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Liberalizing Trade in Legal Services under Asia-Pacific FTAs: The ASEAN Case

Pasha L. Hsieh*

ABSTRACT

The article examines the liberalization of trade in legal services in the Association of the Southeast Asian Nations (ASEAN) and its reform prospects to meet the challenges of multi-jurisdictional practice. It argues that while the ten-country bloc pledges to progressively liberalize the legal sector, ASEAN commitments under free trade agreements (FTAs) constitute merely ‘paper commitments’. To achieve the goal of the ASEAN Economic Community to form a single market and production base, a feasible, incremental roadmap is imperative to integrate the legal services market. The article first analyzes the economic impact of foreign law firms on ASEAN’s legal capacity building and the evolution of emerging ASEAN law. By assessing legal services negotiations under the World Trade Organization, the European Union, and Asia-Pacific FTAs, the article identifies issues of complexity in international arenas. The Singapore experiment further explores the effectiveness of FTAs with Australia and the USA and self-initiated FTA-plus measures such as Joint Law Ventures and Qualifying Foreign Law Practices. These case studies, along with law firms’ operations vis-à-vis regulatory changes, demonstrate the best practices. Finally, the article provides reform proposals that will accelerate the integration of ASEAN’s legal services market and enhance its competitiveness under the multilateral trading system.

I. INTRODUCTION

The globalized marketplace requires transnational lawyers. Legal services contribute to cross-border transactions that underpin today’s multilateral business network. From the Uruguay Round to the Doha Round, the liberalization of legal services has been of great interest to international law firms and countries keen on exporting

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such services.¹ Lifting trade and investment barriers to legal services is equally critical to a high degree of economic integration that mandates a freer flow of professional services in diverse jurisdictions. With the global economic power shifting to Asia, the total revenue of its legal services market has surpassed \$85 billion and the market size is expected to double by 2017.² A growth of over 18% in US legal services exports to Asia contributed to half of American law firms' overseas expansion in the region.³ Against this background, the article examines the liberalization of trade in legal services in the Association of Southeast Asian Nations (ASEAN). This ten-country bloc is now Asia's third largest economic entity, including countries with high-investment potential such as Indonesia, Myanmar, and Singapore.⁴

This article argues that ASEAN countries' legal services commitments under free trade agreements (FTAs) constitute merely 'paper commitments' that will hinder the formation of the ASEAN Economic Community (AEC) by 2015. It further contends that to meet the AEC's goal as a 'single market and production base', a roadmap is imperative to achieve the intergradation of ASEAN's legal services market.⁵ To substantiate its claims and enrich the existing literature, this article provides the most updated and comprehensive analysis of ASEAN's legal services liberalization measures at multilateral and national levels.⁶ It also details the impact of regulatory changes on private practice, based on insight provided by international and regional law firms. To fill the gap between ASEAN governments' urge for the 'progressive liberalization of trade in legal services' and the reality on the ground, the article

- 1 Legal Services: Background Note by the Secretariat, S/C/W/318, 14 June 2010 [Legal Services: Background Note by the Secretariat], at 1–4; Joint Statement on Legal Services, Communication from Australia, Canada, Chile, the European Communities, Japan, Korea, New Zealand, Singapore, Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the USA, TN/S/W/34; S/CSC/W/46, 24 February 2005 [Joint Statement on Legal Services]; Laurel S. Terry, 'From GATS to APEC: The Impact of Trade Agreements on Legal Services', 43 *Akron Law Review* 869 (2010), 927–34; Massimo Geloso Grosso, 'Managing Request-Offer Negotiations under the GATS: The Case of Legal Services', OECD Trade Policy Papers No. 2 (2004), at 9.
- 2 John Grimley, 'Asian Legal Market Set to Double by 2017', *Asian Law Portal*, 18 April 2013, <http://www.asialawportal.com/2013/04/18/asian-legal-market-set-to-double-by-2017/> (visited 1 August 2014); MarketLine Industry Profile: Legal Services in Asia-Pacific (2012), at 7.
- 3 Recent Trends in US Services Trade, 2013 Annual Report, at 5–9; 2013 Report on the State of the Legal Market, at 8.
- 4 The Association of Southeast Asian Nations (ASEAN) includes Indonesia, Malaysia, the Philippines, Singapore, Thailand, Brunei, Cambodia, Laos, Myanmar, and Vietnam. In terms of Gross Domestic Product, ASEAN is only after China and Japan in Asia. ASEAN Economic Community Chartbook 2013, at 4.
- 5 For the object of the ASEAN Economic Community (AEC), see Roadmap for an ASEAN Community: 2009–2015 (2009), at 21–31.
- 6 Most of the existing articles or reports on this matter are either outdated or lack an overall analysis of FTA impact and actual operation of ASEAN-based law firms. E.g. Chew Seng Kok and Yeap Suan Hong, 'Liberalization of Legal Services – Embracing a World of Opportunities in the ASEAN Region', 10 *US-China Law Review* 141 (2013); Pasha L. Hsieh, 'ASEAN's Liberalization of Legal Services: The Singapore Case', 8 *Asian Journal of WTO & International Health Law and Policy* 483 (2013); Jayanth K. Krishnan, 'The Joint Law Venture: A Pilot Study', 28(2) *Berkeley Journal of International Law* 431 (2012); Indonesia: Legal Services Market Report (2010); Colin Ong, 'Cross Border Legal Services within ASEAN under the WTO: the Law and Practice: Brunei Darussalam' (2005).

provides reform proposals that incorporate the best practices of ASEAN states and other regional blocs.⁷

This article proceeds in the following manner. Section II analyzes the *de jure* and *de facto* obstacles to the development of intra-ASEAN liberalization of legal services. It first discusses the architecture of the prospective AEC and the need to cultivate the expertise of emerging ASEAN law. In challenging the weaknesses of the implementation of ASEAN states' commitments, the article addresses legal services negotiations in the context of the World Trade Organization (WTO) and FTAs. Section III examines ASEAN states' experiments with legal services liberalization from the tripartite perspective of governments, law firms, and business clients. It offers an overview of ASEAN's legal profession and focuses on Singapore as a key case study. For decades, this city-State has been the base for multinational law firms that serve the ASEAN market. Its regulatory changes in compliance with FTAs with the USA and Australia, as well as self-initiated FTA-plus liberalization efforts, provide valuable lessons for ASEAN. Section IV explores proposals for reforming regulations governing the supply of legal services in ASEAN. Based on the experiences of ASEAN states, the European Union (EU) and the North American Free Trade Agreement (NAFTA), the article advances a number of pragmatic proposals to expedite the ten-country bloc's seamless multi-jurisdictional practice.

II. CHALLENGES TO ASEAN'S LEGAL SERVICES INTEGRATION

ASEAN includes a population of 616 million, and its diverse development stages across the region have been a prime obstacle to the AEC's objective to promote a 'free flow of services'.⁸ Placing Singapore and Myanmar on the same liberalization agenda can never be easy, as the Gross Domestic Product (GDP) per capita of the former is 61 times of that of the latter.⁹ The liberalization of legal services is particularly daunting because the legal profession is jurisdiction-based and more protectionist than other sectors. One cannot ignore ASEAN's complex legal systems, which include common law, civil law, socialist law and Sharia law that have been influenced by the legal traditions of France, Spain, the Netherlands, and the USA.¹⁰ The regulatory stance of ASEAN states towards foreign lawyers varies significantly. While Cambodia implicitly allows foreign consulting firms to offer advice on domestic law, Article XII of the Philippine Constitution explicitly confines '[t]he practice of all

7 Joint Communiqué of the Eighth ASEAN Law Ministers Meeting (ALAWMM), 4–5 Nov. 2011; Quaratul-Ain Bandial and Bandar Seri Begawan, 'Southeast Asia Discusses Challenges to Liberalising Legal Services Sector', *Brunei Times*, 14 April 2011, <http://www.bt.com.bn/news-national/2011/04/14/southeast-asia-discusses-challenges-liberalising-legal-services-sector> (visited 1 May 2014).

8 ASEAN Statistic Leaflet: Selected Key Indicators 2013; Roadmap for an ASEAN Community: 2009–2015 (2009), at 25–27.

9 ASEAN Statistic Leaflet: Selected Key Indicators 2013.

10 Colin Y.C. Ong, Cross-Border Litigation within ASEAN: The Prospects for Harmonization of Civil and Commercial Litigation 115–40 (The Hague & Boston: Kluwer Law International, 1997); 'Alphabetical Index of the Political Entities and Corresponding Legal Systems', <http://www.juriglobe.ca/eng/sys-juri/index-alpha.php> (visited 20 July 2014).

professions' to citizens.¹¹ The Supreme Court of the Philippines in *Cayetano v Monsod* widely interpreted the 'practice of law' to encompass 'any' law-related activities, hence *de facto* banning the practice of foreign lawyers.¹²

A. The AEC as a Single Market and Emerging ASEAN Law

While recognizing that these issues above constitute hurdles to ASEAN's multi-jurisdictional practice, ASEAN law ministers proposed the 'progressive liberalization' of the legal sector.¹³ In fact, the AEC envisions the substantial removal of restrictions on the legal services by 2015.¹⁴ Several reasons can be adduced for liberalizing the legal services market to magnify ASEAN's competitiveness. First, the transfer of expertise from international law firms to local lawyers will benefit the AEC's legal capacity in dealing with transnational litigation and finance. Easing restrictions on legal services will also help develop ASEAN-based law firms and cultivate ASEAN law expertise, thus facilitating the goal of the AEC.¹⁵ Second, the promotion of trade in legal services will help attract foreign direct investment (FDI) and benefit ASEAN's development. Finally, allowing further liberalization of legal services will give ASEAN more bargaining power in opening foreign markets. This strategy may benefit ASEAN states' negotiations in the Trans-Pacific Partnership (TPP) and the Regional Comprehensive Economic Partnership (RCEP).¹⁶

A typical merger and acquisition (M&A) deal illustrates the transnational nature of ASEAN's legal practice. To reinforce its position in the ASEAN market for hygiene products such as baby diapers, Japan-based Unicharm Corporation acquired a Singapore company that held 88% of Myanmar Care Products Limited (MYCARE).¹⁷ Unicharm then purchased 10% of MYCARE's outstanding shares through its Thai affiliate.¹⁸ The potential restructuring of Unicharm's supply chain following the M&A will also take into consideration preferential treatment under

11 An example is Gordon & Associate, a Phnom Penh-based consulting firm founded by a US lawyer. Interview with a UK lawyer [name withheld], 12 June 2013. Constitution of the Philippines (1987), article XII, section 14.

12 The Court held that 'practice of law' refers to 'any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience'. *Cayetano v Monsod*, 201 SCRA 210 (1991).

13 Joint Communique of the Eighth ASEAN Law Ministers Meeting (ALAWMM), 4–5 November 2011.

14 The AEC's plan for a free flow of services mandates the removal of 'substantially all restrictions on trade in services for all other services sectors by 2015'. Roadmap for an ASEAN Community: 2009–2015 (2009), at 26.

15 Certain national law firms have become well-known as ASEAN law firms, including Rajah & Tann of Singapore, Zaid Ibrahim & Co (ZICO) of Malaysia, and DFDL of Laos. Notably, Rajah & Tann and ZICO first developed the 'ASEAN law firm' concept. Interview with a Malaysian lawyer [name withheld], 10 July 2013.

16 For a detailed analysis of the TPP and the RCEP, see generally Meredith Kolsky Lewis, 'The TPP and the RCEP (ASEAN+6) as Potential Paths toward Deeper Asian Economic Integration', 8(2) Asian Journal of WTO & International Health Law and Policy 359 (2013); C. L. Lim et al. (eds), *The Trans-Pacific Partnership: A Quest for a Twenty-first Century Agreement* (New York: Cambridge University Press, 2012).

17 'Completion of Acquisition of Shares in Myanmar Care Products Ltd. and CFA International Paper Products Pte. Ltd.', 22 August 2013, http://www.unicharm.co.jp/english/ir/news/2013/___icsFiles/afieldfile/2013/08/22/130822_2_Press_Release_E.pdf (visited 1 July 2014).

18 Ibid.

ASEAN FTAs. As this case demonstrates, any law firm that engages in such multi-jurisdictional M&A cases needs a sophisticated understanding of ASEAN jurisdictions. The existing model of retaining correspondent firms at various levels on an *ad hoc* basis no longer meets the demands of ASEAN-oriented transactions.

It has been contended that ASEAN law is only a loose political concept because of a lack of ASEAN-wide super-national institutions akin to those of the EU, thus rendering it infeasible to make applicable intra-ASEAN law.¹⁹ Such a contention is disputable. While ASEAN's legal framework has chiefly developed through a soft-law approach, its rapid development has prompted the legalization of the ASEAN integration process.²⁰ The 2007 ASEAN Economic Community Blueprint (AEC Blueprint) set 2015 as the goal for forming a single market and production base.²¹ The adoption of the ASEAN Charter in 2007 and the agreements that underpin the AEC both transformed ASEAN into an internal-governmental institution and accelerated the emergence of ASEAN law.²²

ASEAN treaties on trade in goods, services, investments and the dispute resolution mechanisms constitute the legal framework of the AEC. The 2009 ASEAN Trade in Goods Agreement (ATIGA) incorporates prior goods-related agreements concluded since the 1992 Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area.²³ Since 1991, various rounds of negotiations under the 1995 ASEAN Framework Agreement on Services (AFAS) led to eight packages of commitments including legal services.²⁴ The liberalization of professional services was also facilitated by eight mutual recognition arrangements (MRAs) and the 2012 ASEAN Agreement on the Movement of Natural Persons (ASEAN Agreement on the MNP).²⁵ To enhance ASEAN's attractiveness for FDI, the 2009 ASEAN Comprehensive Investment Agreement (ACIA) integrates the two previous agreements, streamlines the schedule of reservations and confers immediate benefits on ASEAN investors.²⁶

19 E.g. Lin Chung Hung, 'ASEAN Charter: Deeper Regional Integration under International Law?', 9(4) Chinese Journal of International Law 821 (2010), 835–37; Lay Hong Tan, 'Will ASEAN Economic Integration Progress beyond a Free Trade Area?', 53 International & Comparative Law Quarterly 935 (2004), 949.

20 Michael Ewing-Chow and Tan Hsien-Li, 'The Role of the Rule of Law in ASEAN Integration', EUI Working Paper RSCAS 2013/16 (2013), at 19–22; Diane A. Desierto, 'ASEAN's Constitutionalization of International Law: Challenges to Evolution under the New ASEAN Charter', 49 Columbia Journal of Transnational Law 268 (2011), 274.

21 Roadmap for an ASEAN Community: 2009–2015 (2009), at 22.

22 See Charter of the Association of Southeast Asian Nations (2007), article 3 ('ASEAN, as inter-governmental organisation, is hereby conferred legal personality.').

23 Kanya Satyani Sasradipoera, 'ASEAN Trade in Goods Agreement (ATIGA)', in S. Tiwari (ed.), *ASEAN: Life after the Charter* (Singapore: Institute of Southeast Asian Studies, 2010), at 90–92.

24 ASEAN Economic Community Factbook (2011), at 19–20.

25 The MRAs cover, for instance, engineering, nursing, architectural, and accountancy services. ASEAN Integration Monitoring Report: A Joint Report by the ASEAN Secretariat and the World Bank (2013) [ASEAN Integration Monitoring Report], at 113.

26 The ASEAN Comprehensive Investment Agreement integrates the 1987 Agreement for the Promotion and Protection of Investments (1987 Agreement), the 1998 Framework Agreement on the ASEAN Investment Area, and two related protocols. Yap Lai Peng, 'The ASEAN Comprehensive Investment Agreement 2009: Its Objectives, Plan and Progress', in S. Tiwari above n 23, at 101.

More importantly, ASEAN has developed multi-layered dispute settlement mechanisms. Non-economic matters fall within the realm of the 1976 Treaty of Amity and Cooperation (TAC) and the ASEAN Charter, whereas trade disputes can be resolved under the 2004 ASEAN Protocol for Enhanced Dispute Settlement Mechanism (EDSM).²⁷ While the TAC and the EDSM provide for State-to-State dispute settlement, the ACIA accords private investors the right to resort to investor–State arbitration.²⁸ Under a previous investment agreement, the 2003 case of *Yaung Chi Oo Trading v Myanmar* marked the first and only instance where ASEAN dealt with a legal dispute in the investment areas.²⁹ The ACIA, which provides more detailed guidance on dispute procedures, may prompt ASEAN-based investors to make greater use of the regional mechanism.

Indonesia's recent Bilateral Investment Treaty (BIT) practice is noteworthy. The termination of its BIT with the Netherlands in 2014 and its intention to cancel more than 60 other BITs may have been prompted by concerns over arbitral bias in traditional investment treaties.³⁰ Jakarta's move may further reveal the preference of ASEAN states to shift the prosecution of investor–State disputes towards the ACIA, the RCEP or other ASEAN FTAs.³¹ These developments consolidate emerging ASEAN law and reinforce this article's contention that the liberalization of legal services will fortify the legal capacity of ASEAN law firms and lawyers and benefit the AEC's integration.

B. The Evolution of Legal Services Negotiations: From the WTO to FTAs

To promote the growth of cross-border legal transactions, some WTO members have attempted to push for additional liberalization in the legal sector. To assess ASEAN's legal services liberalization, understanding the evolution of multilateral legal services negotiations is essential. Legal services, which include advisory and representation services related to legal proceedings, belong to the sub-sector 'professional services' of 'business services' in the WTO Services Sectoral

27 For a detailed analysis of ASEAN dispute settlement mechanisms, see Locknie Hsu, 'The ASEAN Dispute Settlement System', in Sanchita Basu Das et al. (eds), *The ASEAN Economic Community: A Work in Progress* (Singapore: Institute of Southeast Asian Studies, 2013), at 383–91; Ewing-Chow and Hsien-Li, above n 20, at 23–28.

28 E.g. The ASEAN Comprehensive Investment Agreement (2009), articles 32 and 33.

29 This case concerned the interpretation of the 1987 Agreement and the Tribunal held that it lacked jurisdiction. *Yaung Chi Oo Trading Pte Ltd. v Government of the Union of Myanmar*, ASEAN I.D. Case No. ARB/01/1.

30 'Termination Bilateral Investment Treaty', <http://indonesia.nlembassy.org/organization/departments/economic-affairs/termination-bilateral-investment-treaty.html> (visited 1 May 2014); 'Indonesia to Terminate More Than 60 Bilateral Investment Treaties', 26 March 2014, *Financial Times*, <http://www.ft.com/intl/cms/s/0/3755c1b2-b4e2-11e3-af92-00144feabdc0.html#axzz31SVQbGe4> (visited 10 July 2014). For recent trends and practices of Asian investment treaties, see generally Julien Chaisse, 'Assessing the Exposure of Asian States to Investment Claims', 6(2) *Contemporary Asia Arbitration Journal* 187 (2013).

31 Edmund Sim, 'Indonesia's Shift in Arbitration May Help ACIA, Hurt Non-RCEP Partners', 30 March 2014, <http://aseanec.blogspot.tw/2014/03/indonesias-shift-in-arbitration-may.html> (visited 10 July 2014).

Classification List.³² Legal services generally exclude the administration of justice because it concerns ‘the exercise of governmental authority’ as defined by Article I of the General Agreement on Trade in Services (GATS).³³ Around 45 members, including four ASEAN countries, made commitments on legal services in the Uruguay Round.³⁴ Yet, several obstacles to effective access remained in place through a lack of transparency and the maintenance of nationality, residency, and licensing and qualification requirements.³⁵ These limitations hinder the effective supply of legal services through various modes under the GATS.³⁶ For example, restrictions on foreign–domestic partnerships or joint ventures largely diminish the market value of ‘commercial presence’ commitments for international law firms.³⁷

To facilitate negotiations in legal services, Australia suggested that the countries adopt the ‘limited licensing’ concept that reflects the operation of international law firms.³⁸ This concept includes a two-faceted goal. It urges WTO members to devise a less burdensome regulatory approach to allow foreign lawyers and law firms to practice non-domestic law without the requirement to gain a right of audience in local courts.³⁹ For instance, an Australian law firm in a foreign jurisdiction should be allowed to practice Australian law (home-country law), US law (third-country law), and international law. In addition, Australia’s proposal encourages host-states to allow foreign law firms to form partnerships or other forms of voluntary commercial association with other law firms.⁴⁰

To impart greater momentum to negotiations in legal services, Australia, the USA and other ‘Friends of Legal Services’ countries issued a collective request in the sector in 2006.⁴¹ This request reflected a joint desire on the part of its signatories to ask selected WTO members to remove existing limitations and make additional commitments in legal services in Doha Round negotiations.⁴² To date, 42 WTO members, including five ASEAN states, have submitted Doha Round offers relating

32 Services Sectoral Classification List, MTN.GNS/W/120, 10 July 1991; Joint Statement on Legal Services, above n 1, at 2–3; Legal Services: Background Note by the Secretariat, above n 1, at 8.

33 GATS, Article 1(3)(a) and (b). See also Gilles Muller, *Liberalization of Trade in Legal Services* (The Netherlands: Kluwer Law International, 2013), at 31 (‘The OECD was the first international organization to discuss the liberalization of legal services in depth and its recommendations have significantly influenced . . . negotiations within the GATS or PTAs.’).

34 Annex III: Legal Services – Specific Commitments, in Legal Services: Background Note by the Secretariat, above n 1, at 29–30.

35 Ibid, at 8.

36 Annex B: Sectoral and Modal Objectives as Identified by Members, in Report by the Chairman to the Trade Negotiations Committee, TN/S/23, 28 November 2005, at 11–12.

37 Grosso, above n 1, at 10.

38 Negotiating Proposal for Legal Services Revision, Communication from Australia, S/CSS/W/67/Supp.1/Rev/1, 20 July 2001, at 2.

39 Ibid, at 2–4.

40 Ibid, at 4–5.

41 ‘Collective Request: Legal Services (2006)’, http://www.iatp.org/files/451_2_78786.pdf (visited 10 July 2014); Terry, above n 1, at 939–40.

42 Ibid, at paras 3(a) and (b). For information on legal services negotiations in the Doha Round, see generally Sydney M. Cone III, ‘Legal Services and the Doha Round Dilemma’, 41(2) *Journal of World Trade* 245 (2007).

to legal services.⁴³ Nevertheless, given the Doha Round impasse, services negotiations have yet to result in any meaningful outcome.

Notwithstanding the limitations inherent to the stalled WTO negotiations, the liberalization of legal services has made progress in the context of FTAs. Such experiments in market opening can serve as best practices for ASEAN. The Doha Round impasse prompted key exporters of legal services, including Australia and the USA, to shift discussion towards the Asia-Pacific Economic Cooperation (APEC).⁴⁴ The 21-member APEC includes seven ASEAN countries and its objective to form a pan-APEC Free Trade Area of the Asia Pacific is pertinent to ongoing AFAS, RCEP, and TPP negotiations.⁴⁵ Although APEC is technically not a forum for negotiating hard law agreements, its consensus built the foundation for binding instruments such as the 1996 Information Technology Agreement under the WTO.⁴⁶

Based on Australia's proposal, APEC launched the APEC Legal Services Initiative (APEC LSI) in 2009.⁴⁷ The goal of this initiative was to enhance transparency by facilitating discussions and creating an online inventory that includes domestic regulations governing foreign legal practice.⁴⁸ The inventory covers information on APEC members' regulatory frameworks on Mode 4 temporary practice (known as 'fly in, fly out' practice), full and limited licenses to practice law, and rules on law firms' partnerships. This project arguably suffers from two weaknesses.⁴⁹ APEC's voluntary approach led to incomplete compliance. Brunei and Malaysia's failure to provide full information on their regimes for legal services rules confirmed the problem.⁵⁰ As the initiative was a one-time APEC project, the information in the inventory has not been updated since the project was completed in 2010.⁵¹

Distinguishable from the APEC initiative, NAFTA parties (Canada, the USA, and Mexico) placed the liberalization of legal services in the agreement. Article 1210 of NAFTA prohibits 'licensing and certification' requirements from being 'an unnecessary barrier to trade' and its Annex encourages parties to establish 'mutually acceptable standards and criteria for' such requirements.⁵² The Annex also calls on the parties to develop the mechanism for foreign legal consultants (FLCs) in

43 WTO Services Negotiations – Derestricted Offers Relating to Legal Services [Doha Round Offers], 1 August 2010, <http://www.americanbar.org/content/dam/aba/migrated/cpr/gats/derestricted.authcheckdam.pdf> (visited 1 May 2014); Grosso, above n 1, at 15–16.

44 Terry, above n 1, at 887–90 (discussing APEC discussions on legal services).

45 Seven ASEAN states that are APEC members include Brunei, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam.

46 For the outcome of APEC's soft-law approach, see Pasha L. Hsieh, 'Reassessing APEC's Role as a Trans-Regional Economic Architecture: Legal and Policy Dimensions', 16(1) *Journal of International Economic Law* 119 (2013), 134–35.

47 Completion Report for APEC Legal Services Initiative, 2011/SOM1/GOS/006, 3 March 2011, at 2–3.

48 Ibid.

49 'Inventory', <http://www.legalservices.apec.org/inventory/index.html> (visited 2 May 2014).

50 Sections of Brunei and Malaysia, Ibid.

51 The project lasted from 2009 to 2010. Services Action Plan, 2013/SOM2/GOS/003, 12 April 2013, at 7. The APEC Legal Services Initiative inspired the IBA project to collect and release information on legal profession rules in selected countries. Laurel S. Terry, 'Putting the Legal Profession's Monopoly on the Practice of Law in a Global Context', 82 *Fordham Law Review* 2903 (2014), 2919–20.

52 NAFTA (1993), Article 1210 & Annex 1210.5, section A.

their jurisdictions.⁵³ The significance of these provisions is to enable future talks on legal services liberalization and ensure the creation of FLC rules in NAFTA jurisdictions.⁵⁴ However, NAFTA rules do not mandate that parties enact licensing and certification requirements in a particular way. Subject to certain conditions, the rules ban discriminatory measures in violation of national treatment and most-favoured-nation treatment.⁵⁵ Moreover, negotiations under Article 1210 have proven complex. While Mexico has a state-regulated legal profession, states and provinces rather than the federal governments are entrusted with the power to enact or change rules on the legal profession in the USA and Canada.⁵⁶

In addition to NAFTA, the US–Korea FTA (KORUS FTA) marked a milestone in pushing for liberalizing the legal market through an FTA. The three-stage liberalization under the KORUS FTA enabled Korea to pass the Foreign Legal Consultant Act (FLC Act).⁵⁷ The Act first allows FLCs and the establishment of the representative offices of foreign law firms, and it will permit cooperative agreements and eventually joint ventures between Korean and foreign law firms.⁵⁸ Comparable liberalization of legal services was included in Korea's FTA with the EU.⁵⁹ Arguably, the FLC Act provides *de facto* preferential treatment to US firms because it requires the chief representative of a foreign law firm to have a minimum of seven years' experience in the 'home country of license'.⁶⁰ As most foreign educated Korean lawyers gained their education and qualification in the USA, this requirement poses challenges to UK-based firms to find suitable chief representatives.⁶¹ Another asymmetrical requirement is that foreign lawyers in foreign law firms must meet the three-year experience requirement.⁶² This rule hinders the development of foreign law firms because junior associates cannot be qualified as FLCs. Ironically, the rule does not apply to foreign lawyers working in Korean firms. In fact, the number of foreign lawyers working at Kim & Chang alone is larger than the number of all foreign lawyers working in Korea-based international law firms.⁶³ The impact of the US and EU FTAs on the Korean legal market serves as valuable lessons for ASEAN states in legal services negotiations.

53 NAFTA, Annex 1210.5, section B.

54 Orlando Flores, 'Prospects for Liberalizing the Regulation of Foreign Lawyers under GATS and NAFTA', 5 Minnesota Journal of Global Trade 159, 188 (1996); Cone, above n 42, at 256.

55 NAFTA, Articles 1202 and 1203.

56 Flores, above n 54, at 185.

57 Kyungho Choi, 'Korean Foreign Legal Consultants Act: Legal Profession of American Lawyers in South Korea', 11(1) Asian-Pacific Law & Policy Journal 100 (2009), 101–03.

58 Deadlines for three stages of liberalization are set for 2012, 2014, and 2017, respectively. 2013 National Trade Estimate Report on Foreign Trade Barriers, at 238; Annex II-Korea-45, Free Trade Agreement between the Republic of Korea and the United States of America (2007) [Annex II-Korea-45, KORUS FTA].

59 Yeongkwan Song, 'KORUS FTA v. Korea-EU FTA: Why the Differences?', KEI Academic Paper Series, Vol. 6(1) (2011), at 10 (explaining the legal services commitments under Korea's US and EU FTAs).

60 Summary of the Foreign Legal Consultant Act [on file with author]; Interview with a US lawyer [name withheld], 18 July 2013.

61 Interview with a US lawyer [name withheld], 18 July 2013.

62 Summary of the Foreign Legal Consultant Act, above n 60.

63 Kim & Chang, the largest Korean law firm, has approximately 150 foreign lawyers. Interview with a US lawyer [name withheld], 18 July 2013.

The EU, which went further than NAFTA and the KORUS FTA, led to the most integrated legal market that covers diverse jurisdictions. Unlike EU law, ASEAN law has no direct effect in domestic law and hence the integration levels of the two blocs vary significantly. Nonetheless, the EU experience offers useful insight to the ASEAN process. As for the liberalization of legal services, the EU went further than NAFTA. Built on the Treaty of Rome, the Treaty on the Functioning of the European Union (TFEU) mandates freedom of movement and establishment within the EU market.⁶⁴ To further a knowledge-based economy, the following directives fundamentally changed the landscape of pan-European legal practice. The 1977 Lawyers' Services Directive allowed the emergence of cross-border temporary practice using the lawyers' home-country professional titles.⁶⁵ The 2005 Recognition of Professional Qualifications Directive, which superseded the 1989 Recognition of Diplomas Directives, enabled lawyers to have their qualifications recognized in other States.⁶⁶ The host jurisdiction retains the authority to impose an aptitude test for such recognition.⁶⁷

The boldest step in liberalizing the EU legal sector was the 1998 Lawyers' Establishment Directive, which allowed European lawyers to register as foreign lawyers on a permanent basis in other EU Member States.⁶⁸ The Directive creates a unique European legal consultant system distinguishable from most FLC rules, as a migrant lawyer can practice foreign and local law, albeit subject to certain restrictions.⁶⁹ Remarkably, the directive permits an EU lawyer to gain admission to the local bar without sitting for an aptitude test, so long as he 'has effectively and regularly pursued for' three years in the host state in local law.⁷⁰ Pursuant to this directive, an English solicitor who has had substantial exposure to German law in Frankfurt-based firm would be entitled to be qualified as a German lawyer (*Rechtsanwalt*). In other words, notwithstanding diverse legal systems and training, the Establishment Directive allows EU lawyers to acquire the same status as local lawyers.

64 Treaty on the Functioning of the European Union, as amended by the Treaty of Lisbon (2007), Title IV.

65 Council Directive No. 77/249/EEC to Facilitate the Effective Exercise by Lawyers of Freedom to Provide Services, 1977 O.J. K 78/17.

66 Parliament & Council Directive No. 2005/36 on the Recognition of Professional Qualifications, 2005 O.J. L 255/22 replaced Council Directive 89/48, 1989 O.J. (L 19) 16.

67 Ibid; Julian Lonbay, 'Assessing the European Market for Legal Services: Developments in the Free Movement of Lawyers in the European Union', 33 Fordham International Law Journal 1629 (2010), 1645.

68 Parliament & Council Directive No. 98/5 to Facilitate Practice of the Profession of Lawyers on a Permanent Basis in a Member State Other than that in which the Qualification Was Obtained, 1998 O.J. L 77/36 [Directive No. 98/5].

69 An EU lawyer 'may, inter alia, give advice on the law of his home Member State, on Community Law, on international law and on the law of the host Member State'. Ibid, Article 5(1). The host country can exclude the scope of an EU lawyer's practice areas or require him to work in conjunction with a local lawyer. Ibid Article 5(2) and (3).

70 Directive No. 98/5, above n 68, Article 10(1). The Directive defines 'effective and regular pursuit' as 'actual exercise of the activity without any interruption other than that resulting from the events of everyday life'. Ibid.

The Establishment Directive accelerated the penetration of ‘foreign’ EU lawyers into financial or business hubs such as Brussels, Luxembourg, and London.⁷¹ In *Luxembourg v European Parliament*, Luxembourg challenged the legality of the directive, arguing that it led to discrimination against local lawyers and failed to safeguard the interest of the public.⁷² The European Court of Justice upheld the directive. The Court explained that the equal protection principle was not violated because the directive did not change national routes for lawyers nor did it abolish the rules governing which types of cases a lawyer can handle.⁷³ National requirements such as ‘applicable rules of professional conduct’ can prevent an EU lawyer from engaging in domestic law cases about which he possesses limited knowledge.⁷⁴ To ensure that an EU lawyer is entitled to the freedom of establishment, the directive ‘simply released him from the obligation to prove that knowledge in advance’.⁷⁵ Consequently, these directives and case law laid the foundation for the European legal services market and can serve as guidance for prospective ASEAN’s liberalization efforts.

C. Assessing ASEAN’s Legal Services Commitments and Enforcement

The experiences of APEC, NAFTA, the KORUS FTA, and the EU demonstrate the impact of FTAs on the liberalization of legal services in terms of transparency requirements, FLC rules, and mutual recognition of education and qualifications. They also demonstrate the emerging trend to internationalize the legal profession to strengthen the trade blocs’ economic competitiveness. The weaknesses and merits of these examples analyzed above will be important to ASEAN’s future reform path. Despite the market demand for seamless legal practice, ASEAN states’ rules on foreign lawyers often lack transparency. This is particularly true in the least-developed countries in the process of modernizing their legal frameworks. To understand the legal structure of ASEAN’s legal services market and how it operates differently from other trade blocs, Table 1 compares commitments under the WTO and ASEAN FTAs.⁷⁶

71 Laurel S. Terry, ‘A Case Study of the Hybrid Model for Facilitating Cross-Border Legal Practice: The Agreement between the American Bar Association and the Brussels Bars’, 21 *Fordham International Law Journal* 1382 (1998), 1404–08; Wayne J. Carroll, ‘Liberalization of National Legal Admissions Requirements in the European Union: Lessons and Implications’, 22 *Penn State International Law Review* 563 (2004), 581–83.

72 Case C-168/98, *Luxembourg v European Parliament and Council of the European Union*, [2000] E.C.R. I-9131.

73 *Ibid.*, 43; Lonbay, above n 67, at 1643.

74 *Luxembourg*, [2000] E.C.R. I-9131, 43.

75 *Ibid.*

76 Annex III: Legal Services – Specific Commitments, in Legal Services: Background Note by the Secretariat, above n 1, at 29–30; Schedules of Specific Commitments (For the First Package of Commitments), Annex/SCI, ASEAN–Korea Agreement on Trade in Services (2007); Schedules of Specific Commitments, Annex 3, ASEAN–Australia–New Zealand Free Trade Agreement (2009) [AANZFTA Commitments]; Annex to the Protocol to Implement the Eighth Package of Commitments under the ASEAN Framework Agreement on Services (2010) [AFAS Eighth Package of Commitments]; Doha Round Offers, above n 43; and Schedules of Specific Commitments (For the Second Package of Commitments, 2011), AC-TIS/SC2, ASEAN–China Free Trade Agreement on Trade in Services (2007).

Table 1. Legal services commitments in the WTO and ASEAN FTAs

ASEAN Country	WTO: Uruguay Round (1993)	Korea FTA (2007)	Australia– New Zealand FTA (2009)	AFAS (2010)	WTO: Doha Round (2010)	China FTA (2011)
Brunei Darussalam					X	
Cambodia	X	X	X	X		X
Indonesia		X	X	X	X	
Lao PDR						
Malaysia	X	X	X	X	X	X
Myanmar						
Philippines					X	
Singapore						
Thailand	X		X	X	X	X
Vietnam	X	X	X	X		X

Note: 'X' indicates a partial or full commitment.

At the WTO, four ASEAN states entered into commitments in legal services in the Uruguay Round and five countries made legal services offers in the Doha Round.⁷⁷ Cambodia, Malaysia, Thailand, and Vietnam agreed to ease restrictions on advisory services concerning foreign and international law.⁷⁸ In particular, Thailand committed to both advisory and representation services in domestic law.⁷⁹ Notably, ASEAN's 'free flow of services' is distinguished from the EU concept of 'freedom of movement' because the AEC confines the liberalization of movement to 'skilled labor'.⁸⁰ Legal professionals thus fall within the scope of liberalization. According to the AEC Blueprint, restrictions on trade in legal services should be substantially removed. By 2015, all ASEAN states are obliged to allow no less than 70% of ASEAN equity participation in law firms and to complete various MRAs governing legal services.⁸¹ These MRAs may be comparable to EU directives that facilitate the recognition of education and professional qualifications, although ASEAN MRAs can only be binding only after the transposition into domestic law.

In 2010, for the first time, the eighth package of AFAS commitments incorporated legal service commitments and five countries made specific commitments.⁸² Compared with ASEAN countries' GATS commitments, this represents an improvement in that five of ten ASEAN countries raised their foreign equity limits

77 Annex III: Legal Services – Specific Commitments, in Legal Services: Background Note by the Secretariat, above n 1, at 29–30; Doha Round Offers, above n 43.

78 Annex III: Legal Services – Specific Commitments, in Legal Services: Background Note by the Secretariat, above n 1, at 29–30.

79 Ibid, at 30.

80 Roadmap for an ASEAN Community: 2009–15 (2009), at 22.

81 Ibid, at 26.

82 AFAS Eighth Package of Commitments, above n 76.

to 100%.⁸³ The 2012 ASEAN Agreement on the MNP further facilitated the ASEAN lawyers' 'temporary entry and temporary stay' in ASEAN states.⁸⁴ In addition to the AFAS, ASEAN's external FTAs have influenced the legal sector. Since 2002, ASEAN as a bloc concluded five FTAs with China, Korea, India, Japan, as well as Australia and New Zealand.⁸⁵ Several ASEAN FTAs feature legal services commitments. These FTAs include the 2007 ASEAN–Korea Trade in Services Agreement, the 2009 ASEAN–Australia–New Zealand FTA (AANZFTA) and the 2011 second package of commitments under the ASEAN–China Agreement on Trade in Services.⁸⁶

Regardless of these commitments made in the WTO and in FTAs, this article contends that ASEAN's commitments in legal services constitute merely 'paper commitments'. These commitments, which embed multi-faceted problems, misrepresent the actual degree of legal services liberalization prevailing in the region.⁸⁷ First, one need not challenge the value of commitments that constitute the negotiating basis for removing trade barriers and enhance the stability for domestic regulatory regimes.⁸⁸ Vietnam, for instance, is a major market for Australian law firms. The AANZFTA therefore ensures that Vietnam will not restrict foreign lawyers or shut down foreign law firms, as it did in the 1990s.⁸⁹ Nonetheless, the potential loophole lies in the interpretation of commitments, which are often subject to the state that made the commitments. For instance, Vietnam excluded 'legal documentation' services from its commitments in the WTO, the AFAS, and other ASEAN FTAs.⁹⁰ While such services can be defined to include drafting of 'commercial contracts', it remains unclear whether such contracts can be based on Vietnamese law or should be limited to foreign law.⁹¹

In 2012, 18 local Vietnamese law firms lobbied the government to expand the definition of legal documentation services, so that foreign law firms would be barred from preparing Vietnamese law contracts.⁹² Presumably, due to the lobbying force of foreign law firms such as Baker & McKenzie, Vietnam's National Assembly decided

83 Sirisena Dahanayake, *Implications of Liberalizing Professional Services: Legal, Accountancy, and Engineering Services in Lao PDR*, Aug. 2012, at 12–13.

84 ASEAN Agreement on the Movement of Natural Persons (2012), Article 6.

85 For information on ASEAN external FTAs, see ASEAN Economic Community: Handbook for Business 2012, at 69–78.

86 Ibid; For detailed commitments, see agreements, above n 76.

87 For instance, the Services Trade Restrictiveness Index for legal services of Cambodia, Indonesia, Malaysia, the Philippines, and Thailand ranges from 60 to 80, indicating a relatively high-restrictive regime. ASEAN Integration Monitoring Report, above n 25, at 103–04.

88 See Muller, above n 33, at 99 (explaining the role of specific commitments in the GATS).

89 International Legal Services Advisory Council, Submission to the Productivity Commission: Review of Bilateral and Regional Trade Agreements (2010), at 7.

90 E.g. Elizabeth Roomhall, 'Foreign Law Firms in Vietnam Face Pushback from Local Practices', 7 December 2012, LegalWeek, <http://www.legalweek.com/legal-week/news/2230173/foreign-law-firms-in-vietnam-face-pushback-from-local-practices> (visited 20 July 2014); Viet Nam – Schedule of Specific Commitments: For the 8th Package of Commitments under ASEAN Framework Agreement on Services (2010); Viet Nam – Schedule of Specific Commitments, in Schedules of Specific Commitments, Annex 3, ASEAN–Australia–New Zealand Free Trade Agreement (2009).

91 The definition of '8613 86130 Legal documentation and certification services' is included in the United Nations Professional Central Product Classification of 1991.

92 Roomhall, above n 90.

not to include the protectionist provision in the Amended Lawyer Law.⁹³ Cambodia had a similar controversy of interpretation. In its WTO and FTA commitments, Cambodia allows foreign and Cambodian law firms to enter into a 'commercial association', defined as 'any commercial arrangement' without requiring 'a specific juridical form'.⁹⁴ Although Cambodian law firms' proposal to impose restrictions of commercial arrangements and a 49% equity limitation on foreign firms was not approved, it has caused ambiguity and uncertainty in the country's regulatory regime.⁹⁵

Second, although Laos, Myanmar, the Philippines and Singapore made limited legal services commitments in the WTO and in FTAs, they represent significantly different levels of liberalization of the legal professions. Laos and Myanmar are 'liberal' toward foreign law firms primarily because they are at an early stage of developing rules for lawyers.⁹⁶ Both Singapore and the Philippines place the legal profession under a highly regulated framework, but they mark the two ends of the spectrum with respect to foreign law firms. Singapore only made legal services commitments under bilateral FTAs, but it has significantly liberalized the legal market over the past decade. The Philippines, along with Indonesia, maintain ASEAN's most restrictive regimes on 'commercial presence' (known as Mode 3 under the GATS) of foreign law firms.⁹⁷ The Philippines Constitution bestows the exclusive power to regulate 'the admission to the practice of law' on the Supreme Court.⁹⁸ The Court's 1985 decision that banned Baker & McKenzie from practicing law due to its 'alien law firm' status continues to apply.⁹⁹ On the separation of power basis, the Court even found a treaty with Spain unconstitutional because it allowed Filipino citizens to practice law in the Philippines based on law licenses issued in Spain.¹⁰⁰ Such constitutional complexity will challenge future liberalization efforts.

Third, a comparative analysis of ASEAN states' legal services commitments further fortifies the 'paper commitments' contention. The legal services commitments under the AFAS and ASEAN's external FTAs are almost identical.¹⁰¹ In simple words, ASEAN countries just 'copied and pasted' their legal services commitments in these FTAs at different times without any actual improvements. Compared with

93 Leanne Mezrani, 'Globals Fight Protectionist Lawyer Law', 28 November 2012, *Lawyers Weekly*, <http://www.lawyersweekly.com.au/news/globals-fight-protectionist-lawyer-law> (visited 20 July 2014); Interview with a Vietnamese lawyer [name withheld], 14 August 2013.

94 E.g. Trade Policy Review, Secretariat Report, Cambodia: Revision, WT/TPR/S/253/Rev.1, 24 November 2011 [Trade Policy Review, Cambodia], at 80; The text and footnote 1, Cambodia – Schedule of Specific Services Commitments, in AANZFTA Commitments, above n 76.

95 Trade Policy Review, Cambodia, above n 94, at 80.

96 Dahanayake, above n 83, at 22–23; Brigid O. Gorman, 'Firm Opportunities in Myanmar', 30 May 2013, *Lawyers Weekly*, <http://www.lawyersweekly.com.au/news/firm-opportunities-in-myanmar> (visited 20 July 2014).

97 Interview with a Singapore lawyer [name withheld], 11 June 2013.

98 Constitution of the Philippines (1987), Article VIII, section 5.5.

99 The Court hence enjoined Baker & McKenzie from practicing law under its name. *Dacanay v Baker & McKenzie*, Adm. Case No. 2131 (1985). After this case, Baker's Manila office has practiced through a locally incorporated firm and been referred to as 'Quisumbing Torres'. Interview with a Philippines lawyer [name withheld], 26 April 2014.

100 In Re: Garcia, 2 SCRA 985 (1861).

101 E.g. legal services commitments of Cambodia, Malaysia, Thailand under the AFAS and the AANZFTA.

treatment of their Australian or Chinese counterparts under ASEAN's external FTAs, ASEAN law firms and lawyers are not even accorded preferential treatment under the AFAS. This hinders the development of ASEAN lawyers and counteracts the very aim of the AEC. In fact, certain commitments are rarely utilized. For example, Malaysia's commitments allow foreign law firms to be established in the Federal Territory of Labuan.¹⁰² However, no foreign law firms set up branches on the island because the goal of promoting Labuan as an offshore banking center largely failed.¹⁰³

Lastly, most ASEAN states have indicated their most conservative stance on the presence of natural persons by entering 'unbound' in the Mode 4 section in legal services commitments. Such 'fly in, fly out' practice is critical to international law firms, as they can effectively serve their clients' needs without establishing a costly on-the-ground office. Unlike the EU's Services Directive that specifically applies to lawyers, the ASEAN Agreement on the MNP only incorporates the principle allowing the movement of professionals.¹⁰⁴ Although most ASEAN states do not have clear rules that permit the Mode 4 practice of foreign lawyers, such a practice has been tolerated in reality. For example, Singapore does not adopt explicit rules because Singapore-based firms may suffer should other ASEAN states adopt a restrictive approach towards the 'fly in, fly out' practice. The anomaly is the Philippines, as its case law indicates that merely advising on foreign or international law could constitute the 'practice of law', which is limited to its citizens.¹⁰⁵ Thailand imposes a milder level of restriction. Its time-consuming application procedure for the business visa for temporary practice often delays cross-border legal practice.¹⁰⁶

Foreign lawyers may run into the danger of committing the unauthorized practice of law pursuant to the government's interpretation of ambiguous rules. The case of Malaysia illustrates this problem. The proposed Legal Profession (Amendment) Act 2012 made foreign lawyers' temporary advisory services concerning non-Malaysian law illegal.¹⁰⁷ This proposed rule contravened Malaysia's goal to be an Islamic financial center by attracting multilateral enterprises. It would essentially inhibit Malaysia-based companies from receiving regional legal advice. Not even a Singapore-based general counsel could provide legal advice to Malaysian subsidiaries. As the rule caused grave concerns to international firms, the Malaysian Bar Council subsequently decided to amend the Act to allow foreign lawyers' to temporarily practice non-Malaysian law up to 60 days each year.¹⁰⁸ Given the loose immigration

102 Trade Policy Review, Report by the Secretariat, Malaysia, WT/TPR/S/292, 27 January 2014, at 110 and 122.

103 Interview with a UK lawyer and a Malaysian lawyer [names withheld], 6 March 2014.

104 The range of professionals covered in the agreement will be determined by subsequent negotiations. ASEAN Agreement on the Movement of Natural Persons (2012), Articles 3–7.

105 See generally *Cayetano v Monsod*, 201 SCRA 210 (1991).

106 Marialusia Taddia, 'Thailand: Staying Power', 17 March 2014, Law Society Gazette, <http://www.lawgazette.co.uk/practice/malaysia-open-for-business/practice/thailand-staying-power/5040390.article> (visited 20 July 2014).

107 Legal Profession (Amendment) Act 2012, section 37(2A).

108 'Liberalisation of Legal Services', http://www.malaysianbar.org.my/trade_in_legal_services_formerly_known_as_gats/liberalisation_of_legal_services.html (visited 20 May 2014).

enforcement mechanism to police the 60-day rule, the amendment was simply made for face-saving purposes.

III. LESSONS OF LIBERALIZING THE LEGAL PROFESSION AND THE IMPACT OF FTAS

Despite enforcement weaknesses, ASEAN states' legal services commitments under FTAs have progressively paved the way for multi-jurisdictional practice. Such commitments reflect official recognition of the importance of cross-border legal practice. To meet the AEC goals, ASEAN countries will need to strike a balance between opening the legal market and enabling the local legal profession to adjust to greater competition. In this regard, academia and governments in the region have paid close attention to the case of Singapore's incremental approach to liberalizing its legal sector.¹⁰⁹ The efforts to internationalize the legal market for attracting FDI and strengthening the country's financial status provide pragmatic insight for ASEAN states. In particular, valuable lessons can be drawn from Singapore's recent experience in Joint Law Ventures and Qualifying Foreign Law Practices, as well as the impact of the country's FTAs with Australia and the USA on law firms and lawyers.

A. Foreign Law Firms and Lawyers

Singapore has emerged as a legal hub in ASEAN. Since 2008, the value of Singapore's legal industry has increased by 25% and the export of its legal services has grown by 60%.¹¹⁰ The influx of foreign law firms and foreign lawyers has been remarkable. More than 130 international law firms use Singapore as a base to handle offshore transactions related to ASEAN and India.¹¹¹ Over 1300 foreign lawyers represent one-fifth of Singapore's legal profession.¹¹² The fact that the number of Singapore International Arbitration Centre (SIAC) cases rose 2.6 times from 2008 to 2013 is also evidence of the country's status as a preferred venue to resolve ASEAN-related commercial and investment disputes.¹¹³ Such status will be further enhanced by Singapore's plan to set up the International Commercial Court and the International Mediation Centre.¹¹⁴ Despite the government's liberalization efforts

109 E.g. Krishnan, above n 6, at 442–58; Hsieh, above n 6, at 490–99; Hyung Tae Kim, 'Legal Market Liberalization in South Korea: Preparations for Change', 15(1) *Pacific Rim & Policy Journal* 199 (2006), 213–14; Welcoming Remarks by Datin Paduka Hajah Hayati, Opening Ceremony of the 6th ASEAN Law Forum on the Progressive Liberalization of Trade in Legal Services in ASEAN, 13 April 2011; Trade in Legal Services: Preparing for the Liberalisation of Legal Services, 2011/12 Annual Report of the Malaysian Bar, at 258.

110 Speech by Minister for Law, K. Shanmugam, during the Committee of Supply Debate 2014, 5 March 2014 [Shanmugam's 2014 Speech].

111 The list of Singapore-based foreign law firms [List of Foreign Law Firms], see <http://www.lawsociety.org.sg/forPublic/FindaLawFirmLawyer/FindaLawFirm.aspx> (visited 1 May 2014).

112 Elizabeth Broomhall, 'Open Season – The Influx of Global Firms Making Their Mark in Singapore', 24 May 2013, *LegalWeek*, <http://www.legalweek.com/legal-week/analysis/2269459/open-season-the-influx-of-global-firms-making-their-mark-in-singapore> (visited 3 May 2014); Opening of the Legal Year 2013 and Welcome References for Chief Justice Sundaresh Menon, 4 January 2013, para 12; 'Liberalisation of Singapore's Legal Sector: A Reflection', 1:2 *Al-Mizan* 13, 18 (2013).

113 Shanmugam's 2014 Speech, above n 110.

114 *Ibid*; for detailed information on the Court, see Report of the Singapore International Commercial Court Committee (2013).

and keen foreign competition, 17 of the largest 25 firms in Singapore remain local ones, which have become highly competitive in the region.¹¹⁵

Singapore-based firms are divided into foreign and local firms. Foreign law firms operate under five schemes: Foreign Law Practices (FLPs), Representative Offices (ROs), Formal Law Alliances (FLAs), Joint Law Ventures (JLVs) and Qualifying Foreign Law Practices (QFLPs). Local firms are officially known as Singapore Law Practices (SLPs). Prior to the amendments to the Legal Profession Act (LPA) in 2000, the LPA only governed SLPs, thus leaving foreign firms out of the regulatory framework.¹¹⁶ For the first time, the amendments required foreign law firms and lawyers to register and introduced the JLVs and FLAs.¹¹⁷ The Legal Profession (International Services) Secretariat under the Attorney General's Chambers (AGC) was established as a regulatory agency for registration matters.¹¹⁸ Further reform that introduced QFLPs under subsequent amendments to the LPA took place in 2008.¹¹⁹

Strong government motivations have driven the liberalization of Singapore's legal sector. From Singapore's viewpoint, fortifying alliances between local and foreign law firms will help transfer legal expertise and enhance the standards of Singapore firms.¹²⁰ Localizing international law firms will not only increase high value-added employment, but will also rectify the brain drain problem that long saw elite Singapore lawyers move to Hong Kong or London-based firms.¹²¹ In addition, attracting foreign law firms will expand Singapore's GDP growth and transform it into Asia's 'key legal services hub'.¹²² Foreign law firms are expected to bring in offshore transactions. The value of exporting legal services will hence escalate in tandem with the increasing use of Singapore law in contracts and designation of Singapore as a dispute resolution forum.¹²³ Importantly, Singapore's policy-makers avoided repeating the Hong Kong experience. In Hong Kong, international law firms now dominate almost 'every area of law' because they are permitted to practice local law with few restrictions.¹²⁴ ASEAN countries should note that Singapore's incremental liberalization approach offers foreign firms a menu of options as to their corporate forms and permits local law practice under certain conditions.

115 'Singapore's 25 Largest Law Firms 2013', 4 March 2014, Singapore Business Review, <http://sbr.com.sg/professional-services/legal/feature/singapores-25-largest-law-firms-2014-0> (visited 2 May 2014).

116 Jeffery Chan Wah Teck, *Liberalisation of the Singapore Legal Sector*, para 11, <http://www.aseanlawassociation.org/10GAdocs/Singapore3.pdf> (visited 2 May 2014).

117 Ibid, paras 11–12.

118 Ibid, para 11.

119 Ibid, para 19.

120 Second Reading Speech on Legal Profession (Amendment) Bill 2008 by Law Minister K. Shanmugam, 26 August 2008 [Shanmugam's 2008 Speech].

121 Report of the Committee to Develop the Singapore Legal Sector (2007), at 85.

122 Ibid, at 67.

123 Shanmugam's 2008 Speech, above n 120.

124 Andrea Tan, 'Singapore Proposes Opening Law Firms to Foreign Ownership, Profit Sharing', 14 February 2012, Bloomberg, <http://www.bloomberg.com/news/2012-02-14/singapore-proposes-opening-law-firms-to-foreign-ownership-profit-sharing.html> (visited 5 May 2014); 'Liberalisation of Singapore's Legal Sector: A Reflection', above n 112, at 18.

Almost 85% of Singapore-based foreign firms are FLPs.¹²⁵ What makes FLPs different from FLAs, JLVs, or QFLPs is that FLPs are limited to practicing non-Singapore law.¹²⁶ Lawyers working in a FLP, even Singapore-qualified, cannot practice local law. For foreign law firms that take a 'wait and see' stance on setting up a permanent office, Singapore law offers the possibility of establishing a Representative Office, a more cost-effective mechanism for boutique firms to access the market. The renewable one-year RO license limits the scope of practice to 'liaison or promotional work only'.¹²⁷ Unlike an FLP, an RO cannot even 'practice' foreign law. One should not confuse Singapore's RO concept with ROs in other countries, such as China and Korea, where ROs are comparable to Singapore's FLPs.¹²⁸ The structures of FLAs, JLVs, and QFLPs will be discussed in the following sections.

Other than foreign law firms, Singapore's liberalization measures extend to foreign attorneys. The scope of liberalization is 'FTA-plus' because the treatment accorded to foreign lawyers exceeds the requirements of Singapore's FTAs. Singapore did not make legal services commitments in the WTO or in ASEAN FTAs. It only made such commitments under its bilateral FTAs with Japan, Australia, and the USA.¹²⁹ As Singapore merely committed to 'consultancy services for Japanese law', the FTA with Japan has a minimal impact on Singapore's legal market.¹³⁰ However, the Singapore–Australia FTA (SAFTA) and the US–Singapore FTA (USSFTA), which became effective in 2003 and 2004 respectively, have energized the change in Singapore's legal profession since 2000.¹³¹

Under the USSFTA, Singapore recognized Juris Doctor (J.D.) degrees conferred by Harvard, Columbia, Michigan, and New York University law schools as 'local degrees' for admission purposes.¹³² The SAFTA obliged Singapore to accord recognition to 10 Australian law schools for the same purposes.¹³³ Both FTAs apply to Singapore citizens and to permanent residents (PRs) who graduated from designated US and Australian schools with a specified standing.¹³⁴ While the rationale for selecting the Australian law schools was based on Australia's 'geographical representation',

125 List of Foreign Law Firms, above n 111.

126 Legal Profession (International Services) Rules 2008, rule 2(1).

127 Legal Profession (International Services) Rules 2008, rule 17; Fees and Payments, https://app.agc.gov.sg/What_We_Do/Legal_Profession_Secretariat/Fees_and_Payments.aspx (visited 3 May 2014).

128 E.g. Summary of the Foreign Legal Consultant Act, above n 60.

129 Table IV.10, Trade Policy Review, Report by the Secretariat, Singapore, WT/TPR/S/267, 5 June 2012, at 76–77.

130 Annex 4C, Singapore's Schedule of Specific Commitments, Japan–Singapore Economic Partnership Agreement (2002), at 432.

131 Table IV.10, Trade Policy Review, Report by the Secretariat, Singapore, above n 129.

132 George Yeo's Letter to Robert Zoellick, 6 May 2003 [George Yeo's Letter]; Eul-soo Pang, *The U.S.–Singapore Free Trade Agreement: An American Perspective on Power, Trade, and Security in the Asia Pacific* (Singapore: Institute of Southeast Asian Studies 2011) 85.

133 Annex 4-III(II): Recognition of Law Degrees for Admission as Qualified Lawyers, Singapore–Australia FTA (2003) [Annex 4-III(II), Singapore–Australia FTA].

134 Ibid; George Yeo's Letter, above n 132.

it remains unclear how the four US law schools were selected.¹³⁵ The SAFTA went further than the USSFTA by allowing Australian nationals who have received law degrees from the National University of Singapore (NUS) to be admitted to the Singapore bar.¹³⁶

The recognition of foreign schools under FTAs may change the dynamic of the legal market, which is currently dominated by law graduates from NUS, Singapore Management University (SMU) and UK schools. After the SAFTA and the USSFTA, Singapore initiated FTA-plus measures to liberalize foreign lawyers' practice areas by introducing the Foreign Practitioner Examination (FPE) in 2012.¹³⁷ The objective of the FPE is to enable foreign lawyers to practice 'commercial areas of Singapore law'.¹³⁸ This direction is in line with the liberalization efforts to expand the scope of practice areas of foreign law firms.

Singapore's FPE imposes eligibility requirements. It is limited to foreign lawyers who have at least three years of relevant work experience and have worked, or will work, in Singapore-based firms.¹³⁹ The FPE is also distinctive in test subjects and the permissible scope of practice. For instance, Indonesia introduced the first bar examination for foreign attorneys in 2014.¹⁴⁰ The examination focuses on the code of ethics and passing the examination is the prerequisite to register as a foreign lawyer to practice non-Indonesian law.¹⁴¹ Singapore's FPE covers ethics and corporate laws and passing the FPE will enable foreign lawyers to practice Singapore commercial laws.¹⁴² It is expected that the increasing participation of foreign lawyers who passed the FPE in domestic cases will further internationalize Singapore's legal market.

B. The Misunderstanding of Joint Law Ventures

The overview of Singapore's legal regimes on foreign law firms and lawyers demonstrates the nation's incremental approach to liberalizing the legal sector by providing foreign firms with a list of options to suit their commercial goals. Singapore's lessons also show that while FTAs may inspire change, self-initiated FTA-plus measures can result in the meaningful liberalization of legal services. Trade negotiators and law-makers prefer to create a legal basis that facilitates foreign and local firm alliances to energize legal services liberalization. There are diverse designs for such alliances. Cambodia and Vietnam's commitments under the AFAS and the AANZFTA and Malaysia's 2012 statute that introduces 'international partnerships' do not mandate

135 Milton Church, Transcript of Evidence, at 19, *cited in* Singapore–Australia Free Trade Agreement, at 25, <http://www.apf.gov.au/binaries/house/committee/jsct/march2003/report/chap2.pdf> (visited 1 June 2013); Pang, above n 132.

136 Annex 4-III(II), Singapore–Australia FTA, above n 133.

137 Legal Services, http://www.contactsingapore.sg/key_industries/legal_services/ (visited 3 May 2014).

138 Ibid.

139 Legal Profession (Foreign Practitioner Examinations) Rules 2011, rule 4(3).

140 'PERADI Organizes Bar Exam for Foreign Lawyers', 27 February 2014, <http://en.hukumonline.com/pages/lt530f21a990829/peradi-organizes-bar-exam-for-foreign-lawyers> (visited 1 Jan. 2015).

141 Ibid.

142 Singapore's Foreign Practitioner Examination covers components of Ethics and Social Responsibility, Corporate Practice, Commercial Practice and Corporate Finance. Guide to the 2013 Session of the Foreign Practitioner Examinations (2013), at 9.

particular forms of corporate associations.¹⁴³ The KORUS FTA adopted more specific language that allows US law firms to establish 'joint venture firms with Korean law firms' by 2017 as the final stage for liberalizing Korea's legal market.¹⁴⁴

Based on the Singaporean experience, ASEAN states should be cautious in adopting such arrangements due to the high-failure rate of JLVs and their inherent structural weaknesses detailed below. Singapore introduced FLAs and JLVs under amendments to the PLA in 2000 in order to encourage collaboration between foreign and Singapore law firms and allow the latter to receive world-class expertise from the former.¹⁴⁵ The two schemes enable constituent foreign and local firms to market 'as a single service provider' and bill their clients as a single entity.¹⁴⁶ Furthermore, 'office premises, profits or client information' of the constituent firms can be shared.¹⁴⁷ To form an FLA or a JLV, both constituent firms should possess 'relevant legal expertise and experience' in niche areas such as financial, intellectual property, maritime law, or arbitration.¹⁴⁸

Despite sharing the 'two-in-one' concept, an FLA is different from a JLV in that an FLA solely fortifies an alliance between a foreign and a Singapore law firm without creating a separate corporate entity. In other words, an FLA permits two free-standing firms to collaborate without cross-ownership. Ince & Co, a UK-based international firm, formed an FLA with Incisive Law LLC.¹⁴⁹ The two constituent firms respectively registered as an FLP and an SLP. For branding and client purposes, the FLA creates the image of a single firm that provides English and Singapore law services. Attorneys of the two firms share the same office premises, collaborate, and share profits on certain cases, and attend each other's board meetings.¹⁵⁰ Nevertheless, the two legal entities maintain separate client bases, as well as recruiting and promotion procedures.¹⁵¹

In reality, foreign law firms utilize the JLV scheme more often than the FLA one.¹⁵² A JLV indicates a legal entity that an FLP and an SLP jointly established and own.¹⁵³ In the context of an FLA, Singapore law services are provided through lawyers in the constituent SLP.¹⁵⁴ A JLV can be more complex. While the constituent

143 Cambodia and Vietnam allow commercial associations and partnerships, respectively between foreign and local law firms. AANZFTA Commitments & AFAS Eighth Package of Commitments, above n 76; Legal Profession (Amendment) Act 2012, Article 40F.

144 2013 National Trade Estimate Report on Foreign Trade Barriers, at 238; Annex II-Korea-45, KORUS FTA, above n 58.

145 Steven Chong, 'Liberalisation of Legal Services Freeing the Legal Landscape: Is South-East Asia Ready?', paper presented at the International Bar Association: 3rd Asia-Pacific Regional Forum Conference (2012), at 4–6.

146 Legal Profession (International Services) Rules 2008, rules 5(1) and 9(1).

147 Legal Profession Act (Ch. 161), arts 130B(7) and 130C(7).

148 Legal Profession (International Services) Rules 2008, rules 4(2)(a) and 8(1)(a).

149 Interview with a UK lawyer [name withheld], 6 June 2013.

150 Ibid.

151 Ibid.

152 There are only four FLAs and 7 JLVs, most of which are small firms. The only exception is Clifford Chance Asia. 'Joint Law Ventures/Formal Law Alliances', <http://www.lawsociety.org.sg/forPublic/FindaLawFirmLawyer/JointLawVenturesFormalLawAlliances.aspx> (visited 1 May 2014).

153 Legal Profession Act (Ch. 161), Article 130B(1) and (9).

154 Legal Profession (International Services) Rules 2008, rule 9(2).

SLP of a JLV offers a full-range of Singapore law services, a JLV in itself is allowed to engage in 'permitted areas of legal practice' (i.e. commercial areas of Singapore law).¹⁵⁵ Hogan Lovells Lee & Lee exemplifies a long-standing JLV. As a constituent SLP of this JLV, Lee & Lee also functions as an independent domestic firm that encompasses a group of lawyers and maintains a client base separate from the JLV.¹⁵⁶ To a JLV, a prime concern arising from the 'permitted areas of legal practice' restriction is cost efficiency in arbitration cases. A foreign attorney can deal with matters before an arbitral forum such as the SIAC.¹⁵⁷ Nonetheless, if the opposing party challenges the arbitral award in court, the JLV must transfer the case to a Singapore-qualified lawyer in the SLP of the JLV. This is because 'appearing or pleading in any court' is excluded from a JLV's permitted practice areas.¹⁵⁸ Thus, the restriction hinders a JLV's provision of full-scale arbitration services in a more cost-efficient way.

The regimes governing JLVs have undergone various stages of reform since 2000. Under the USSFTA and SAFTA, Singapore accorded preferential treatment to US and Australian law firms. These two FTAs eased requirements for establishing JLVs, as well as FLAs, by reducing the number of resident foreign lawyers and the length of their relevant experiences.¹⁵⁹ For example, the USSFTA reduced the requirement of the minimum number of US lawyers from five to three, including two equity partners.¹⁶⁰ Rather than meeting the five-year experience requirement for each US lawyer, 'an aggregate basis of 15 years' for resident lawyers would suffice.¹⁶¹

The USSFTA also expanded the scope of relevant experience for JLVs. In addition to 'banking and finance work', the scope was extended to cover so-called 'Tier 1' and 'Tier 2' key areas such as project finance, capital market, and M&As.¹⁶² After the two FTAs, Singapore introduced an 'enhanced JLV scheme' in 2008 in order to increase incentives for international firms to set up JLVs.¹⁶³ The 2008 scheme enabled the foreign firm of a JLV to share 49% of its constituent SLP's profits in the 'permitted areas'.¹⁶⁴ In 2012, profit-sharing and holding of equity were increased to the 33% cap on the profits of the entire JLV in areas of cooperation.¹⁶⁵

155 Legal Profession Act (Ch. 161), arts 130A(1) and N(3); Legal Profession (International Services) Rules 2008, rule 3.

156 Interview with a UK lawyer [name withheld], 6 June 2013.

157 Lawrence G S Boo, 'Ch. 04: International and Domestic Arbitration in Singapore', <http://www.singaporelaw.sg/sglaw/laws-of-singapore/overview/chapter-4> (visited 20 May 2014).

158 Legal Profession Act (Ch. 161), Article N(3); Legal Profession (International Services) Rules 2008, rule 3.

159 For an overview of legal services under Singapore's FTAs with the United States and Australia, see Arfat Selvam, 'Cross Border Legal Services in ASEAN under WTO', http://www.aseanlawassociation.org/docs/w2_sing.pdf (visited 1 June 2014), at 76–78.

160 George Yeo's Letter, above n 132.

161 Ibid.

162 Ibid.

163 Yun Krieger, 'Singapore Flings: the Politics of Local Tie-ups Revealed', 16 April 2012, Lawyer, <http://www.thelawyer.com/singapore-flings-the-politics-of-local-tie-ups-revealed/1012180.article> (visited 20 June 2014); Chong, above n 145, at 9.

164 'Allowing Singapore Law Practices More Flexibility to Grow and Enhance International Competitiveness', 31 May 2012, <http://www.mlaw.gov.sg/news/press-releases/allowing-singapore-law-practices-more-flexibility-to-grow-and-enhance-international-competitiveness.html> (visited 15 June 2014).

165 Ibid.

Singapore has focused its liberalization efforts on reforming JLVs. These measures did attract foreign law firms such as Allens Arthur Robinson, Australia's first JLV following the SAFTA, and China's Dacheng Law Offices.¹⁶⁶ However, ASEAN states that tend to follow Singapore's regulatory changes should be careful. In reality, the failure rate of JLVs has been noteworthy. From 2000 to 2005, a third of JLVs and all FLAs came to an end.¹⁶⁷ JLVs that involved US firms lasted the shortest amount of time. Shearman & Sterling's JLV with Stamford Partnership and White & Case's JLV with Colin Ng & Partners disbanded after only two years.¹⁶⁸ The Singapore government's recognition of liberalized JLV rules as 'limited success' promoted the introduction of the enhanced JLV scheme.¹⁶⁹ However, these enhanced measures did not incur positive market responses. By 2012, three of Singapore 'Big Four' firms that had formed JLVs ended their alliances with foreign partners.¹⁷⁰ In particular, Allen & Gledhill dissolved its eleven-year JLV with Linklaters and subsequently ended its merger talk with Allen & Overy.¹⁷¹

As previously discussed, from the perspective of trade negotiators, the design of JLVs is usually intended as a significant step for legal services liberalization. As the Singapore experience demonstrates, such an intention is based on a misunderstanding of JLVs. A simple, yet important, question for ASEAN countries to consider is what underlies the persistent failure of JLVs. To be fair, the high failure rate of joint ventures has been proven empirically and JLVs are no exception.¹⁷² Singapore's measures that focus on profit-sharing have not remedied JLVs' embedded problems. From a pragmatic perspective, as AGC's Legal Profession (International Services) Secretariat has only four to five staff members, monitoring and enforcing the percentage rules on profit-poses significant challenges.¹⁷³

A more difficult obstacle to JLVs is the alignment of management cultures and financial interests. The cultural differences in the JLV context range from corporate strategies and partnership structures to standardized forms. Competing financial interests often erode the foundation of a JLV as an economic union. A Singapore firm in a JLV may not be willing to 'share the pie' with its foreign partner if a transaction involves primarily ASEAN-related legal issues. Also, an internal conflict of interests arises when the constituent FLP wishes to represent a foreign company that will compete with the SLP's major clients such as Temasek Holdings.

166 Azadeh Khalilzadeh, 'First Australian Law Firms Ties Knot with Singapore under Joint Law Venture', <http://www.findlaw.com.au/articles/2204/first-australian-law-firm-ties-knot-with-singapore.aspx> (visited 3 June 2014); Seher Hussain, 'Singapore: Dacheng Servers Ties with Central Chambers; in JLV with Wong Alliance', 26 January 2012, Asian Legal Business, <http://www.asianlegalonline.com/news/singapore-dacheng-severs-ties-central-chambers-jlv-wong-alliance/60445> (visited 10 June 2014).

167 Chong, above n 145, at 7; Ibid.

168 Table 1, in Krishnan, above n 6, at 444.

169 Report of the Committee to Develop the Singapore Legal Sector (2007), at 87.

170 Drew & Napier, Wong Partnership, and Allen & Gledhill terminated their JLVs with Freshfields, Clifford Chance, and Linklaters, respectively. Table 1, in Krishnan, above n 6, at 444; Broomhall, above n 112.

171 Douglas Wong, 'Allen & Gledhill Ends Talks with Law Firm Allen & Overy', 26 March 2012, Bloomberg Businessweek, <http://www.businessweek.com/news/2012-03-26/allen-and-gledhill-ends-talks-with-law-firm-allen-and-overy> (visited 20 June 2014).

172 Krishnan, above n 6, at 438–39.

173 Interview with a Singapore lawyer [name withheld], 11 June 2013.

These dilemmas explain the limited survival and low utilization rates of JLVs and FLAs mechanisms. Notwithstanding these challenges, there are reasons for long-lasting JLVs. Both Hogan Lovells Lee & Lee and Baker & McKenzie.Wong & Leow have been in existence since 2001.¹⁷⁴ Why and how have these two JLVs operated against the prevailing trend of failure? The fact that Hogan Lovells and Lee & Lee cover different areas of expertise makes them an ideal match. The former's expertise in project finance and offshore M&As and the latter's focus on stock exchanges and employment law enable them to complement rather than compete with each other on the same deals.¹⁷⁵

Baker & McKenzie.Wong & Leow presents a different model. The two constituent firms have no conflict because Wong & Leow, the SLP, was actually set up by Baker for JLV purposes.¹⁷⁶ A similar practice of an 'Alibaba arrangement' under which an FLP enters the Singapore legal market through a small, local proxy is also found in FLAs. The UK firm of Ince & Co launched an SLP, Incisive Law LLC, just a year before it formed an FLA.¹⁷⁷ Although the FLA application 'surprised' the AGC, the FLA was technically in compliance with the existing law.¹⁷⁸ ASEAN states should note that Singapore rules require both an FLP and an SLP in alliances to possess 'relevant legal expertise and experience' with the intention to facilitate the transfer of expertise to the local profession.¹⁷⁹ Allowing an Alibaba arrangement discussed above may defeat the intention of the LPA that introduces the JLV and FLA mechanisms. The rules should be carefully crafted to prevent such an abuse of regulatory frameworks.

C. The Experiment of Qualifying Foreign Law Practices

In response to the mixed result of liberalization measures, Singapore introduced the QFLP licenses in tandem with the enhanced JLV scheme in 2008.¹⁸⁰ The QFLP mechanism is not mandated by FTAs and can be seen as Singapore's self-initiated FTA-plus commitment to legal services liberalization. The QFLP mechanism is revolutionary. Different from JLVs or FLAs, a five-year, renewable QFLP license enables a foreign law firm to practice 'permitted areas' of Singapore law.¹⁸¹ In other words, a QFLP can engage in commercial law independently of having a Singapore law firm partner.¹⁸²

174 Table 1, in Krishnan, above n 6, at 444.

175 Interview with a UK lawyer [name withheld], 6 June 2013.

176 Alice Gartland, 'Singapore Rising: Licensed to Thrill', 6 July 2012, LegalWeek, http://www.legalweek.com/legal-week/feature/2189476/singapore-rising-licensed-thrill?WT.rss_f=Law+firms&WT.rss_a=Singapore+rising%3A+Licensed+to+thrill%3F&keepThis=true&TB_iframe=true&height=650&width=850 (visited 3 June 2014).

177 Interview with a UK lawyer [name withheld], 6 June 2013.

178 Ibid.

179 Legal Profession (International Services) Rules 2008, rules 4(2) and 8(1).

180 Chong, above n 145, at 10.

181 Legal Profession (International Services) Rules 2008, rules 3 and 11; 'Award of Qualifying Foreign Law Practice (QFLP) Licences', 5 December 2008, http://www.news.gov.sg/public/sgpc/en/media_releases/agencies/minlaw/press_release/P-20081205-1 (visited 10 June 2014).

182 In a QFLP, Singapore law matters can also be handled by Singapore-qualified lawyers. Legal Profession (International Services) Rules 2008, rule 11(1)(b).

Table 2. International law firms awarded QFLP licenses

Foreign Law Firm	Awarded in 2008	Awarded in 2013	Renewed in 2014
Allen & Overy (UK)	X		X
Clifford Chance (UK)	X		X
Gibson, Dunn & Crutcher (USA)		X	
Herbert Smith Freehills (UK & Australia)	X		Did not apply for renewal
Jones Day (USA)		X	
Latham & Watkins (USA)	X		X
Linklaters (UK)		X	
Norton Rose Fulbright (UK & USA)	X		X
Sidley Austin (USA)		X	
White & Case (USA)	X		One-year conditional license

Note: 'X' indicates the receipt or renewal of five-year QFLP licenses.

The government selected six of twenty FLPs in 2008 and four of twenty-three FLPs in 2013 for QFLP licenses, all of which are leading US and UK firms.¹⁸³ The two-stage selection process involved the Evaluation Committee and the Selection Committee comprising senior officials from various ministries in charge of law, trade, and finance.¹⁸⁴ Also unique to QFLPs, an FLP must be committed to growth in Singapore. These selection criteria include the number of the Singapore offices' resident lawyers, the value of its offshore work, and whether the office will be each firm's regional headquarters.¹⁸⁵ Since fewer than 8% of Singapore-based foreign firms could be QFLPs, they are naturally perceived to hold elite status in the legal market.¹⁸⁶

Table 2 includes law firms that are awarded QFLP licenses.¹⁸⁷ Statistics show that QFLPs did contribute to the growth of Singapore's legal industry. The 2009–2014 revenue that the first six QFLP firms generated totalled S\$1.2 billion, including 80% from offshore transactions.¹⁸⁸ Singapore's QFLP experiment attracted the attention

183 'Award of Qualifying Foreign Law Practice (QFLP) Licences', 5 December 2008, http://www.news.gov.sg/public/sgpc/en/media_releases/agencies/minlaw/press_release/P-20081205-1 (visited 10 June 2014).

184 'Award of the Second Round of Qualifying Foreign Law Practice Licences', 19 February 2013, <http://www.mlaw.gov.sg/news/press-releases/award-of-second-round-qflp-licences.html> (visited 10 June 2014).

185 Ibid.

186 There are 10 QFLPs out of 130 foreign law firms in Singapore. List of Foreign Law Firms, above n 111.

187 'Qualifying Foreign Law Practices', <http://www.lawsociety.org.sg/forPublic/FindaLawFirmLawyer/QualifyingForeignLawPractices.aspx> (visited 12 June 2014); 'Award of the Second Round of Qualifying Foreign Law Practice Licences', above n 184; 'Renewal of Qualifying Foreign Law Practice Licences Awarded in 2008', 28 February 2014, <http://www.mlaw.gov.sg/news/press-releases/renewal-of-qualifying-foreign-law-practice-licences-awarded-in-2.html> (visited 12 June 2014).

188 "Renewal of Qualifying Foreign Law Practice Licences Awarded in 2008", *supra* note 187.

of ASEAN states. Following Singapore's step, Malaysia introduced a similar mechanism known as the Qualifying Foreign Law Firm (QFLF) license in 2012.¹⁸⁹ The key differences between Singapore's QFLP and Malaysia's QFLF is that the latter limits the number of the licenses to five and only foreign firms with international Islamic finance expertise will be considered.¹⁹⁰ Arguably, Malaysia's substantial restriction on practice areas can be a deterrent for international firms, thereby counteracting the intended goal of the new scheme.

Malaysia's reform demonstrates that Singapore's QFLP mechanism can be seen as a milestone for ASEAN's liberalization efforts. To understand Singapore's experiment from a holistic approach, it is important to understand the reasons for QFLP applications. From a law firm's perspective, perception and the cost efficiency are primary considerations. QFLP status accords a foreign firm an immediate reputational advantage, as a QFLP license is perceived as an official 'testament' of a firm's global reputation.¹⁹¹ This advantage benefits pursuing clients proactively because they will prefer QFLPs to other foreign firms that are 'based in Singapore, but cannot do Singapore law'.¹⁹² The client issue is associated with the cost efficiency because a QFLP provides one-stop shop legal services. For matters of Singapore law, a QFLP can internalize and reduce the cost without recruiting increasingly expensive local firms. An FLP often assists foreign corporate clients with a long-term relationship to be a holding company via a buyout of Singapore-listed corporations. Once the foreign company enters Singapore, an FLP with a QFLP license can keep the same clients for Singapore law-related services and avoids such work being taken away by other firms.¹⁹³ These pragmatic reasons contribute to the QFLPs' market popularity.

While the impact of Malaysia's QFLF scheme remains to be seen, Singapore's five-year experiment with the QFLP mechanism offers valuable lessons for ASEAN countries in their liberalization efforts. Importantly, the QFLP license aims at increasing the value of offshore legal services and exposing local lawyers to world-class legal practice by obliging foreign firms to commit to growth in Singapore. Without periodic monitoring, these purposes will be frustrated by a game of numbers. For example, one QFLP criterion is the firm's expected increase in the hire of Singapore lawyers.¹⁹⁴ This criterion would prompt applicant firms to inflate the number of local lawyers they will recruit.¹⁹⁵ ASEAN countries should note that focusing on such a number per se will miss the point. A foreign firm may easily 'fulfill the quota' by recruiting dual-qualified lawyers or adopting a dual salary scheme, making local lawyers second-class citizens in the firm.

One hundred Singapore-qualified lawyers are employed in the first six QFLPs and, thus, on average, a QFLP hires 16 local lawyers.¹⁹⁶ Not all QFLPs have

189 'Liberalisation of Legal Services', above n 108; Legal Profession (Amendment) Act 2012, Article 40G.

190 The goal is to support the Malaysian International Islamic Finance initiative. *Ibid.*

191 Interview with a US lawyer [name withheld], 6 June 2013.

192 *Ibid.*

193 *Ibid.*

194 'Award of the Second Round of Qualifying Foreign Law Practice Licences', above n 184.

195 Interview with a UK lawyer [name withheld], 28 June 2013.

196 'Renewal of Qualifying Foreign Law Practice Licences Awarded in 2008', above n 187.

expanded local hiring. Herbert Smith Freehills' recruitment record is substantially below other QFLPs and currently includes only five local lawyers.¹⁹⁷ Presumably for this reason, as well as its inability to generate expected revenues, the firm decided not to renew its QFLP license in 2014.¹⁹⁸ The fact that White & Case's renewal of its QFLP license was extended for only one year underscores the challenge of maintaining QFLP status.¹⁹⁹ Sidley Austin adopted a different approach. Since being awarded a QFLP license in 2013, the firm has substantially increased the number of Singapore-qualified lawyers in its international finance practice.²⁰⁰ These mixed results indicate that the regulatory agency's careful review of the firms' track records is critical to the underlying goals of the QFLP scheme.

Also, Singapore's QFLP experiment may inform ASEAN states of a multi-faceted Alibaba arrangement problem that is intertwined with the JLV/FLA cases discussed above. The utilization and incentive for a QFLP license will decrease if the Alibaba arrangement in the JLV/FLA context is not regulated. Without going through a competitive application, a FLP can simply form an artificial SLP to provide Singapore law services. The permitted scope of such JLV/FLA alliances is even wider than that of a QFLP. This loophole may become a fallback option for firms that could not gain the QFLP status. Furthermore, the 2012 amended rules that allow QFLPs to form JLVs and FLAs with local firms present a different dilemma.²⁰¹ Such alliances may offer full-scale services because a QFLP's commercial law and arbitration practice can be augmented by the Singapore firm partner's litigation capability.

Nonetheless, the permission of such an arrangement may lead to distorted results. A QFLP may circumvent the permitted areas restriction by setting up 'its' SLP. Clifford Chance exemplifies this Alibaba arrangement practice. The firm became a QFLP in 2008 and formed an FLA with a boutique Singapore firm, Cavenagh Law, in 2012.²⁰² In fact, this SLP was founded by Clifford Chance partners for FLA purposes.²⁰³ The claim of the new 'Clifford Chance Asia' as 'the first international law firm offering litigation advice' could mislead the clients that a QFLP can work on litigation matters.²⁰⁴ As this incident also reveals a QFLP's potential violation

197 Yun Krieger, 'Can Herbies Succeed in Singapore without the QFLP?', 3 March 2014, Lawyer, <http://www.thelawyer.com/analysis/behind-the-law/can-herbies-succeed-in-singapore-without-the-qflp/3017033.article> (visited 14 June 2014).

198 Ibid.

199 Ibid.

200 Interview with an Australian lawyer [name withheld], 27 April 2014.

201 Legal Profession (International Services) Rules 2008, rule 11(3A).

202 Elizabeth Broomhall, 'Singapore Law Minister Criticises Clifford Chance over "Inaccurate" Claims', 22 October 2013, LegalWeek, <http://www.legalweek.com/legal-week/news/2302060/clifford-chance-under-scrutiny-in-singapore-for-statements-on-litigation> (visited 20 May 2014); Jonathan Ames, 'Clifford Chance Signs Singapore Joint Venture Deal', 11 December 2012, Global Legal Post, <http://www.globallegalpost.com/global-view/clifford-chance-signs-singapore-joint-venture-deal-39831452/> (visited 20 May 2014).

203 The founding partners came from Clifford Chance and the firm's formal JLV partner, WongPartnership. Ames, *ibid.*

204 'Cavenagh Law Links with Clifford Chance for Formal Law Alliance', 11 December 2012, Singapore Business Review, <http://sbr.com.sg/professional-services/legal/more-news/cavenagh-law-links-clifford-chance-formal-law-alliance> (visited 20 May 2014); 'Liberalisation of Singapore's Legal Sector: A Reflection', above n 112, at 17.

of legal profession rules, Singapore's Law Minister sharply criticized such an advertisement.²⁰⁵

IV. THE ROADMAP FOR REFORMING ASEAN'S LEGAL SERVICES MARKET

As ASEAN marches towards its fourth decade, it is necessary for the ten-country bloc to reinvigorate its economic competitiveness on the regional and global stages. Transforming the AEC into a single market and production base will give ASEAN investment advantages over China and India. As ASEAN governments have recognized, the progressive liberalization of legal services is integral to the seamless multi-jurisdictional practice and the development of ASEAN law. However, the 'paper commitments' weaknesses under ASEAN FTAs still undermine the intended result of liberalization. A constructive roadmap is therefore crucial to revitalizing ASEAN's legal services negotiations. APEC, NAFTA, and the EU, as well as Singapore's experiments with foreign lawyers, JLVs and QFLPs, demonstrate the best practices for ASEAN's prospective liberalization efforts. In line with the AEC objectives and the lessons analyzed above, the article advances a three-step reform proposal for liberalizing ASEAN's legal services market. These proposals will in turn help the establishment of the AEC, as they further the integration of ASEAN law.

A. Transparency and Harmonization of ASEAN Law

The initial step for the liberalization of legal services is to deepen the transparency and harmonization of ASEAN legal systems. Emerging ASEAN law and dispute resolution mechanisms lack a centralized enforcement akin to EU law. The lack of transparency in domestic rules on legal services has also delayed the integration progress. ASEAN should create an on-line ASEAN Legal Services Database modelled after the inventory of the APEC Legal Services Initiative. The information in the APEC LSI has not been updated since 2010 and does not include the non-APEC members of ASEAN (Cambodia, Laos, and Myanmar). To ensure transparency on the rules governing legal services in each Member State, the database's information should be regularly updated by ASEAN's justice and trade ministries and bar associations.

The ASEAN database should be 'APEC-plus' by including the rules governing both domestic and foreign lawyers and law firms. Requirements for qualifying law degrees, such as Bachelor of Laws (LLB) degrees in most ASEAN jurisdictions and J.D. degrees in the Philippines and Singapore, will be included. The database should highlight the rules on different categories of lawyers and whether the full licensing is limited to citizens and permanent residents. The admission examination and practical training periods should also be clearly identified. The transparency of such information will facilitate prospective mutual recognition efforts.

As for foreign lawyers' Mode 4 practice, simple explanations as to whether a host State permits or prohibits the temporary practice are inadequate. 'User friendly' information should include the permitted scope of temporary services (e.g. arbitration or foreign law advice), as well as the permitted length of work, the type of visas and

205 Broomhall, above n 201; 'Liberalisation of Singapore's Legal Sector: A Reflection', above n 112, at 17.

tax implications.²⁰⁶ With respect to the licensing of foreign law firms, the database should also detail authorized forms of commercial associations, practice areas, and equity requirements. As incidents in Vietnam and Cambodia have shown, such information may deter the protectionist lobbying forces from pushing the government to narrowly construe FTA commitments. Overall, the ASEAN database will not only strengthen the transparency of domestic rules, but will also serve as the 'single window' for law firms and the authoritative basis for ASEAN negotiations.

Legal harmonization will complement transparency towards ASEAN's integrated legal services market.²⁰⁷ Harmonizing ASEAN's diverse laws, particularly in trade and investment areas, will reduce transaction costs and attract FDI, thus benefitting ASEAN firms. This objective is in line with ASEAN's principle to comply with 'multilateral trade rules and ASEAN's rules-based regimes' in order to fulfil economic commitments and eliminate barriers to regional integration.²⁰⁸ The TFEU authorizes the European Council to issue directives to approximate the differences in domestic laws that may distort the internal market.²⁰⁹ In comparison, the ASEAN Summit lacks such top-down law-making authority under the ASEAN Charter.²¹⁰ Legal harmonization in ASEAN has, to date, been conducted through a soft-law approach.²¹¹ Harmonization measures include the implementation of ASEAN's Intellectual Property Rights Action Plan, Regional Guidelines on Competition Policy, and MRAs on various industrial standards.²¹²

Prospective efforts should focus on expanding these areas and enhancing periodic reviews of ASEAN states' compliance. An equally important harmonization effort is to accelerate the mutual recognition of arbitral awards and court judgments within ASEAN. With Myanmar acceding to the New York Convention in 2013, arbitral awards rendered in contracting states can be recognized and enforced in ASEAN.²¹³

206 India serves as a tax example for the temporary practice. While the Indian court in the 2012 case of *A.K. Balaji v Government of India and Ors* held that foreign lawyers' fly-in, fly-out practice is permitted, their presence in the country 'may also give rise to potential Indian tax exposure'. Vyapak Desai et al., 'Practice of Foreign Law in India Foreign Lawyers Can "Fly- in and Fly- out"', 5(1) *India Law Journal* (2012), http://www.indialawjournal.com/volume5/issue_1/special_story.html (visited 20 May 2014).

207 Sundaresh Menon, Keynote Address: ASEAN Integration through Law Concluding Plenary, 25 August 2013, at 7; 'Law Officials Gather to Discuss ASEAN Legal Cooperation', 5 December 2013, Xinhua, <http://english.people.com.cn/90777/8476146.html> (visited 20 June 2014); Agnes Winarti, 'SBY Calls for Legal Harmonization', 17 February 2012, Jakarta Post, <http://www.thejakartapost.com/news/2012/02/17/sby-calls-legal-harmonization.html> (visited 20 June 2014).

208 Charter of the Association of Southeast Asian Nations (2007), Article 2(2)(n).

209 Treaty on the Functioning of the European Union, as amended by the Treaty of Lisbon (2007), Article 115. For provisions on 'approximation of laws', see Charter 3 of the Treaty.

210 For the authorities of the ASEAN Summit, as 'the supreme policy-making body', see Charter of the Association of Southeast Asian Nations (2007), Article 7(2).

211 This approach is in line with ASEAN's non-binding, consensus-based principle. Charter of the Association of Southeast Asian Nations (2007), preamble.

212 'ASEAN IPR Action Plan 2011–2015', http://www.aseanipr.org/ipportal/index.php?option=com_content&view=article&id=141:asean-ipr-action-plan-2011-2015&catid=218&Itemid=653 (visited 15 June 2014); ASEAN Regional Guidelines on Competition Policy (2010), at 15–44; Simon Pettman, 'Standards Harmonisation in ASEAN: Progress, Challenges and Moving Beyond 2015', ERIA Discussion Paper Series, ERIA-DP-2013-30 (2013), at 9–10.

213 Myanmar Accedes to New York Convention, Client Alert: Regulatory Developments in Myanmar, White & Case (2013).

The next step is to adopt an ASEAN version of the Hague Convention on Choice of Court Agreements that deters forum shopping and enables the recognition and enforcement of civil and commercial judgments within the bloc.²¹⁴

As transparency and harmonization of ASEAN law constitute an integral foundation of legal services liberalization, ASEAN states should strengthen ASEAN legal studies. Such an education effort can involve ASEAN law courses and the creation of ASEAN-wide law school exchange scheme akin to the EU's Erasmus Exchange Program.²¹⁵ Although ASEAN set 2015 as the year of the AEC's completion, a 2014 survey revealed that 55% of ASEAN enterprises were unaware of the AEC.²¹⁶ Improving an understanding of ASEAN law will enable ASEAN lawyers to better serve their clients and facilitate their mobility in the prospective integrated legal services market.

B. Accelerating the AEC's Free Movement and Establishment of Lawyers

The second major milestone for liberalizing ASEAN's legal services market is to remedy the 'paper commitments' problem through a treaty-based approach. To integrate cross-ASEAN legal practice, a 'cost-efficient' way that has profound impact on law firms is to legalize the Mode 4 'fly in, fly out' practice. ASEAN states' regulatory regimes vary considerably. While some countries left the practice unregulated (e.g. Singapore, Indonesia, and Thailand), others either expressly permitted it (e.g. Vietnam) or disallowed it (e.g. Brunei).²¹⁷ Incoherent interpretation of ambiguous rules may subject ASEAN lawyers to criminal penalties for the unauthorized practice of law, hence increasing ASEAN firms' compliance costs. The ASEAN Agreement on the MNP marked a useful step forward in this regard. However, its effectiveness depends on individual commitments and implementation.²¹⁸ Currently, under the Agreement, only a few states, such as Indonesia and Malaysia, have made commitments in the legal services sector.²¹⁹

214 Convention of 30 June 2005 on Choice of Court Agreements [Hague Convention], Articles 1 and 8. ASEAN states may be concerned about joining the Hague Convention, which will oblige them to recognize and enforce judicial decisions rendered in contracting parties, including Mexico, the USA and the EU. Hence, I propose the ASEAN version of the Convention, which limits the effect of recognition and enforcement to ASEAN jurisdictions.

215 R. Rajeswaran, 'Legal Education in ASEAN in the 21st Century', http://www.aseanlawassociation.org/9GAdocs/w2_Malaysia.pdf (visited 8 June 2014), at 5 and 9; Rahmat Mohamad, 'Cross Border Legal Practice in ASEAN under WTO' (2003), at 12; Laurel S. Terry, 'International Initiatives that Facilitate Global Mobility in Higher Education', 2011 Michigan State Law Review 305 (2011), 325–26.

216 Dylan Loh, 'Many Businesses Unaware of ASEAN Economic Community', 6 June 2014, *Channel NewsAsia*, <http://www.channelnewsasia.com/news/business/singapore/many-businesses-unaware/1139802.html> (visited 20 June 2014).

217 See generally Inventory, above n 49; 'Brunei Darussalam International Trade in Legal Services', http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Brunei_Darussalam.aspx (visited 16 June 2014).

218 ASEAN Agreement on the Movement of Natural Persons (2012), Articles 4 and 6.

219 Annex 1: Indonesia's Schedule of Movement of Natural Persons (MNP) Commitments and Annex 1: Malaysia's Schedule of MNP Commitments, ASEAN Agreement on the Movement of Natural Persons (2012).

To complement the AEC's 'free flow of services' goal, ASEAN states should explicitly aim to allow ASEAN lawyers' temporary practice within the bloc.²²⁰ Similar to the EU's Lawyers' Services Directive, the commitments under the ASEAN Agreement on the MNP should allow ASEAN lawyers to use home-country professional titles for practicing non-domestic law. ASEAN governments can introduce an e-notification system on the application mechanism for monitoring the length and nature of temporary practice. The APEC Business Travel Card scheme allows qualified business visitors to cut time spent at immigration checkpoints.²²¹ ASEAN states should implement a comparable scheme to facilitate temporary practice of law and business by designating 'ASEAN lanes' at major ports of entry. These measures will decrease transaction costs for transnational legal practice in the region.

From the perspective of law firms, establishing a permanent basis in ASEAN Member States will facilitate providing legal services. Indonesia and the Philippines have banned Mode 3 commercial presence of foreign law firms entirely, whereas some other ASEAN states have restricted practice areas and types of associations.²²² The prospective packages of commitments under the AFAS should liberalize the commercial presence of ASEAN law firms. To avoid repeating the 'paper commitments' syndrome, AFAS commitments should reduce equity limitations and the restrictions on the number of resident lawyers and their residential periods.²²³ In practice, the issue of law firms' 'name' causes concern and confusion. For instance, Rajah & Tann's Cambodian presence is known as R&T Sok & Heng Law Office and Allen & Gledhill's office in Malaysia is known Rahmat Lim & Partners.²²⁴ Allowing ASEAN firms to use uniform names under the AFAS by easing the associate firm requirement will help them integrate their ASEAN law practices and strengthen the international branding of ASEAN legal expertise.

Singapore's incremental approach, based on the USSFTA and SAFTA requirements and self-initiated FTA-plus measures, provides lessons for liberalizing foreign firms' corporate structures and permitted practice areas. The restrictions on legal forms of commercial associations between local and foreign firms should be eased. Although the JLV/FLA mechanism proved unpopular in the market, providing a menu of diverse legal options can be a model for ASEAN states. A QFLP scheme that allows foreign firms to practice certain areas of domestic law can serve as an inducement to attract international law firms. These regulatory changes will enhance ASEAN law practice and strengthen the AEC's objective for a free flow of investment.²²⁵

220 Roadmap for an ASEAN Community: 2009–15 (2009), at 25–26.

221 19 APEC members, including Brunei, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam, participated in the scheme. APEC Business Travel Card, <http://travel.apec.org/abtc-summary.html> (visited 16 June 2014).

222 See generally Inventory, above n 49.

223 For example, Vietnam requires each foreign law firm to have minimum two resident lawyers who stay in the country for at least 183 days. Amended Lawyer Law (2012), Article 68(2).

224 'R&T Sok & Heng Law Office', <http://kh.rajahtann.com/> (visited 16 June 2014); 'Rahmat Lim & Partners', <http://www.allenandgledhill.com/Pages/network.aspx> (visited 16 June 2014).

225 Roadmap for an ASEAN Community: 2009–15 (2009), at 27–28.

C. Mutual Recognition and the Concept of ASEAN Legal Consultants

As the final step for integrating ASEAN's legal services market, it is important to conclude the ASEAN MRA Framework on Legal Services pursuant to the AEC's mandate to complete MRAs for professional services by 2015.²²⁶ Based on the practices of ASEAN MRAs on architectural and engineering services, ASEAN states should establish the ASEAN Lawyer Council that consists of regulatory body representatives.²²⁷ This Council will provide a forum for exchanging information and identifying best legal practices for ASEAN states. It will enable continuing intra-ASEAN MRA negotiations in legal services, including recognition of legal education and qualifications. More importantly, the Council will interact with international lawyers' associations and represent the ASEAN stance in various international negotiations.

Recognizing the divergence of existing domestic rules for such recognition, an MRA in legal services can be conducted on an 'ASEAN Minus X' basis as an initial step.²²⁸ Common law jurisdictions such as Singapore, Malaysia, and Brunei may first agree to implement MRA disciplines. The experience of EU Directives and Singapore FTAs may serve as guidance in this regard. Notably, the current legal profession rules of these countries already recognize law degrees from Singapore, Australia, and New Zealand.²²⁹ Extending such recognition to ASEAN states will further promote intra-ASEAN education exchanges and facilitate the recognition of legal qualifications.

The most meaningful liberalization measure will be to recognize practicing certificates and grant permission for ASEAN lawyers' practice on a permanent basis rather than through a 'fly in, fly out practice'. From the vantage point of feasibility, ASEAN's liberalization agenda should focus on limited licensing instead of full licensing, which grants the right of audience. A full license, comparable to the Lawyers' Establishment Directive that qualifies EU lawyers to practice domestic law, will likely generate undue protectionist reaction that could prove inimical to ASEAN's overall

226 Ibid, at 26. See also ASEAN Integration Monitoring Report, above n 25, at 113 ('The agreements on accountancy services and surveying qualification services are framework MRAs, so that another stage of negotiated accords is required to turn them into fully functional MRAs.'). To promote mutual recognition of engineering services, APEC also established the APEC Engineer Coordinating Committee. The APEC Engineer Manual: The Identification of Substantial Equivalence (2009), at 8–9. ASEAN MRA on legal services may follow the same approach.

227 Note that the approaches of ASEAN MRAs vary across sectors. ASEAN-level institutions, such as the ASEAN Architecture Council and the ASEAN Chartered Professional Engineer Coordinating Committee, were established to enforce MRAs on architectural and engineering services. Other MRAs do not include an ASEAN-level approval mechanism. ASEAN Integration Monitoring Report, above n 25, at 113; Deunden Nikomborirak and Supunnadee Jitdumrong, 'The ASEAN Dispute Settlement System', in Sanchita Basu Das et al. (eds), *The ASEAN Economic Community: A Work in Progress* (Singapore: Institute of Southeast Asian Studies, 2013), at 104.

228 See Roadmap for an ASEAN Community: 20092015 (2009), at 26 (stating that the ASEAN Minus X formula can be used to allow flexibilities).

229 'Qualifications to be a "Qualified Person"', http://www.lpqb.org.my/index.php?option=com_content&view=article&id=131&Itemid=77 (visited 17 June 2014); Zaki Abdul Rahman, 'Implications of the ASEAN Charter on Legal Education in ASEAN', <http://www.aseanlawassociation.org/10GAdocs/Brunei1.pdf> (visited 17 June 2014), at 1.

liberalization efforts.²³⁰ Although ASEAN-wide recognition of legal education may simplify full licensing restrictions, the obstacle will be the required changes to the national admission requirement limited to citizens.²³¹ These changes exceed the current mandate of the AEC. ASEAN states may consider adopting a mechanism similar to Singapore's FPE that enables foreign attorneys to practice the commercial laws of the host country. Preferential requirements of aptitude testing and work experience can be applied to ASEAN lawyers.

Given ASEAN's development stage, the legalization of limited licensing across the region will better suit the pragmatic needs of law firms and the AEC. ASEAN's limited licensing scheme should undergo a two-step reform. First, based on the NAFTA and the KORUS FTA practices, developing FLC rules in ASEAN jurisdictions will clarify the status of foreign lawyers. Registered FLCs will be allowed to join ASEAN firms, as locally qualified lawyers are permitted to work in foreign firms. Hence, the enactment and convergence of ASEAN FLC rules will benefit the internationalization of the ASEAN legal services market. Second, establishing an ASEAN Legal Consultant (ALC) mechanism will grant ASEAN lawyers preferential treatment, accelerating a free flow of legal services within the prospective AEC.²³² The practice areas of an ALC will include laws of the home country, ASEAN law and international law. With the emergence of AEC rules, the capacity to practice ASEAN law will provide ASEAN lawyers with additional advantages in legal practice. The ASEAN law practice covers not only cross-border M&As, but also trade and investment disputes before the ASEAN dispute resolution mechanisms. In comparison with FLC rules, ALC requirements will be further reduced under prospective AFAS commitments. The MRA on legal services will also facilitate the operation of the ALC scheme.

The ASEAN Lawyer Council should develop FLC and ALC requirements and registration procedures. Furthermore, as the EU experience illustrates, the integration of legal services makes a pan-ASEAN code of professional conduct indispensable.²³³ Uniform ethical rules will address the 'double deontology' dilemma where ASEAN lawyers may encounter conflicts of domestic rules.²³⁴ This dilemma arises in

230 See generally Directive No. 98/5, above n 68, Article 10.

231 For example, in Cambodia and Thailand, even a permanent resident is not qualified to be admitted to the bar. Law on the Bar [of Cambodia], Article 31(1); Lawyers Act [of Thailand] (1985), Article 35(1).

232 ASEAN's limited license will create a system comparable to the European legal consultant mechanism under the Lawyers' Establishment Directive, although the laws of the host country will be excluded from permitted practice areas. Directive No. 98/5, above n 68, Article 5. See also Ong, above n 6, at 10 ('[ASEAN countries should] agree to the idea of a restricted reciprocity of admitting and providing practising certificates to each other . . .'); Mohamad, above n 215, at 12 ('It is imperative for [ASEAN] countries to establish common qualification entrance for ASEAN lawyers to practice in any member countries if liberalization of legal services is to progress.'). An ASEAN Legal Consultant system will be a feasible scheme to materialize these suggestions.

233 See Mary C. Daly, 'The Dichotomy between Standards and Rules: A New Way of Understanding the Differences in Perceptions of Lawyer Code of Conduct by U.S. and Foreign Lawyers', 32 Vanderbilt Journal of Transnational Law 1117, 1159–61 (1999) (discussing that in 1988, the Council of the Bars and Law Societies of the European Union 'adopted the Code of Conduct for Lawyers in the European Community (CCBE Code)').

234 See Hans-Jürgen Hellwig, 'At the Intersection of Legal Ethics and Globalization: International Conflicts of Law in Lawyer Regulation', 27 Penn State International Law Review 395 (2008–09), 395–96 (defining double deontology in the European context).

cross-border cases that involve bribery or terrorism-related money laundering.²³⁵ A lawyer's reporting duties under a country's rules contravene another country's confidentiality requirement.²³⁶ To regulate the evolving cross-border legal practice, ASEAN's code of conduct should also incorporate ethical obligations on legal outsourcing. The expansion of outsourcing services may expand in ASEAN countries and, hence, the code should ensure pertinent rules such as requirements for conflict checks and preservation of confidentiality.²³⁷ These soft-law ethical rules will complement the treaty-based liberalization of legal services in ASEAN and galvanize the transformation of the AEC as an integrated legal market.

V. CONCLUSION

From the Uruguay Round to the Doha Round, accelerating trade in legal services has been a prime objective of international law firms and the 'Friends of Legal Services' countries. With economic power shifting to Asia, the ten-country ASEAN has become a rapidly emerging legal market. This article examined the bloc's liberalization of legal services in the context of the WTO and FTAs vis-à-vis the actual operations of ASEAN-based law firms. By providing the most-updated assessment of FTAs and their enforcement, the article argued that the 'paper commitments' weakness has obstructed ASEAN's liberalization efforts. This article further contended that a feasible, incremental roadmap is critical to a seamless multi-jurisdictional practice in ASEAN's legal services market.

To realize the AEC's objective to form a single market and production base, the progressive liberalization of legal services in ASEAN is indispensable. Facilitating cross-border legal practice will enhance the bloc's legal capacity building and strengthen its status for attracting FDIs and ASEAN law development. The decade-long evolution of legal services negotiations in the WTO and FTA arenas indicates the importance and complexity of achieving meaningful liberalization. The Singapore case reveals the actual effectiveness of liberalization measures such as JLVs and QFLPs. The experiences of APEC, NAFTA, the EU, and Singapore offer a menu of best practices for ASEAN's liberalization measures. To reinvigorate legal services negotiations, it is important to buttress ASEAN's legal transparency and harmonize rules on the 'fly in, fly out' practice and the commercial presence of law firms. Other key recommendations include implementing MRAs on legal services, creating the ALC mechanism and enacting pan-ASEAN rules of professional legal conduct. These reform proposals will promote the further integration of ASEAN's legal services market and fortify its competitiveness under the multilateral trading system.

235 Ibid, at 398–99.

236 Ibid.

237 For issues on legal outsourcing, see Jayanth K. Krishnan, 'Outsourcing and the Global Legal Profession', 48 William & Mary Law Review 2189 (2006–07), 2201–16; Report on the Outsourcing of Legal Services Overseas, Association of the Bar of the City of New York: Committee on Professional Responsibility (2009), at 3–12.