JUDICIARY REFORMATION UNDERPINNING ECONOMIC IMPERATIVES IN SINGAPORE

By Rajenthran Arumugam

The Judiciary, amongst the three organs of a state, is unmistakeably an important public institution — essentially being the prime custodian of "Rule of Law". In general, an efficient and independent judiciary reins in political impunity, augments economic development, and maintains social cohesion. Several of ASEAN countries' legal systems have been inherited from erstwhile colonial influences. Regrettably, today, there is a prevalent perception, particularly, in the developed countries that save Singapore, the judiciaries in the region are weak, inefficient, and to a lesser or greater degree politicized. These criticisms became more acute during the onset of the Asian financial crisis in 1997. In all fairness, since then, the ongoing process of democratization in the region has also engendered legal reforms, particularly in Indonesia, Thailand, and the Philippines. It remains to be seen if the reforms will appease both the domestic and international community. Starkly, however, the Singapore judiciary has outshone internationally since the mid-1990s. How did this come about?

Since assuming office as the Chief Justice in 1990, Yong Pung How has initiated and provided leadership for a myriad of ground-breaking reforms in the judiciary. Looking back in the early 1990s the courts in Singapore was burdened with a hefty backlog of cases, both civil and criminal. Possibly, to some extent the adage: "Delayed Justice Is Denied Justice" did then apply to Singapore court users. Nevertheless, through a combination of strategies that included effective case management, vast usage of alternate dispute resolution means and technology, the backlog of cases have since been disposed of. Today, Singapore's judiciary is internationally acclaimed for just, economical, and speedy disposal of lawsuits. The *World Competitiveness Yearbook 2004* survey on the "legal framework" and "Justice" shows Singapore ranked first and tenth, respectively, amongst 60 countries. In similar manner, in 2004 the Political and Economic Risk Consultancy (PERC) ranked Singapore's judicial system the best amongst the 12 Asian countries. In addition, the World Bank, the International Monetary Fund, as well as many visiting foreign dignitaries, including judges have consistently commended the Singapore legal system.

Economic Imperatives

Suffice it to say, other things being equal, a well-managed market-economy

induces optimal resource allocation. To this effect, laws governing personal property and contractual principles, amongst others, bring about economic allocative efficiency. Thus, without the efficacy of broad commercial laws that enshrine legal rights and obligations of all market players, market forces per se will not bring forth the desired economic objectives. Indeed, several studies plausibly argue that in the absence of responsive commercial laws in a market economy, eventually negative externalities and market failure will set in. Accordingly, commercial laws induce a respectable degree of certainty and predictability in business dealings. Next, to actualize the efficacy of commercial laws the existence of a competent and independent judiciary that is able to dispense justice in a fair, economical, and speedy manner is highly imperative. To put it another way, apart from the laws, the scope and mechanism to implement and enforce the commercial laws, decisively, is integral to strategic business practice. From an economic standpoint, a judiciary that is fraught with excessive delays, high costs, corruption, and politicization increases economic transaction costs and legal risks for business entities. Arguably, these concerns have now become more profound in light of rapid internationalization of trade and investment. Indeed, since the revival of market economy in the 1990s in the face of collapse of the socialist bloc and emergence of economic-driven China, the law and development paradigm thinking has received fresh impetus.

In the main, all ASEAN countries have promulgated some form of commercial laws. The question is: Are they responsive and business-friendly? Laws that are prescriptive as opposed to permissible tend not to be good economic allocator. More importantly, the legal institutions of several ASEAN countries are not entirely satisfactory. First, countries like Indonesia, Thailand, and the Philippines have courts beleaguered by huge backlogs of cases and relative high legal costs. Courts in the CLMV countries (Cambodia, Laos, Myanmar, and Vietnam) remain shoddy, let alone have laws and regulations that are cumbersome and interspersed with loopholes. Second, the competence and integrity of several ASEAN countries bench as well as the practising bar have often been called into question. Third, anecdotal evidence suggests that there is a lack of political will in some ASEAN countries to empower and bestow independence to the judiciaries; hence, to some degree transparency and

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accountability in their judicial processes are verily wanting. There is a pressing need to undertake cogent and meaningful judicial reformatory works in the region — fundamentally the challenge is to attain and sustain a just, economical, and speedy legal system.

Progressive and Responsive *Modus Operandi*

From the very beginning, Singapore's judiciary reformation in the 1990s has been squarely underpinned on pragmatism and structured methodology. In the 1980s, in part due to vast unchecked procedural flexibility and in part due to counsel indolence, it was not uncommon to see lawsuits taking six to seven years to be heard. But since the 1990s to the present, the focus of the judiciary has been to resolutely emphasize on a proactive case and trial management ethos that underscores fair, cost-effective, and speedy disposal of lawsuits. Consequently, the necessary institutional set-ups and procedural norms have been established. To the end, first, the ambit of power and function of the High Court and the Subordinate Courts have been rationalized. Second, all lawsuits continue to be meticulously tracked down and monitored till disposal. Third, in the absence of a valid reason, a strict policy of reluctance to vacate or change trial dates, once allotted, is observed. Fourth, through vociferous usage of Pre-Trial Conferences (PTCs), every lawsuit is prepared for an uninhibited open trial via narrowing down of the issues and the law in question and more importantly, exploring the possibility of an amicable settlement between all parties concerned. Indeed, judges and judicial officers tend to take PTCs seriously — an issuance of an "unless order" means that if judicial directions are not adhered to by the litigants, the related lawsuit (civil) can be dismissed. Overall, the PTCs have yielded much success in steering a pending lawsuit forward as well as to prevent dilatory tactics.

Similarly, effective trial management has been achieved by more emphasis on written submission as opposed to oral submission during court hearings, restrictions on the right to appeal and imposition of court fees. Not surprisingly, at present lawsuits are disposed of by either a settlement or trial at a fairly short space of time that typically ranges from a few months to a year. The judiciary has consistently taken great pains to explain that the judicial proactive stance is not intended to deter the public from, or deprive them of, access to justice; on the contrary, it is to facilitate the due process of law for the earnest in an economical and prompt manner and correspondingly rid inconsiderate court users. From an

economic perspective, this will as a matter of fact heighten business confidence in Singapore. This also explains Singapore's ability to attract foreign direct investment with relative ease. Of course, the clean and effective government and bureaucracy is partly the reason. Also, the no-nonsense criminal jurisdiction keeps crime rate at a low level.

Alternate Dispute Resolution (ADR) mechanism principally in the form of conciliation, mediation, and arbitration has gained wide international recognition since the 1980s. The Singapore judiciary formally introduced the ADR mechanism in the 1990s, both within and outside the judicial process — a multi-door courthouse approach. Statistically, a high portion of lawsuits in Singapore is settled through the court-initiated mediation services free-of-charge. Similarly, the Singapore International Arbitration Centre (SIAC) provides administered arbitration services for both domestic and international commercial disputes. Furthermore, Singapore is a signatory to the 1958 United Nations Convention of the Recognition and Enforcement of Foreign Arbitral Awards and the UNCITRAL Arbitration Rules. Several advantages can be accrued from the utilization of SIAC-administered arbitration. First, it is economical and prompt. Second, confidentiality of arbitration proceedings is fully protected by law. Third, all concerned parties have high latitude in the control and course of the arbitration process. Fourth, the formal courts do not unnecessarily interfere in the conduct of the arbitration. Fifth, and most importantly, arbitration is inherently less confrontational and acrimonious as compared with a formal trial and therefore facilitates business comity, which is good for long-term economic development. By all accounts, Singapore has been extremely successful in putting in place a credible ADR mechanism; in fact, the arbitration environment here is frequently equated to that of New York and London. Similarly, most ASEAN countries at varying degree have introduced the ADR mechanism, but in most part due to institutional and human capacity failures are as yet to reap optimal returns.

The hallmark of judicial reformation in Singapore is arguably the infusion of technology in the administration of justice. The Electronic Filing System (EFS) under the aegis of LawNet, a strategic national information network, has introduced revolutionary ways of electronically filing, serving, and examination of a myriad of court documents and more importantly, e-judicial hearings, both in open trials and chambers. In others words, through the installation of necessary hardware and software technological equipment in the courts and law firms, judicial processes are now conducted without the need for voluminous amount of

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paper and, if feasible, physical appearance of counsel and witnesses. In sum, information technology has taken the Singapore's judiciary to another level of concept and functionality, albeit the essence of traditional jurisprudence remains strongly intact.

Concluding Remarks

Suffice it to say, today, both the public and the business community have strong confidence in the Singapore judiciary, let alone the international community — its laudable attributes include competency, dynamism, independence, transparency, and accountability. Independent surveys attest to this. The efficacy of the rule of law has been explicitly brought to the people and the business community, which translates to sustainable economic development and social cohesion in the country. Judicial reform is an ongoing process and ASEAN countries could benefit by exchanging ideas and methodology. Gleaned from the Singapore experience some plausible policy suggestions include:

- At the outset, a strong political will to implement judicial reform is extremely important and is the deciding factor in concretizing the underlying reform objectives.
- Judges per se should actively pave the way and provide the leadership for a judicial reformation agenda that ranges from the immediate to long-term concerns.
- Judicial reform should be on a consultative and consensual basis, particularly with practising bar and court users.
- Judicial reform should adopt a structured pattern with necessary institutional support and regulation changes.
- An incremental approach to judicial reform is prudent and a systematic auditing of new changes or modifications to validate stated objectives and corresponding results would be instructive.
- The public and the business community should be informed of the reform features in a timely and suitable manner (pamphlets, mass media, and the Internet).
- All aspects of judicial reform should be scrupulously well thought out — hence, erratic changes to legal procedural rules and norms should be clearly avoided.