BAKER & MCKENZIE

Submission to Department of Foreign Affairs and Trade

Australia-India Comprehensive Economic Cooperation Agreement

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1. Executive Summary

1.1 Baker & McKenzie is pleased to have the opportunity to make this submission to the Department of Foreign Affairs and Trade in relation to the proposed Australia-India Comprehensive Economic Cooperation Agreement (**AICECA**). In particular, Baker & McKenzie appreciates the opportunity to express its views on the entry of foreign law firms into India's legal market.

1.2 Baker & McKenzie has 77 offices in 47 countries, and has gained first hand experience from entering these legal markets and it is from this experience that we make this submission.

1.3 India has historically been resistant to opening its legal market to foreign law firms and foreign lawyers. In more recent times, we have seen a wider realization within the legal community in India of the importance of globalization and its implications for the growth of any economy. There is growing recognition that this also applies to the legal profession. Therefore, this traditional attitude is beginning to shift and more notably since the newly elected Indian government came into power.

1.4 Traditional barriers to opening India's legal market have largely centred around:

(a) a fear of the impact of liberalisation based on previous experience of the Big Four accounting firms entering India;

(b) a fear of loss of share of the market; and

(c) the ability of Indian firms to compete with foreign law firms; for example there are strict restrictions on advertising by law firms.

1.5 Australia is just one of a number of countries engaging with India in relation to entry into the legal market.

1.6 The benefits of deregulation of India's legal market include increased facilitation of trade and investment not only bilaterally but also within the region. Opening up the legal market also brings benefits to the domestic legal profession in India by providing increased opportunities for training and development for Indian lawyers, access to innovative approaches to the supply and delivery of commercial legal services and opening up an international client base.

1.7 Baker & McKenzie understands that a phased entry of foreign firms into the Indian legal market is currently being considered and joint venture/ partnership with local firms may form one of the possible frameworks.

1.8 A number of other countries have recently opened their legal markets to foreign law firms. In relation to Australia, the entry into the Korea-Australia Free Trade Agreement and Japan Australia Economic Partnership Agreement further illustrates this move towards securing such access to those legal markets.

2. Overview of legal market in India

2.1 India's legal profession has a rich heritage, built on years of ethics, culture and tradition. It is the world's second largest legal profession. The size of the profession was estimated in 2012 to be worth US$4 billion and is expected to grow to US$6.5 billion by 2016.

2.2 According to a Right to Information response submitted by the Bar Council of India, in 2011[1], there are over 1.3 million lawyers in India and this number is estimated to grow by 4% each year. Of these 1.3 million, it is estimated that only 5% of these lawyers are transactional lawyers.

3. Traditional barriers to opening India's legal market and general prohibition on foreign law firms

3.1 Traditionally, there has been some reservation in the Indian legal market regarding entry of foreign law firms and how this might affect Indian law firms' share of the market. Many domestic firms are concerned about the impact of liberalization on the profession, fearing that it may be exposed to the same level of international competition as the country's accounting firms. The Big Four (Deloitte, PwC, Ernst & Young and KPMG) have introduced strong competition for independent accountancy professionals in India and there is naturally a widespread belief that the same would happen to lawyers should the legal market open up.

3.2 The Indian regulations are guided by stringent guidelines which do not permit Indian firms to advertise or have elaborate websites. This has, to some extent, led to some firms believing that they are not rightly equipped to compete with foreign firms, should the market be opened up.

3.3 The Chairman of the Society of Indian Law Firms (SILF), Mr. Lalit Bhasin has recently been quoted as saying to the Business Standard, a reputed business daily newspaper:[2]

We have so many restraints and constraints. We cannot have our own websites or our firm's entries in international law directories, or market our firms through brochures. Even the chairman of the Bar Council of India has said he is in favour of first opening up of the legal sector in the country. This will help us to come up to the level where we can compete effectively (with foreign law firms). On this, we are all on the same page - the government, Bar Council of India and Society of Indian Law Firms.

3.4 As a result of these reservations, India has kept its doors shut to foreign law firms.

3.5 By way of historical background, in the early nineties, a number of U.S. and U.K. based law firms (**Foreign Law Firms**) applied to India's Foreign Investment Promotion Board for permission to operate in India. Permission was denied. Those firms then sought permission from the Reserve Bank of India (**RBI**) under s. 29 of the *Foreign Exchanges Regulation Act 1971* (**FERA**) (since repealed) to set up a liaison office in India to conduct the activities of, amongst other things:

(a) coordination, communication between its head office, clients, various governments;

(b) establish business contacts, explore foreign investment opportunities in India and other administrative functions.

The RBI granted permission under FERA with certain restrictions; such as, the liaison office shall not enter into contracts in its own name and its expenses shall be met by its head office etc.

[1] *http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/vision-statement-2011-13/*
http://www.legallyindia.com/201302183448/Bar-Bench-Litigation/rti-reveals-number-of-lawyers-india
[2] *http://www.business-standard.com/article/economy-policy/we-are-against-fdi-in-the-legal-profession-lalit-bhasin-115022200787_1.html*

3.6 Despite this decision by the RBI; however, in 1995, the Lawyers' Collective (**Petitioners**), a public trust, filed a writ petition in the High Court of India against those Foreign Law Firms and RBI[3]. The issues petitioned before the High Court were:

(a) the RBI could not grant Foreign Law Firms permission to set up a liaison office in India under FERA; and

(b) the Foreign Law Firms could carry out liaising activities in India only upon due enrolment as an 'Advocate' under the provisions of the *Advocates Act 1961*.

3.7 The Petitioners argued that RBI had no power under s. 29 of FERA to allow any foreign law firm to practice law in India, since practice of law is not in the nature of trade, commerce or industrial activity (for which RBI is empowered to allow setting up of a liaison office).

3.8 The judgement of this case was made in 2009, where the High Court held that:

(a) Since the Foreign Law Firms' head offices provide legal advice to clients all over the world, their liaison office in India, even though functioning as coordination and communication channels, would also be conducting activities in relation to providing legal advice. In other words, the activity of the liaison office is "inextricably linked" to the head office of the Foreign Law Firms.

(b) RBI's authority under s. 29 of FERA is limited to granting permission to foreign entities to set up a branch or liaison office in India for the carrying on of any activity of trading, commercial or industrial nature.

(c) Based on judicial precedents , the High Court held that since the practice of law is a profession and not a business, trade or commerce, as covered under the scope of s. 29 of FERA, the RBI has no authority to grant permission to foreign law firms to establish a liaison office in India.

(d) The object of the *Advocates Act 1961* is inclusive and is meant to regulate persons practicing law in any part of India as well as persons practicing the profession of law in any court, including Supreme Court. If it were to be held that practice of law did not include non-litigious practice, the purpose of the *Advocates Act 1961* would fail since any professional misconduct of an advocate while conducting non-litigious practice would not be punishable.

(e) The High Court also directed the Government of India to act expeditiously in relation to the issue of foreign law firms practicing the profession of law in India, as this issue has been pending for over 15 years.

3.9 Then in March 2010, A.K. Balaji, an Indian lawyer acting on behalf of the Tamil Nadu-based Association of Indian Lawyers, filed a writ in the Madras High Court demanding a complete ban on foreign lawyers operating in India[4]. The petition named thirty-one foreign law firms as defendants, including major U.K. based firms Freshfields Bruckhaus Deringer, Allen & Overy and Clifford Chance, as well as U.S. firms including Wilmer Hale, Perkins Coie, Davis Polk & Wardell and White & Case and Australia's Clayton Utz and Freehills (now Herbert Smith Freehills). Baker & McKenzie was not a party to this proceeding.

3.10 In his petition, Balaji contended that the defendants violated the *Advocates Act 1961* by practicing law in India without being enrolled as advocates. Specifically, he objected to

[3] *Lawyers Collective v Chadbourne and Park and Others* Bombay High Court, case no. WP/1526/1995.
[4] *A. K. Balaji vs Government of India & Others*, W.P. No. 5614/2010.

foreign lawyers establishing Indian practices in neighbouring countries, and entering India on a temporary basis to provide corporate legal services and conduct arbitrations.

3.11 The Chennai High Court in *A.K. Balaji vs The Government of India*, and subsequently the Supreme Court of India in an interim order, provided the following guidelines for international firms active in India:

(a) international law firms and foreign lawyers can advise on India-related matters, except on pure Indian law;

(b) they can not set up a liaison office in India. However, foreign lawyers can "fly in and fly out" on a temporary basis to advise their clients on international law; and

(c) foreign lawyers can come to India to attend and hold international commercial arbitrations.

3.12 This matter is being considered by the Chennai High Court at the moment.

3.13 Despite the somewhat turbulent history of foreign lawyers operating in India, in more recent times, we have seen a wider realization within the legal community in India of the importance of globalization and its implications for the growth of any economy. There is growing recognition that this also implies to the legal profession.

4. Recent development on the entry of foreign law firms into India

4.1 In recent years, legal markets across the Asia-Pacific region have been liberalized. Member states of the World Trade Organization, of which India is also a member, are required to liberalize their legal markets. [5]

4.2 Following the introduction of the newly elected government and a pro-business atmosphere in India, the legal community worldwide is now watching to see whether India's new government will liberalize its legal sector.

4.3 In the last couple of months, market reports have indicated that the new government is seriously considering liberalizing the legal market. We understand that an Inter-Ministerial Group (**IMG**) has been formulated to compile a paper setting out its recommendations for the Cabinet to consider.[6]

4.4 We understand that the IMG is considering a phased entry of foreign firms into the Indian legal market and may consider joint venture/ partnership with local firms as one of the possible frameworks. This is discussed in further detail below.

4.5 We understand and appreciate that the IMG may need to address a number of domestic issues that local firms face at the moment before international firms can be allowed to set up in the country. For example, as previously mentioned the current regulations in India do not permit Indian law firms to advertise or have elaborate websites. The IMG will need to create a roadmap to effectively equip local firms to compete with foreign competition in the market.

[5] *Asia Law Portal - Will India's new government liberalize the country's legal market?* http://asialawportal.com/2014/08/18/will-indias-new-government-liberalize-the-countrys-legal-market-2/

[6] *Legal League Consulting - Understanding the liberalization buzz in the Indian Legal Sector* http://www.legalleague.co.in/What%20to%20expect%20from%20the%20Liberalisation%20Buzz_new.pdf

5. Australia and other key countries' engagement with India on entry into the Indian legal market

5.1 Baker & McKenzie is pleased to note the significance of India as a trading partner for Australia and the recent bilateral talks between the governments of the two countries to further deepen these ties.

5.2 As the world sees a major shift in thinking and the emergence of Asia as the centre of the global economy, it is extremely timely that these two economies in the region forge stronger ties.

5.3 There have been several requests in the past from various sectors of Australian business and the legal profession requesting reciprocity and liberalization of the legal market. Most notably, in the Law Council of Australia's submission dated 30 January 2012, where it was expressed that the "*Australian legal profession seeks practice rights in India which are no more burdensome than the rights of Indian lawyers to practise law in Australia.*"[7]

5.4 India has also received requests from other countries such as the U.S., the European Union, New Zealand, Brazil, Singapore, China, Switzerland and Japan seeking permission for their lawyers to have access to the Indian legal market. The nature of such requests has ranged from abolishing the nationality requirement for obtaining qualification as a lawyer to permitting foreign law firms to establish enterprises with partnerships/joint ventures with local firms.[8]

6. Benefit of deregulating legal markets

6.1 Baker & McKenzie notes the submissions provided to the Department of Foreign Trade and Investment by the Law Council of Australia in 2012 as part of the Australia Comprehensive Economic Cooperation Agreement (**Law Council Submission**) and by the International Legal Services Advisory Council (**ILSAC**) as part of the Australia-India Free Trade Agreement Feasibility Study in 2008 (**ILSAC's Submission**), and would like to endorse a number of the points made in those submissions.

6.2 In particular, Baker & McKenzie would like to point out the following statements made in the Law Council's Submission with respect to trade and investment:

(a) "*The Law Council notes the significance of India as a trading partner for Australia and supports the Australian Government's activities to improve opportunities for trade and investment between India and Australia…AICECA has the potential to create many opportunities for clients of Australian lawyers and law firms and this will have a significant impact on the services which Australian lawyers provide to their clients, particularly in key areas of trade and investment.*"

(b) "*India's framework for domestic regulation of legal services maintains artificial barriers to trade in services which are contrary to India's commitments under the General Agreement on Trade in Services (GATS). These barriers are costly to India's*

[7] *Law Council of Australia submission to the Department of Foreign Affairs and Trade in relation to the Australia Comprehensive Economic Cooperation Agreement, 30 January 2012, 6. Available at* http://www.dfat.gov.au/trade/agreements/aifta/Documents/law-council-australia.pdf

[8] *[India Business Law Journal, December 2014/January 2015 article p 22]*

economy and severely impede both the speed and efficiency of international transactions between Australian and Indian business sectors."[9]

6.3 Deregulating India's legal market can not only facilitate increased flow of trade and investment between Australia and India and within the region; it can also deliver benefits to India's legal profession. In that regard, Baker & McKenzie would like to reiterate the following benefits for India's legal services sector that are set out in ILSAC's Submission:

(a) "*greater opportunities for specialisation by local lawyers, leading to the retention of India's best lawyers;*

(b) *opportunities for Indian lawyers and law firms to work with Australian lawyers and law firms to provide legal services to clients in the region, particularly across South East Asia and China…*

(c) *greater opportunities for local lawyers to gain wider expertise and experience;*

(d) *greater opportunities for local practitioners to provide supporting or complementary services;*

(e) *greater opportunities for international commercial arbitration being conducted in the country;*

(f) *immediate access to enhanced professional training, both in terms of increased availability and exposure to international best practice, including in practice management;*

(g) *immediate access to an international client base and top-end electronic legal resources;*

(h) *access to innovative approaches in the supply and delivery of commercial legal services; and*

(i) *improved client responsiveness due to increased choice in legal services providers and cost efficiencies in the supply of international legal services…*".[10]

7. Current regulation of foreign lawyers in India

7.1 As mentioned above the current framework allows foreign law firms to advise their clients on intentional law aspects only, on a fly-in fly-out basis, and restricts them from having presence or liaison offices and from advising on Indian law. Refer to paragraph 3.11.

8. Suggestions for regulation of foreign lawyers in India

8.1 A number of legal markets within the Asia-Pacific region have opened up in recent times. However, much care and attention has been placed on protecting the domestic legal market in taking these steps. Schedule 1 to this submission provides a brief overview of the deregulation of the legal markets in Singapore, South Korea, Malaysia and Japan.

[9] *Law Council of Australia submission to the Department of Foreign Affairs and Trade in relation to the Australia Comprehensive Economic Cooperation Agreement, 30 January 2012, 3. Available at http://www.dfat.gov.au/trade/agreements/aifta/Documents/law-council-australia.pdf*

[10] *International Legal Services Advisory Council submission to the Department of Foreign Affairs and Trade in respect of Australia-India Free Trade Agreement Feasibility Study, June 2008, 6.*

8.2 Most Australian lawyers and law firms are not seeking to practise as advocates in India but rather, seek permission to practise Australian and international law for the purpose of advising clients on international commercial transactions.

8.3 Drawing from the examples of other legal markets, there are a number of frameworks that the Indian government can consider in relation to its own legal market. In our view, the best strategy would be a phased approach. This approach has been used in recently deregulated legal markets in South Korea and Japan (for more information please refer to Schedule 1).

8.4 This approach would enable the Indian government to introduce strategies and a framework that ultimately equips local Indian firms and lawyers with the tools to compete on a level playing field with foreign competition.

8.5 A phased approach may achieve the following:

(a) Phase 1

(i) allow foreign law firms to establish and operate representative offices from which their foreign lawyers are permitted to practise and advise in relation to their home jurisdiction, international law and to conduct international commercial arbitration, conciliation and mediation; and

(ii) allow foreign lawyers to be employed as legal consultants to domestic law firms to provide the same class of legal services set out above;

(b) Phase 2

(i) allow foreign law firms to practice in permitted areas of practice in Indian law through hiring local Indian lawyers with local practising certificates or foreign lawyers with a recognised foreign legal certificate; and

(c) Phase 3

(i) permit Australian and Indian law practices to formally enter into commercial associations such as joint-ventures and strategic alliances and to permit them to enter into fee and profit-sharing arrangements.

9. Lessons learned and key issues to consider based on experience in entering other legal markets

9.1 Baker & McKenzie, the first truly global law firm, has been the first mover in many markets over the years and has 77 offices in 47 countries. We have the advantage of being exposed to diverse legal markets. Most of our Partners who have played vital roles in our expansion are supportive of liberalized legal markets. They have, for the benefit of this submission, shared their key learnings as a foreign firm entering a recently deregulated or rapidly evolving legal market and how the entry of foreign law firms can promote the host country's economy and increase the ease of doing business for both local and international clients.

9.2 The Managing Partners views are as follows:

(a) Baker & McKenzie, Asia Pacific

"*Lawyers are enablers of economic growth and today, they are closer to business and strategic decisions more than ever before. With so many emerging economies competing for global FDI, each country needs to listen to their potential investors carefully and take into account what investors say about the ease of doing business. Emerging economies seeking to*

attract FDI will understand that their sources of capital draw comfort from having their legal counsel of choice next to them when investing in new jurisdictions.

Competition is good. It stimulates innovation, broadening of service offerings and sharing of knowledge and experiences. A strong legal profession is essential for a strong economy and a robust society, and the influx of foreign talent can enhance the quality of services and talent in the profession. There is greater scope for exchange of new ideas, innovation and collaboration. Local firms can benefit from working more closely with foreign firms as they bring rich resources, knowhow and support systems to the table. Local firms, in return, can provide support to foreign firms, with their deep understanding of the local culture and business, and regulatory environment. Liberalization also provides opportunities for increase in the number of high quality job positions for local lawyers.

Over a number of years with the Firm, I have seen our entry into many new markets. We hire local people at all levels. For example, in our Beijing and Shanghai offices, most of our people are the product of local universities in China, and many have received Baker & McKenzie scholarships during their law school years. In China, we award 18 scholarships annually, and have just announced an annual program of internships in Beijing and Shanghai."

- Bruce Hambrett, Chairman, Asia Pacific Regional Council, Baker & McKenzie

(b) Baker & McKenzie, Sydney, Melbourne and Brisbane, Australia

"If you are a business looking to invest in Australia, navigating the regulatory challenges and barriers to entry can be challenging. Being a global law firm in Australia has proven critical for the advancement of our clients seeking to do business for the first time or indeed expand their current local operations.

In response to client growth and globalisation in general, the Australian legal market has grown from state based law firms, to multistate, national and finally global entities. Trade liberalisation has been a cornerstone of Australia's economic development since the 1970s. Our nation has long pushed for multilateral, inclusive strategies to open up new markets.

Baker & McKenzie entered the Australian legal market long before any other global law firm. The benefits of foreign entrants to the local legal industry have been immense, translating into a $22.7 billion legal services sector inhabited by 19,167 businesses, contributing significantly towards Australia's economic prosperity. In addition, such a mature industry with stable rule of law has catered for the incredible inflows of foreign investment and the establishment of new businesses.

The connectedness of the world's economies and cultures is undeniable and in order to attract commerce, one must think globally with the ability to service that growth through catering for diverse needs. More competition by opening up local markets such as Australia has meant greater choice for those wishing to procure legal services while at the same time creating local jobs, contributing to the Australian economy.

Overwhelmingly, the result of global law firms entering the Australian market has led to unprecedented innovation, delivering the highest quality legal advice.

The legal market in Australia has certainly led to greater opportunities for local lawyers to gain wider, global experience."

- Chris Freeland, National Managing Partner, Baker & McKenzie, Australia

(c) Baker & McKenzie, Joint Offices (Singapore, Kuala Lumpur and Jakarta)

"*Foreign firms should be given an opportunity to practice local law such that local practitioners are exposed to and benefit from the operations of a foreign firm, its training, its management and its international reach. The world is global and local practitioners benefit tremendously by being hired by and becoming partners of foreign firms. It is a synergy which would be desirable to enhance the quality and depth of knowledge of local practitioners.*

Foreign firms bring a multiplier effect to the economy by way of offerings which may not be available from local firms. They also bring their network of clients who feel assured and comforted that the economy is open and global and is therefore able to generate comparative advantages for both local and foreign corporations. Foreign firms also discharge cross border work from the domestic jurisdiction thus bringing in revenue that may not otherwise be brought in, and providing a platform for local practitioners to be exposed to cross border work. The depth of the capital market domestically would be improved with the presence of foreign practitioners particularly from serious money centres.

Local and foreign clients will benefit substantially if they have a source of high level expertise which is global and able to deal with the laws of many jurisdictions seamlessly as they expand abroad, for local clients, and as they expand into the domestic economy, for foreign clients. Foreign lawyers will therefore be able to provide, either by themselves or with local practitioners who work with them, a complete and one-stop shop offering which will have businesses to move smoother and faster."

- Wong Kien Keong, Chairman, Baker & McKenzie, Joint Offices (Singapore, Kuala Lumpur and Jakarta)

(d) Baker & McKenzie, Tokyo, Japan

"*The Japanese market for legal services has been gradually liberalized over the last 20 years – first to allow foreign lawyers to practice independently in Japan, then to allow limited-purpose joint enterprises between foreign lawyers and Japanese lawyers and finally, in 2004, to allow full partnerships between Japanese and foreign lawyers and to permit foreign lawyers to employ Japanese lawyers.*

The main driver of liberalization in the Japanese market was pressure from clients as well as from foreign governments – through interested chambers of commerce and business councils. Clients continue their drive to be increasingly global, and need legal service firms that can address their needs in a global context – understanding both their home market as well as the global market space. The ability to provide legal support in this manner improves the value of the service to the client and also improves efficiency, thus reducing overall cost. This applies both to investment by foreign corporations in Japan and outward investment by Japanese corporations.

Foreign law firms have also brought benefits to clients in the domestic market. By bringing law firm management expertise and know how, foreign law firms have helped Japanese law firms increase quality, efficiency and profitability. By bringing transactional expertise and know how, foreign law firms have introduced new business techniques into the Japanese market which have helped clients achieve their business objectives.

Foreign law firms also offer Japanese lawyers (bengoshi) new and different career paths in Japan, and internationally – the ability to work closely with experienced foreign lawyers, and the ability to work in offices around the globe."

- Jeremy Pitts, Managing Partner, Baker & McKenzie, Tokyo, Japan

10. Contact details

10.1 On behalf of Baker & McKenzie we wish to thank you for the opportunity to make a submission.

10.2 We would welcome the opportunity to discuss any aspect of this submission with you in further detail.

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Schedule 1

Examples of other countries who have opened their legal market to foreign law firms

1. Singapore[11]

1.1 A foreign law practice may choose to set up an office in Singapore using any of the following structures by obtaining the relevant licence from the Attorney-General:

(a) **Licensed Foreign Law Practice** (**FLP**): FLPs are usually set up in Singapore as a branch of a foreign law firm from another jurisdiction. An FLP that is licensed to practise foreign law in Singapore may offer the full range of foreign law-related legal services that the firm is competent to offer.

(b) **Qualifying Foreign Law Practice** (**QFLP**): The QFLP scheme was introduced in 2008. It allows foreign law practices which obtain such a license to practise Singapore law in "permitted areas of legal practice". This is done through hiring Singapore lawyers with Practising Certificates or foreign lawyers who hold the Foreign Practitioner Certificate.

"Permitted areas of legal practice" are mainly commercial areas of law and exclude domestic ring-fenced areas of legal practice such as:

(i) constitutional and administrative law;

(ii) conveyancing;

(iii) criminal law;

(iv) family law;

(v) succession law, including wills, intestate succession and probate and administration; and

(vi) conduct of litigation.

(c) **Joint Law Venture** (**JLV**) and **Formal Law Alliance** (**FLA**): Amendments were made to the Singapore *Legal Profession Act* in 2000 to introduce the JLV and FLA schemes. These two schemes provide a platform for domestic law practices and foreign law practices to enter into collaborative arrangements to provide their clients with access to a convenient "one-stop shop" for cross-border commercial and financial services. Within the JLV and FLA framework, law practices can provide their clients with a range of legal services for cross-border work seamlessly.

(i) **JLV**: The JLV is a new legal entity formed jointly between a Singapore law practice (**SLP**) and an FLP. JLVs can offer legal services covering foreign law as well as Singapore law in the "permitted areas of legal practice". The practice of the "permitted areas of Singapore law" must be done through Singapore lawyers with Practising Certificates or foreign lawyers who hold the Foreign Practitioner Certificates.

[11] *Ministry of Law* https://www.mlaw.gov.sg/content/minlaw/en/setting-up-a-practice/flp.html

(ii) **Formal Law Alliance** (**FLA**): The FLA enables a SLP and a FLP to enter into a "best friend's" relationship and collaborate as two freestanding firms. FLAs allow the SLP and FLP entering into such an alliance, the benefit of co-branding and billing, and sharing of office premises, resources and client information. Both firms however remain distinct entities and may only provide legal services that the respective firm and their lawyers are competent to provide. Ring-fenced domestic Singapore law work, including areas such as litigation remain work that can solely be handled by the SLP through Singapore lawyers with Practising Certificates.

(d) **Representative Office** (**RO**): A RO is an office set up by a foreign law practice that does purely liaison or promotional work only. A RO is not allowed to provide any legal services or conduct any other business activities in Singapore.

2. South Korea[12]

US-Korea Free Trade Agreement

2.1 The US-Korea Free Trade Agreement (**FTA**) enabled the entry of foreign firms in South Korea, where the foreign firms were allowed to open offices on the ground to advise their clients on international law in a phased manner. However, they continue to be barred from advising on local Korean law.

2.2 As part of the Korean government's efforts to satisfy its obligations under the FTA and before the FTA's formal ratification by both governments, Korea's Ministry of Justice passed the *Foreign Legal Consultant Act* (**FLCA**) in March 2009. The FLCA is the statutory mechanism that specifies which foreign lawyers and firms may work in Korea.

2.3 Under the FTA, lawyers and law firms are allowed to enter the Korean legal services market in three stages:

(a) First, U.S. law firms could establish branch offices in Korea. U.S. attorneys could also provide legal advisory services on U.S. and public international law, but not domestic law. This first stage focused on allowing foreign individuals to transact business in Korea.

(b) Second, in 2014, Korean and foreign law firms were able to collaborate in matters where domestic and foreign legal issues were mixed, and share profits realized from such collaboration. This stage focused on greater integration by foreign law firms.

(c) In the third stage, estimated to take place around 2017, foreign law firms will be able to enter into joint ventures with Korean law firms, as well as directly employ Korean legal professionals. This last stage envisions the fullest integration of foreign legal professionals in Korea, and the creation of international law firms.

Korea-Australia Free Trade Agreement

2.4 Australia and South Korea entered into a free trade agreement (**KAFTA**) which came into force on 12 December 2014.

2.5 Under the KAFTA, Australian lawyers will be able to work in Korea as foreign legal consultants for Korean and foreign law firms. Australian law firms will also be able to establish and operate representative offices.

[12] *http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1031&context=njilb*

2.6 The KAFTA puts Australian on equal footing with their U.S. and EU counterparts by:

(a) allowing Australian lawyers to provide legal advisory services on home jurisdiction and public international law; and

(b) allowing Australian firms to enter into cooperative agreements with Korean law firms (by 12 December 2016) and later, to form joint ventures law firms (by 12 December 2019).

3. Malaysia

3.1 Prior to liberalisation, foreign law firms could only set up entities in Labuan to advise on international law and offshore Malaysian law to companies incorporated in Labuan as part of the Labuan Offshore Financial Centre.

3.2 The services sector was complex and the government had to liberalise sector by sector. In 2012, amendments were made to the existing *Legal Profession Act 1976* allowing foreign law firms and foreign lawyers to practise and advise on foreign law in Peninsular Malaysia as follows:

(a) allows foreign law firms to practise in Malaysia in certain permitted practice areas through an international partnership or via issuance of a qualified foreign law firm license;

(b) local law firms will also be able to employ foreign lawyers subject to certain conditions;

(c) senior partners of foreign law firms are required to be in Malaysia for 182 days per year for the purpose of transferring expertise;

(d) approval is required to be obtained by the foreign law firms from a committee – Malaysian Bar Council and Attorney-General's Chamber; and

(e) only duly licensed foreign law firms with good reputation (not involved in civil/criminal disputes) will be approved to set up practice in Malaysia.

3.3 Foreign lawyers are not permitted to represent cases affecting the sovereignty of the country (particularly in matters relating to the Federal Constitution). They are also not allowed to practice in the areas of conveyancing, criminal law, family law, succession law, trust law and law relating to charities and foundations, registration of patents and trademarks, or appearing or pleading in any court of justice in Malaysia.

3.4 There are three categories of licence:

(a) Qualified Foreign Firm License (allowing them to operate on a standalone basis) - If law firms were to receive Qualified Foreign Firm License, they would have to demonstrate expertise in international Islamic finance;

(b) a license to work at domestic Malaysian firm; and

(c) License for International Partnership with Malaysian law firm whereby Malaysian firm will control at least 60%.

3.5 Liberalisation of the legal sector in Malaysia is intended to be gradual and progressive to allow domestic firms to prepare for competition/change in the market.

4. Japan

4.1 Japan's legal market was historically completely closed to foreign lawyers. It has opened up over time in a phased approach.

4.2 It began to open up with the introduction in 1987 of legislation governing foreign lawyers practising in Japan, Gaikoku Bengoshi ni Yoru Horitsu Jimu no Toriatsukai ni Kansuru Tokubetsu ShochiHo 66, (Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers, (Law No. 66 of 1986)).

4.3 In 1994, a system known as Gaigokuho-Jinni-Bengoshi was introduced, allowing lawyers qualified under Japanese law (bengoshi) and foreign qualified lawyers (gaiben) to form a specific joint enterprise and share profits. This attracted only a handful of foreign law firms due to its systemic restrictive conditions and it was not until 2005 that Japan began to see a significant increase in the presence of foreign lawyers.

4.4 In July 2003, the Ministry of Justice announced plans to enact legislation effective from April 2005 that would allow registered foreign law firms to enter full partnerships with Japanese firms and significantly eased restrictions on partnerships' areas of practice. Although only Japanese lawyers were permitted to practice Japanese domestic law, foreign law firms were allowed to hire bengoshi. Partner firms were also permitted to share a unified name.

4.5 In April 2010, further legislative amendments were announced permitting foreign law firms to incorporate as a Law Corporation in their own right, thereby allowing foreign law firms to operate from their own office in Japan. Foreign law firms operating in partnership with a domestic bengoshi were also permitted to form Law Corporations.

Japan Australia Economic Partnership Agreement

4.6 Japan and Australia entered into the Japan Australia Economic Partnership Agreement (**JAEPA**) which came into force on 15 January 2015.

4.7 Currently, Australian lawyers can practice Australian and international law as registered foreign legal consultants in Japan.

4.8 The JAEPA guarantees existing market access for Australian lawyers and ensures Australian law firms will be able to:

(a) form Legal Professional Corporations under Japanese law; and

(b) take advantage of expedited registration procedures for Australian lawyers residing in Japan and providing Australian and international legal services.

4.9 Australia and Japan have agreed to discussions between the Law Council of Australian and the Japan Federation of Bar Association to further cooperation in legal services. The JAEPA is intended to strengthen cooperation on provision of trans-national legal services particularly in developing markets in the Asia-Pacific region.