Promotion of Singapore Law
Section 11	Conclusion

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](#)).

[Return to the top](#)

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 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 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 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 — 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 falling 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 handle 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, appeals to the Privy Council were 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.

[Return to the top](#)

SECTION 3 COMMON LAW IN SINGAPORE

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.

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 strictly 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 (a) it can materially distinguish the facts of the case before the lower court from those in the prior higher court's decision; or (b) the higher court's decision was made per incuriam (that is, without abiding by the doctrine of stare decisis) in the first place.

Influences of and Departures from English Common Law

1.3.4 The heavy 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). With respect to the latter, other jurisdictions such as India and Australia have strongly influenced the approach and content of some of these statutes.

1.3.5 However, the erstwhile tendency of Singapore courts to adhere to English decisions has recently given way to significant departures from the English courts (even in the traditional common law areas). There is also a greater recognition of local jurisprudence in the development of the common law in Singapore.

1.3.6 Two recent examples shall suffice at this juncture as a manifestation of Singapore's desire to develop an autochthonous legal system and body of laws. In the law of torts, the Singapore courts have consciously deviated from the exclusionary rule in the English case of *Murphy v Brentford District Council* (1991) so as to allow, in the context of building defects, recovery for pure economic losses arising from negligent acts or omissions. In this respect, a single test for duty of care was recently formulated by the Court of Appeal in the case of *Spandek Engineering v Defence Science Technology Agency* (2007). In the law of contract, the Singapore Court of Appeal in *Chwee Kin Keong v Digilandmall.com Pte Ltd* (2005) has chosen not to adopt the position in the English Court of Appeal decision in *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd* (2002) on equity's jurisdiction in the case of unilateral mistake.

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 recently enacted various statutes to govern many specific areas of law (such as the Contract (Rights of Third Parties) Act 2001 (Cap 53B, 2002 Rev Ed), the Competition Act 2004 (No 46 of 2004) and Consumer Protection (Fair Trading) Act) (Cap 52A, 2004 Rev Ed).

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.

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 completed a project to re-issue the Singapore Law Reports from 1965 through 2009 with re-written headnotes and this is expected to be published in 2010. 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.

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, 1999 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.

[Return to the top](#)

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 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. In respect of specific constitutional amendments seeking to amend the discretionary powers of the Elected President and the provisions on fundamental liberties, however, 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](#)).

[Return to the top](#)

SECTION 5 THE LEGISLATURE

Function

1.5.1 The main function of the Singapore Parliament is the enactment of laws governing the State.

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 sometimes make impassioned 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, as a matter of course, for the President's assent. It is at this juncture that the Bill is formally enacted as 'law'.

Composition

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

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. At present, the Parliament is dominated by the ruling PAP with a smallish representation from the opposition political parties.

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).

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.

[Return to the top](#)

SECTION 6 THE EXECUTIVE

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 other requirements, the presidential candidate must have held high office for not less

than three years in a designated constitutional position, statutory board, large company or a similar or comparable position 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 to handle the responsibilities of the job. The Presidential Elections Committee has been set up to ensure the requirements are adhered to.

1.6.2 The Elected President is tasked to safeguard the nation's foreign reserves and retains the power of veto over the appointment of key civil servants. In discharging its constitutional functions, the President is required to consult the Council of Presidential Advisers, a body set up under the Singapore Constitution.

The Cabinet

1.6.3 The Cabinet, under the helm of the Prime Minister, is collectively responsible to the Parliament. The Prime Minister is someone appointed by the Elected President who, in the latter's judgment, is likely to command the confidence of the majority of the Members of Parliament.

1.6.4 There is no complete separation of powers between the Executive and Legislature. In terms of composition, members of 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.

Government's Legal Advisers

1.6.5 On the legal front, the Government is advised and represented by the Attorney General and the Solicitor-General in both civil and criminal matters. There are also special divisions within the **Attorney General's Chambers** dealing with the drafting of legislation, law reform and international affairs.

[Return to the top](#)

SECTION 7 THE JUDICIARY

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 Chan Sek Keong, since his appointment with effect from 11 April 2006, has focused on implementing initiatives to enhance access of justice and the development of substantive jurisprudence in Singapore. Community courts have, for instance, been established to deal with special types of cases and offenders (such as youthful offenders, offenders with mental disabilities, family violence cases and cases involving race relations). A Bail Court was set up in 2007 to deal exclusively with bail matters (in particular, the determination of bail and its quantum). The

courts continually attempt to engage the public interest in the work of the judiciary. In March 2009, the Supreme Court organised a successful open house, 'The Living Courthouse,' as the highlight of its outreach efforts to remove, in the words of Chief Justice Chan Sek Keong, the 'mysterious atmosphere where strange rituals and exchanges are seen to take place between judges, counsel and witnesses'.

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 Subordinate Courts.

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.

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. The recent appointment of some High Court judges to specialise in arbitration matters at the High Court adds to the two existing specialist courts: the Admiralty and the Intellectual Property Court.

The Constitutional Tribunal

1.7.5 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.

The Subordinate Courts

1.7.6 The Subordinate Courts (consisting of the District Courts, Magistrates' Courts, Juvenile Courts, Coroners Courts as well as the Small Claims Tribunals) 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 Subordinate Courts to deal with the more complex cases. Specialist judges have also been appointed on an ad-hoc basis to hear specific complex cases.

The District and Magistrates' Courts

1.7.7 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 sentencing powers. Imprisonment terms imposed by the Magistrates' Courts are limited to two years and for the District Courts, seven years.

The Small Claims Tribunals

1.7.8 The Small Claims Tribunals, on the other hand, afford a speedier, less costly and more informal process for the disposition of small claims with a monetary limit of only \$20,000 (provided the disputing parties consent in writing).

Family Courts

1.7.9 Apart from the above courts, the Family Courts deal with divorces, maintenance, custody and adoptions.

The Courts and Information Technology

1.7.10 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. Legal actions involving a company or an individual may be monitored using a facility known as Casewatch. 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 recently undergone further refinements to upgrade services to end-users. It has been reconstituted as the Electronic Litigations Systems (ELS) in order to further integrate technology into the litigation processes. 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).

[Return to the top](#)

SECTION 8 LEGAL EDUCATION AND LEGAL PROFESSION

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, conveyancing and intellectual property work. Outstanding litigators, practitioners and law academics have been appointed as

Senior Counsels in recognition of their lofty professional standards. The lawyer in the international law firm is generally limited to corporate, finance and banking transactions involving foreign laws. The legal profession has, like the courts, undergone increased specialisation of functions in recent years as we find more lawyers involved in more esoteric areas such as biotechnology and asset securitisations.

Admission to the Singapore Bar

1.8.2 A sound legal education is instrumental to the 'birth' and subsequent development of the Singapore lawyer. 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](#) or the [Singapore Management University](#), or from one of the approved overseas universities of the United Kingdom, United States, Australia, Canada and New Zealand. In addition to the existing LL.B. program, SMU will offer a Juris Doctor (J.D.) Program starting in 2009 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 There have been several recent changes to the criteria for admission to the Singapore Bar. The one-year Diploma of Singapore Law currently offered by NUS for law graduates from the approved foreign universities will be abolished. Instead, these law graduates from the approved foreign universities who are graduating in 2009 will be required to pass Part A of the Bar Examination (after an optional and shorter conversion course offered by NUS). Overseas graduates with Lower Second Class honours from approved universities will henceforth be allowed to take the Bar Examination. On the other hand, the law graduates from NUS and SMU are not required to pass Part A of the Bar Examination. The law graduates from both the local and approved foreign universities would have to complete the Postgraduate Law Course (PLC) which is expected to be revamped, and pass Part B of the Bar Examination at the end of PLC. This is likely to take place from 2010. Finally, the law graduate is required to complete a training contract with a Singapore Law practice as well as specified dining requirements. Upon fulfillment of the above requirements, he or she is admitted to the Singapore Bar.

1.8.4 There are other avenues for admission to the Singapore Bar, albeit more limited, for Queen's Counsel and Malaysian practitioners.

Legal Education

1.8.5 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. Mandatory Continuing Legal Education will be implemented to ensure that the Singapore lawyer to continually keep abreasts of legal developments. The Government also reviews the supply of lawyers periodically to ensure that the

supply of lawyers meets the growing demand for legal talent. Thus far, there have been three major reviews in 1993, 2001, and 2005. The next review is scheduled for 2010.

Forms of Legal Practice

1.8.6 For the lawyer who chooses to set up a legal practice, one prominent feature of the legal landscape in recent times has been the proliferation of 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. More recently, the introduction of limited liability partnerships in Singapore offers yet another vehicle for legal practice. A recent amendment to the Legal Profession Act provided that the 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. The foreign lawyer may also own equity shares in the Singapore law firm subject to a cap of 25% and other conditions.

1.8.7 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. Recently, Qualifying Foreign Law Practice (QFLP) licences have been granted to selected foreign law firms in December 2008 to allow them to practise Singapore law in permitted areas of legal practice through Singapore-qualified solicitors employed by them.

1.8.8 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.

Discipline of the Legal Profession and Professional Ethics

1.8.9 To maintain discipline within the legal profession, the Supreme Court wields considerable power over both practising and non-practising Advocates and Solicitors. Sanctions include 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.

1.8.10 In order to bolster the public's confidence in the law and the legal profession, Chief Justice Chan Sek Keong and the Judiciary have been emphasizing 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.

Lawyers' Fees and Legal Aid

1.8.11 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. 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.

1.8.12 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 Legal Clinics at the Community Development Councils as well as initiatives to raise public awareness of the law.

Professional Bodies

1.8.13 Apart from the law schools, law firms and corporations as well as the Board 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.

[Return to the top](#)

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 (Cap 167B). In "e@dr" (<http://app.subcourts.gov.sg/e-adr/index.aspx>), electronic technology has been harnessed for parties in e-commerce transactions to resolve their disputes through the internet. Further, 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 Singapore is developing an integrated arbitration complex with state-of-the-art facilities available round the clock to meet the needs of high-end arbitration work. This complex in the heart of the Central Business District is expected to be ready by late 2009. 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. There are now four regional **Community Mediation Centres (CMCs)** and several satellite mediation venues. 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.

1.9.8 In May 2008, the Neighbourhood Court was established within the Subordinate Courts. The Neighbourhood Court, which is a magistrate's court presided by legally qualified Justices of Peace, was set up to deal with the increasing incidences of unneighbourly and anti-social behaviour. The Neighbourhood Court adopts a problem-solving approach, and is supported by various community programmes and services such as the CMCs.

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. In April 2003, the Chief Justice appointed Justice Judith Prakash to preside over all arbitration matters brought before the High Court. This is 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.

[Return to the top](#)

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; (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 granting 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.

[Return to the top](#)

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.

[Return to the top](#)

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