British East India Company

East India Company

1. (Historical Terms) the company chartered in 1600 by the British government to trade in the East Indies: after being driven out by the Dutch it developed trade with India until the Indian Mutiny (1857), when the Crown took over the administration: the company was dissolved in 1874
2. (Business / Commerce) any similar trading company, such as any of those founded by the Dutch, French, and Danes in the 17th and 18th centuries

East India Company - an English company formed in 1600 to develop trade with the new British colonies in India and southeastern Asia; in the 18th century it assumed administrative control of Bengal, Formal inauguration of The Institution of Industrial Engineering & Technology (India) at Calcutta by His Excellency Lord Chelmsford, the Governor General of India Inauguration of the First Local Association, namely, the Association of Engineers East India. in December 22,1921

The **British East India Company,** sometimes referred to as **"John Company,"** was a joint-stock company which was granted an English Royal Charter by Elizabeth on December 31, 1600, with the intention of favoring trade privileges in India. The Royal Charter effectively gave the newly created *The Honourable Company of Merchants of London Trading into the East Indies* (HEIC) a 15 year monopoly on all trade in the East Indies. The Company transformed from a commercial trading venture to one which virtually ruled India as it acquired auxiliary governmental and military functions, until its dissolution in 1858. This followed the anti-British rebellion (or First War of Indian Independence), after which the British government decided that direct rule would be more appropriate. Increasingly, the company had been compelled to promote the material and

moral progress of its Indian subjects, as, while trade remained the main goal of Empire, the British started to justify imperialism by speaking of a duty to “civilize” and “educate.” Servants of the company, though, could make vast amounts of money and were highly paid while their counterparts at home received modest salaries. The Utilitarian philosopher, J. S. Mill, who worked for the company, defended its record and argued that it ought to continue to govern India, since it was above party-politics and completely devoted to Indian affairs. London was too distant from India to administer it properly. The company's policy of annexing Indian states whose rulers they considered “corrupt” (or when they refused to recognize a ruler's heir) was one of the main causes of the revolt of 1857–1858. Technically, the company had always governed as agent of the Moghul Emperor. The last emperor was deposed and exiled after lending nominal leadership to the revolt.

A close study of the history of the company shows how the British imperial project was re-imagined over the course of its history. It began unashamedly as a money-making, commercial activity but increasingly re-conceived itself as a moral enterprise. This was arrogant but it resulted in many initiatives, such as education provision and measures aimed at creating social equality that raised many people out of poverty and imbued them with a sense of shared values and human dignity. The eminent British historian, Thomas Babbington Macauley (1800–1859) made his fortune from a few years spent in the company's service, and advised in his 1835 *Minute on Indian Education* that official funds should only be spent on English and Western education in India to produce a class of persons who would be racially Indian, “but English in taste, in opinions, in morals, and in intellect.” Such people would also be loyal to the British out of recognition of their superior moral worth. He claimed to never have met anyone who believed that, “the Arabic and Sanscrit poetry could be compared to that of the great European nations.”[1] The founding fathers of independent India later said that they admired English literature for its concern for liberty, justice, and the underdog. However, they found the British hypocritical, since they applied these high ideals at home and not in India.

Impact

Based in London, the company presided over the creation of the British Raj. In 1717 the company received a royal dictate from the Moghul Emperor exempting the company from the payment of custom duties in Bengal, giving it a decided commercial advantage in the Indian trade. A decisive victory by Sir Robert Clive at the Battle of Plassey in 1757 established the British East India Company as a military as well as a commercial power. By 1760 the French were driven out of India, with the exception of a few trading posts on the coast, such as Pondicherry.

The company also had interests along the routes to India from Great Britain. As early as 1620 the company attempted to lay claim to the Table Mountain region inSouth Africa and later it occupied and ruled St. Helena. The company also established Hong Kong and Singapore, employed Captain William Kidd (1645–1701) to combat piracy, and cultivated the production of tea in India. Other notable events in the company's history were that it held Napoleon captive on St. Helena and made the fortune of Elihu Yale (1649–1721), the benefactor of what became Yale University. Its products were the basis of the Boston Tea Party in Colonial America.

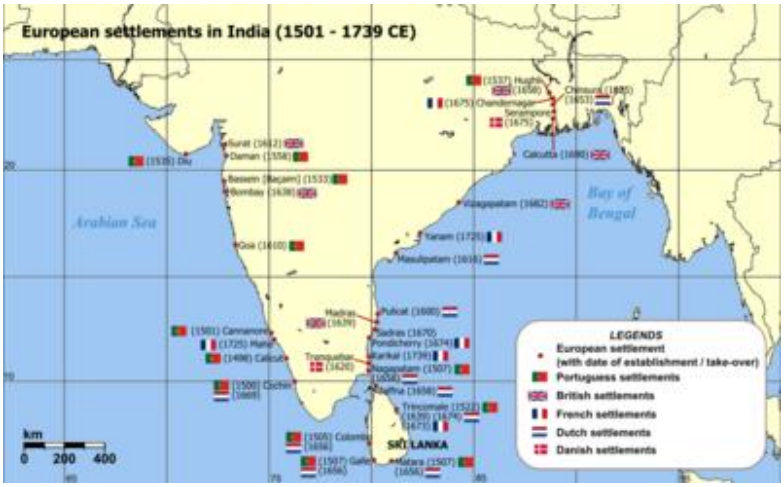
Its shipyards provided the model for St. Petersburg, elements of its administration survive in the Indian bureaucracy, and its corporate structure was the most successful early example of a joint stock company. However, the demands of company officers on the treasury of Bengal contributed tragically to the province's incapacity in the face of a famine which killed millions in 1770–1773.

History

British and other European settlements in India.

The foundation years

The company was founded as *The Company of Merchants of London Trading into the East Indies* by a coterie of enterprising and influential businessmen, who obtained the Crown's charter for exclusive permission to trade in the East Indies for a period of 15 years.[2] The company had 125 shareholders, and a capital of seventy-two thousand pounds. Initially, however, it made little impression on the Dutch control of the spice trade and at first it could not establish a lasting outpost in the East Indies. Eventually, ships belonging to the company arrived in India, docking at Surat, which was established as a trade transit point in 1608. In the next two years, it managed to build its first factory (as the trading posts were known) in the town of Machilipatnam in the Coromandel Coast in the Bay of Bengal. The high profits reported by the company after landing in India (presumably owing to a reduction in overhead costs effected by the transit points), initially prompted King James I to grant subsidiary licenses to other trading companies in England. But, in 1609, he renewed the charter given to the company for an indefinite period, including a clause which specified that the charter would cease to be in force if the trade turned unprofitable for three consecutive years.



Original organization structure

The company was led by one governor and 24 company directors who made up the Court of Directors. They were appointed by, and reported to, the Court of Proprietors. The Court of Directors had ten committees reporting to it.

Footholds in India

Traders were frequently engaged in hostilities with their Dutch and Portuguese counterparts in the Indian Ocean. A key event providing the company with the favor of Moghul emperor Jahangir was their victory over the Portuguese in the Battle of Swally in 1612. Perhaps realizing the futility of waging trade wars in remote seas, the English decided to explore their options for gaining a foothold in mainland India, with official sanction of both countries, and requested the Crown to launch a diplomatic mission. In 1615 Sir Thomas Roe (1581–1644) was instructed by James I to visit the Moghul emperor Jahangir, who ruled over most of the Indian subcontinent, along with Afghanistan. The purpose of this mission was to arrange for a commercial treaty that would give the company exclusive rights to reside and build factories in Surat and other areas. In return, the

company offered to provide goods and rarities from the European market to the emperor. This mission was highly successful and Jahangir sent a letter to the king through Sir Thomas Roe. He wrote:

Upon which assurance of your royal love I have given my general command to all the kingdoms and ports of my dominions to receive all the merchants of the English nation as the subjects of my friend; that in what place soever they choose to live, they may have free liberty without any restraint; and at what port soever they shall arrive, that neither Portugal nor any other shall dare to molest their quiet; and in what city soever they shall have residence, I have commanded all my governors and captains to give them freedom answerable to their own desires; to sell, buy, and to transport into their country at their pleasure.

For confirmation of our love and friendship, I desire your Majesty to command your merchants to bring in their ships of all sorts of rarities and rich goods fit for my palace; and that you be pleased to send me your royal letters by every opportunity, that I may rejoice in your health and prosperous affairs; that our friendship may be interchanged and eternal.[3]

Expansion

The company, under such obvious patronage, soon managed to eclipse the Portuguese, who had established their bases in Goa and Bombay, which was later ceded to England as part of the dowry of Catherine of Braganza (1638–1705) Queen consort of Charles II of England. It managed to create strongholds in Surat (where a factory was built in 1612), Madras (Chennai) in 1639, Bombay in 1668, and Calcutta in 1690. By 1647 the company had 23 factories and 90 employees in India. The major factories became the walled forts of Fort William in Bengal, Fort St. George in Madras, and the Bombay Castle. In 1634 the Mughal emperor extended his hospitality to the English traders to the region of Bengal and in 1717 completely waived customs duties for the trade. The company's mainstay businesses were by now in cotton, silk, indigo, saltpeter, and tea. All the while, it was making inroads into the Dutch monopoly of the spice trade in the Malaccan straits. In 1711 the company established a trading post in Canton (Guangzhou), China, to trade tea for silver. In 1657 Oliver Cromwell renewed the charter of 1609 and brought about minor changes in the holding of the company. The status of the company was further enhanced by the restoration of the monarchy in England. By a series of five acts around 1670, King Charles II provisioned the company with the rights to autonomous territorial acquisitions, to mint money, to command fortresses and troops, to form alliances, to make war and peace, and to exercise both civil and criminal jurisdiction over the acquired areas. The company, surrounded by trading competitors, other imperial powers, and sometimes hostile native rulers, experienced a growing need for protection. The freedom to manage its military affairs thus came as a welcome boon and the company rapidly raised its own armed forces in the 1680s, mainly drawn from the indigenous local population. By 1689 the company was arguably a "nation" in the Indian mainland, independently administering the vast presidencies of Bengal, Madras, and Bombay and possessing a formidable and intimidating military strength. From 1698 the company was entitled to use the motto "Auspico Regis et Senatus Angliae" meaning, "Under the patronage of the King and Parliament of England."

The road to a complete monopoly

Trade monopoly

The prosperity that the employees of the company enjoyed allowed them to return to their country with the ability to establish sprawling estates and businesses and obtain political power. Consequently, the company developed for itself a lobby in the English parliament. However, under pressure from ambitious tradesmen and former associates of the company (pejoratively termed *Interlopers* by the company), who wanted to establish private trading firms in India, a deregulating act was passed in 1694. This act allowed any English firm to trade with India, unless specifically prohibited by act of parliament, thereby annulling the charter that was in force for

almost one hundred years. By an act in 1698, a new "parallel" East India Company (officially titled the *English Company Trading to the East Indies*) was floated under a state-backed indemnity of £2 million. However, the powerful stockholders of the old company quickly subscribed a sum of £315,000 in the new concern, and dominated the new body. The two companies wrestled with each other for some time, both in England and in India, for a dominant share of the trade. But it quickly became evident that in practice the original company scarcely faced any measurable competition. Both companies finally merged in 1702, by a tripartite indenture involving the state and the two companies. Under this arrangement, the merged company lent to the treasury a sum of £3,200,000, in return for exclusive privileges for the next three years—after which the situation was to be reviewed. The amalgamated company became the *United Company of Merchants of England Trading to the East Indies.*

What followed in the next decades was a constant see-saw battle between the company lobby and the parliament. The company sought a permanent establishment, while the parliament would not willingly relinquish the opportunity to exploit the company's profits by allowing it a greater autonomy. In 1712 another act renewed the status of the company, though the debts were repaid. By 1720 fifteen percent of British imports were from India, almost all passing through the company, which reasserted the influence of the company lobby. The license was prolonged until 1766 by yet another act in 1730.

At this time, Britain and France became bitter rivals, and there were frequent skirmishes between them for control of colonial possessions. In 1742, fearing the monetary consequences of a war, the government agreed to extend the deadline for the licensed exclusive trade by the company in India until 1783, in return for a further loan of £1 million. The skirmishes did escalate to the feared war, and between 1756 and 1763 the Seven Years' War diverted the state's attention towards consolidation and defense of its territorial possessions in Europe and its colonies in North America. The war also took place on Indian soil, between the company troops and the French forces. Around the same time, Britain surged ahead of its European rivals with the advent of the Industrial Revolution. Demand for Indian commodities was boosted by the need to sustain the troops and the economy during the war, and by the increased availability of raw materials and efficient methods of production. As home to the revolution, Britain experienced higher standards of living and this spiraling cycle of prosperity. Demand and production had a profound influence on overseas trade. The company became the single largest player in the British global market, and reserved for itself an unassailable position in the decision-making process of the government.

William Pyne notes in his book *The Microcosm of London* (1808) that

on the 1st March, 1801, the debts of the East India Company amounted to £5,393,989 their effects to £15,404,736 and their sales increased since February 1793, from £4,988,300 to £7,602,041.

Saltpeter Trade

Sir John Banks, a businessman from Kent who negotiated an agreement between the king and the company began his career in a syndicate arranging contracts for supplying the navy, an interest he kept up for most of his life. He knew the diarists Samuel Pepys (1633–1703) and John Evelyn (1620–1708) and founded a substantial fortune from the Levant and Indian trades. He also became a director and later, as Governor of the East Indian Company in 1672, he was able to arrange a contract which included a loan of £20,000 and £30,000 worth of saltpeter (used to make gunpowder) for the king “at the price it shall sell by the candle”—that is, by auction—where an inch of candle burned and as long as it was alight, bidding could continue. The agreement also included with the price “an allowance of interest which is to be expressed in tallies.” This was something of a breakthrough in royal prerogative because previous requests for the king to buy at the company's auctions had been turned down as “not honorable or decent.” Outstanding debts were also agreed and the company permitted to export 250 tons of saltpeter. Again in 1673 Banks successfully negotiated another contract for seven hundred tons of saltpeter at £37,000 between the king and the company. So urgent was the need to supply the armed forces in the United Kingdom, America, and elsewhere that the authorities

sometimes turned a blind eye on the untaxed sales. One governor of the company was even reported as saying in 1864 that he would rather have the saltpeter made than the tax on salt.[4]

The Basis of the Monopoly

The Seven Years' War (1756–1763) resulted in the defeat of the French forces and limited French imperial ambitions, also stunting the influence of the industrial revolution in French territories. Robert Clive, the Governor General, led the company to an astounding victory against Joseph François Dupleix, the commander of the French forces in India, and recaptured Fort St. George from the French. The company took this respite to seizeManila in 1762.[5] By the Treaty of Paris (1763), the French were forced to maintain their trade posts only in small enclaves in Pondicherry, Mahe, Karikal, Yanam, and Chandernagar without any military presence. Although these small outposts remained French possessions for the next two hundred years, French ambitions on Indian territories were effectively laid to rest, thus eliminating a major source of economic competition for the company. Contrastingly, the company, fresh from a colossal victory, and with the backing of a disciplined and experienced army, was able to assert its interests in the Carnatic from its base at Madras and in Bengal from Calcutta, without facing any further obstacles from other colonial powers.

Local resistance

However, the company continued to experience resistance from local rulers. Robert Clive led company forces against French-backed Siraj Ud Daulah to victory at the Battle of Plassey in 1757, thereby snuffing out the last

known resistances in Bengal. This victory estranged the British and the Mughals, who had been served by Siraj as an autonomous ruler. But the Mughal Empire was already on the wane after the demise of Aurangzeb, and was breaking up into pieces and enclaves. After the Battle of Buxar, the ruling emperor Shah Alam gave up the administrative rights over Bengal, Bihar, and Orissa. Clive thus became the first British Governor of Bengal. Haider Ali and Tipu Sultan, the legendary rulers of Mysore (in Carnatic), also gave the British forces a tough time. Having sided with the French during the war, the rulers of Mysore continued their struggle against the company with the four Anglo-Mysore Wars. Mysore finally fell to the company forces in 1799, with the slaying of Tipu Sultan. With the gradual weakening of the Maratha Empire in the aftermath of the three Anglo-Maratha wars, the British also secured Bombay and the surrounding areas. It was during these campaigns, both of Mysore and of the Marathas, that Arthur Wellesley, later Duke of Wellington, first showed the abilities which would lead to victory in the Peninsular War and at the Battle of Waterloo. A particularly notable engagement involving forces under his command was the Battle of Assaye.

Thus, the British had secured the entire region of Southern India (with the exception of small enclaves of French and local rulers), Western India, and Eastern India. The last vestiges of local administration were restricted to the northern regions of Delhi, Oudh, Rajputana, and Punjab, where the company's presence was ever increasing amidst the infighting and dubious offers of protection against each other. Coercive actions, threats, and diplomacy aided the company in preventing the local rulers from putting up a united struggle against it. The hundred years from the Battle of Plassey in 1757 to the ant-British rebellion of 1857 were a period of consolidation for the company, which began to function more as a nation and less as a trading concern.

Opium trade

In the eighteenth century, opium was highly sought after by the Chinese so in 1773, the company assumed the monopoly of opium trading in Bengal. Company ships were not allowed officially to carry opium to China, so the opium produced in Bengal was sold in Calcutta on condition that it be sent to China.[6]

Despite the official Chinese ban on opium imports, which was reaffirmed in 1799, opium was smuggled into China from Bengal by traders and agency houses averaging nine hundred tons per year. The proceeds from drug-runners at Lintin were paid into the company's factory at Guangzhou (Canton) and by 1825 most of the money needed to buy tea in China was raised by the opium trade. In 1838 the Chinese imposed a death penalty on opium smuggling which was then close to 1,400 tons per year, and sent a new governor, Lin Zexu, to curb smuggling. This finally resulted in the Opium War of 1840, eventually leading to the British seizing Hong Kong.

Regulation of the company's affairs

Financial troubles

Though the company was becoming increasingly bold and ambitious in putting down resisting states, it was becoming clearer day by day that the company was incapable of governing the vast expanse of the captured territories. The Bengal Famine of 1770, in which one-sixth of the local population died, set the alarm bells ringing in Britain. Military and administrative costs mounted beyond control in British administered regions in Bengal due to the ensuing drop in labor productivity. At the same time, there was commercial stagnation and trade depression throughout Europe following the lull in the post-Industrial Revolution period. Britain became entangled in the rebellion in America, one of the major importers of Indian tea, and France was on the brink of a revolution. The desperate directors of the company attempted to avert bankruptcy by appealing to Parliament for financial help. This led to the passing of the Tea Act in 1773, which gave the company greater autonomy in running its trade in America. Its monopolistic activities triggered the Boston Tea Party in the province of Massachusetts Bay, one of the major events leading up to the American War for Independence.

Regulating Acts

East India Company Act 1773

By this Act (13 Geo. III, c. 63), the Parliament of Great Britain imposed a series of administrative and economic reforms. By doing so, Parliament clearly established its sovereignty and ultimate control over the company. The act recognized the company's political functions and clearly established that the "acquisition of sovereignty by the subjects of the Crown is on behalf of the Crown and not in their own right."

Despite stiff resistance from the East India lobby in Parliament and the company's shareholders, the act was passed. It introduced substantial governmental control and allowed the land to be formally under the control of the Crown, but leased to the company at £40,000 for two years. Under this provision, the governor of Bengal, Warren Hastings (1732–1818) was promoted to the rank of Governor General, having administrative powers over all of British India. It provided that his nomination, though made by a court of directors, should in future be subject to the approval of a Council of Four from India appointed by the Crown—namely Lt. General John Clavering, George Monson, Richard Barwell, and Philip Francis. Hastings was entrusted with the power of peace and war. British judicial personnel would also be sent to India to administer the British legal system. The Governor General and the council would have complete legislative powers. Thus, Warren Hastings became the first Governor General of India. The company was allowed to maintain its virtual monopoly over trade in exchange for the biennial sum and an obligation to export a minimum quantity of goods yearly to Britain. The costs of administration were also to be met by the company. These provisions, initially welcomed by the company, backfired. The company had an annual burden on its back, and its finances continued steadily to decline.

East India Company Act (Pitt's India Act) 1784

This Act (24 Geo. III, s. 2, c. 25) had two key aspects:

- Relationship to the British Government—the bill clearly differentiated the political functions of the East India Company from its commercial activities. For its political transactions, the act directly subordinated the East India Company to the British government. To accomplish this, the act created a Board of Commissioners for the Affairs of India, usually referred to as the Board of Control. The members of the

Board of Control were a Secretary of State, the Chancellor of the Exchequer, and four Privy Councilors, nominated by the king. The act specified that the Secretary of State "shall preside at, and be President of the said Board."

Internal Administration of British India—the bill laid the foundation of the British centralized bureaucratic administration of India which would reach its peak at the beginning of the twentieth century with the governor generalship of George Nathaniel Curzon, First Marquess Curzon of Kedleston.

Pitt's Act was deemed a failure because it was immediately apparent that the boundaries between governmental control and the company's powers were obscure and highly subject to interpretation. The government also felt obliged to answer humanitarian voices pleading for better treatment of natives in British occupied territories. Edmund Burke (1729–1797), the politician and philosopher, a former East India Company shareholder and diplomat, felt compelled to relieve the situation and introduced before parliament a new Regulating Bill in 1783. The bill was defeated due to intense lobbying by company loyalists and accusations of nepotism in the bill's recommendations for the appointment of councilors.

Act of 1786

This Act (26 Geo. III c. 16) enacted the demand of Lord Cornwallis, that the powers of the governor general be enlarged to empower him, in special cases, to override the majority of his council and act on his own special responsibility. The act also enabled the offices of the governor general and the commander-in-chief to be jointly held by the same official.

This act clearly demarcated borders between the Crown and the company. After this point, the company functioned as a regularized subsidiary of the Crown, with greater accountability for its actions and reached a stable stage of expansion and consolidation. Having temporarily achieved a state of truce with the Crown, the company continued to expand its influence to nearby territories through threats and coercive actions. By the middle of the ninteenth century, the company's rule extended across most of India, Burma, Singapore, and Hong Kong, and one- fifth of the world's population was under its trading influence.

Charter Act 1813

The aggressive policies of Lord Wellesley and the Marquis of Hastings led to the company gaining control of all India, except for the Punjab, Sind, and Nepal. The Indian Princes had become vassals of the company. But the expense of wars leading to the total control of India strained the company’s finances to the breaking point. The company was forced to petition Parliament for assistance. This was the background to the Charter Act of 1813 (53 Geo. III c. 155) which, among other things:

- asserted the sovereignty of the British Crown over the Indian territories held by the company
- renewed the charter of the company for a further twenty years but,
  - deprived the company of its Indian trade monopoly except for trade in tea and the trade with China
  - required the company to maintain separate and distinct commercial and territorial accounts
- opened India to missionaries. This was called the “pious clause.” Charles Grant (1746–1823), a former company employee in India and a director, and other evangelical Christians, lobbied for this provision. Previously, missionaries could not legally operate within company territory, although several did, including the pioneer Baptist missionary William Carey, by pursuing a trade or profession as a cover. The company was also required to spend money for the material and moral improvement of India. As a result of the “pious clause,” India became a major field of missionary endeavor. Missions established schools, hospitals, and clinics as well as churches. Company officials who were staunch Christians often worked closely with the missionaries.

Charter Act 1833

The Industrial Revolution in Britain, the consequent search for markets, and the rise of laissez-faire economic ideology form the background to this act.

The act:

- divested the company of its commercial functions
- renewed for another twenty years the company's political and administrative authority
- invested the Board of Control with full power and authority over the company
- carried further the ongoing process of administrative centralization through investing the governor general in council with full power and authority to superintend and through controlling the presidency governments in all civil and military matters
- initiated a machinery for the codification of laws
- provided that no Indian subject of the company would be debarred from holding any office under the company by reason of his religion, place of birth, descent, or color. However, this remained a dead letter well into the twentieth century.

Meanwhile, British influence continued to expand; in 1845 the Danish colony of Tranquebar was sold to Great Britain. The company had at various stages extended its influence to China, the Philippines, and Java. It had solved its critical lack of the cash needed to buy tea by exporting Indian-grown opium to China. China's efforts to end the trade led to the First Opium War with Britain.

Charter Act 1853

This act provided that British India would remain under the administration of the company in trust for the Crown until Parliament should decide otherwise.

The end

The efforts of the company in administering India emerged as a model for the civil service system in Britain, especially during the nineteenth century. Deprived of its trade monopoly in 1813, the company wound up as a trading enterprise. In 1858 the company lost its administrative functions to the British government following the 1857 uprising by the company's Indian soldiers, usually called the *Sepoy Mutiny.* One cause of this was the company's policy of annexing Princely States with which they enjoyed a treaty relationship when they decided that the ruler was corrupt, or because they did not recognize the heir to the throne (such as an adopted son, who could succeed under Hindu law but not British law). There was also a rumor that Britain intended to flood India with Christian missionaries and that pork and beef grease was being used to oil the new Enfield rifle that had been issued to the Indian troops. Technically, the company was always subject to the Moghul Emperor but because the last Emperor lent his name as leader of the revolt, he was deposed and exiled. Indians point out that this was actually a mutiny, rather than an Indian revolt against the British, since the Emperor could hardly "mutiny" against himself. India then became a formal Crown Colony.

Legacy

In the early 1860s all of the company's Indian possessions were appropriated by the Crown. The company was still managing the tea trade on behalf of the British government and supplying Saint Helena. When the East India Stock Dividend Redemption Act came into effect, the company was dissolved on January 1, 1874.*The Times* reported, "It accomplished a work such as in the whole history of the human race no other company ever attempted and as such is ever likely to attempt in the years to come." The Utilitarian philosopher, John Stuart Mill, who worked at the London headquarters of the company, argued in favor of its continued governance of India. He thought the company had the knowledge and experience necessary and could provide a buffer between India and the British government. Too much interference in the affairs of the

13 North American colonies had resulted in their rebellion. A minister in London would change every year or so, and would never acquire expertise. He wrote, “India has hitherto been administered, under the general control of parliament, by a body, who holding aloof from the party conflicts of English politics, devoted their whole time and energy to Indian affairs.”[7] At both ends of its operation, the company attracted men of high intellectual caliber, such as J. S. Mill and Thomas Babbington Macauley, while many of its colonial officers devoted themselves to scholarly writing, achieving eminence in their field, including the Muir brothers, Sir William Muir (1819–1905) Lt. Governor of the North-West Provinces and later Principal of Edinburgh University where his brother John Muir (1810–1882), had endowed the Cahir in Sanskrit. John was Collector of Azimgarh, among other posts, then Principal of Victoria College, Varanasi.[8] The basic administrative system of the company remained in force until the end of British rule, and continues to form the basis of Pakistani, Indian, and Bangladeshi administrative system. The senior officer under the company was the district collector (or district officer) whose original function was to collect taxes. He was later joined by the district magistrate. These men had great power and governed territories larger than several English counties. They were assisted by district medial officers, military commanders, and police officers. Each subdivision had its own junior staff, whose responsibilities mirrored the above. From 1805 to 1858, the company ran its own training academy, Haileybury College, where the curriculum included Asian languages, law, and general politics. Graduates were instilled with a sense of duty. Charles Grant, one of the architects of the curriculum, saw them as first and foremost Christian gentlemen, “men who would be not just capable civil servants but also bearers of a moral and religious tradition from a superior to an inferior society.”[9]

In 1987 coffee merchants Tony Wild and David Hutton created a public limited company called "The East India Company" and in 1990 registered versions of the company's coat of arms as a trademark, although the Patent Office noted “Registration of this mark shall give no right to the exclusive use of the words 'The East India Company'.”[10] As of December 1996 this company has a working website.[11] The company sells St. Helena coffee branded with the company name and also produced a book on the history of the company. This company has no legal continuity with the original company, although they claim to have been founded in 1600 C.E.

East India Club

On the eve of the demise of the East India Company, the East India Club in London was formed for current and former employees of the East India Company. The club still exists today and its club house is situated at 16 St. James's Square, London.

East India Company

British involvement in India during the 18th century can be divided into two phases, one ending and the other beginning at mid-century. In the first half of the century, the British were a trading presence at certain points along the coast; from the 1750s they began to wage war on land in eastern and south-eastern India and to reap the reward of successful warfare, which was the exercise of political power, notably over the rich province of Bengal. By the end of the century British rule had been consolidated over the first conquests and it was being extended up the Ganges valley to Delhi and over most of the peninsula of southern India. By then the British had established a military dominance that would enable them in the next fifty years to subdue all the remaining Indian states of any consequence, either conquering them or forcing their rulers to become subordinate allies.

At the beginning of the 18th century English commerce with India was nearly a hundred years old. It was transacted by the East India Company, which had been given a monopoly of all English trade to Asia by royal grant at its foundation in 1600. Through many vicissitudes, the Company had evolved into a commercial concern only matched in size by its Dutch rival. Some 3000 shareholders subscribed to a stock of £3 200 000; a further £6 million was borrowed on short-term bonds; twenty or thirty ships a year were sent to Asia and annual sales in London were worth up to £2 million. Twenty-four directors, elected annually by the shareholders ran the Company's operations from its headquarters in the City of London.

Towards the end of the 17th century India became the focal point of the Company's trade. Cotton cloth woven by Indian weavers was being imported into Britain in huge quantities to supply a worldwide demand for cheap, washable, lightweight fabrics for dresses and furnishings. The Company's main settlements, Bombay, Madras and Calcutta were established in the Indian provinces where cotton textiles for export were most readily available. These settlements had evolved from 'factories' or trading posts into major commercial towns under British jurisdiction, as Indian merchants and artisans moved in to do business with the Company and with the British inhabitants who lived there.

The Anglo-French conflicts that began in the 1750s ended in 1763 with a British ascendancy in the southeast and most significantly in Bengal. There the local ruler actually took the Company's Calcutta settlement in 1756, only to be driven out of it by British troops under Robert Clive, whose victory at Plassey in the following year enabled a new British satellite ruler to be installed. British influence quickly gave way to outright rule over Bengal, formally conceded to Clive in 1765 by the still symbolically important, if militarily impotent, Mughal emperor.

What opinion in Britain came to recognise as a new British empire in India remained under the authority of the East India Company, even if the importance of the national concerns now involved meant that the Company had to submit to increasingly close supervision by the British state and to periodical inquiries by parliament. In India, the governors of the Company's commercial settlements became governors of provinces and, although the East India Company continued to trade, many of its servants became administrators in the new British regimes. Huge armies were created, largely composed of Indian sepoys but with some regular British

regiments. These armies were used to defend the Company's territories, to coerce neighbouring Indian states and to crush any potential internal resistance.

Company government

the new Company governments were based on those of the Indian states that they had displaced and much of the effective work of administration was initially still done by Indians. Collection of taxes was the main function of government. About one third of the produce of the land was extracted from the cultivators and passed up to the state through a range of intermediaries, who were entitled to keep a proportion for themselves.

In addition to enforcing a system whose yield provided the Company with the resources to maintain its armies and finance its trade, British officials tried to fix what seemed to them to be an appropriate balance between the rights of the cultivating peasants and those of the intermediaries, who resembled landlords. British judges also supervised the courts, which applied Hindu or Islamic rather than British law. There was as yet little belief in the need for outright innovation. On the contrary, men like Warren Hastings, who ruled British Bengal from 1772 to 1785, believed that Indian institutions were well adapted to Indian needs and that the new British governments should try to restore an 'ancient constitution', which had been subverted during the upheavals of the 18th century. If this were done, provinces like Bengal would naturally recover their legendary past prosperity.

By the end of the century, however, opinions were changing. India seemed to be suffering not merely from an unfortunate recent history but from deeply ingrained backwardness. It needed to be 'improved' by firm, benevolent foreign rule. Various strategies for improvement were being discussed. Property relations should be reformed to give greater security to the ownership of land. Laws should be codified on scientific principles. All obstacles to free trade between Britain and India should be removed, thus opening India's economy to the stimulus of an expanding trade with Europe. Education should be remodelled. The ignorance and superstition thought to be inculcated by Asian religions should be challenged by missionaries propagating the rationality embodied in Christianity. The implementation of improvement in any systematic way lay in the future, but commitment to governing in Indian ways through Indians was waning fast.

HISTORICAL BACKGROUND

Early History: The island of Singapore was known to mariners at least by the third century A.D. By the seventh century, when a succession of maritime states arose throughout the Malay Archipelago, Singapore probably was one of the many trading outposts serving as an entrepôt and supply point for Malay, Thai, Javanese, Chinese, Indian, and Arab traders. A fourteenth-century Javanese chronicle referred to the island as Temasek, and a seventeenth-century Malay annal

noted the 1299 founding of the city of Singapura ("lion city") after a strange, lion-like beast that had been sighted there. Singapura was controlled by a succession of regional empires and Malayan sultanates.

European Arrivals: Portuguese explorers captured the port of Melaka (Malacca) in 1511, forcing the reigning sultan to flee south, where he established a new regime, the Johore Sultanate, that incorporated Singapura. The Portuguese burned down a trading post at the mouth of the Temasek (Singapore) River in 1613; after that, the island was largely abandoned and trading and planting activities moved south to the Riau Islands and Sumatra. However, planting activities had returned to Temasek by the early nineteenth century. In 1818 Temasek was settled by a Malay official of the Johore Sultanate and his followers, who shared the island with several hundred indigenous tribal people and Chinese planters. The year 1819 marked the arrival of Sir Thomas Stamford Raffles, the lieutenant governor of the British enclave of Bencoolen (Bengkulu on the west coast of Sumatra) and an agent of the British East India Company, who obtained permission from the local Malay official to establish a trading post. He called it Singapore, after its ancient name, and opened the port to free trade and free immigration on the south coast of the island at the mouth of the Singapore River. At the time, Singapore had about 1,000 inhabitants. By 1827 Chinese had become the most numerous of Singapore's various ethnic groups. They came from Malacca, Penang, Riau, and other parts of the Malay Archipelago. More recent Chinese migrants came from the South China provinces of Guangdong and Fujian.

British Colonial Period: During the 50 years following Raffles's establishment of his free-trade port, Singapore grew in size, population, and prosperity. In 1824 the Dutch formally recognized British control of Singapore, and London acquired full sovereignty over the island. From 1826 to 1867, Singapore, along with two other trading ports on the Malay Peninsula— Penang and Malacca—and several smaller dependencies, were ruled together as the Straits Settlements from the British East India Company headquarters in India. In 1867 the British needed a better location than fever-ridden Hong Kong to station their troops in Asia, so the Straits Settlements were made a crown colony and its capital Penang, ruled directly from London. The British installed a governor and executive and legislative councils. By that time, Singapore had surpassed the other Straits Settlements in importance, as it had grown to become a bustling seaport with 86,000 inhabitants. Singapore also dominated the Straits Settlements Legislative Council. After the Suez Canal opened in 1869 and steamships became the major form of ocean transport, British influence increased in the region, bringing still greater maritime activity to Singapore. Later in the century and into the twentieth century, Singapore became a major point of disembarkation for hundreds of thousands of laborers brought in from China, India, the Dutch East Indies, and the Malay Archipelago, bound for tin mines and rubber plantations to the north.

During the first half of the twentieth century, Singapore prospered as financial institutions, transportation, communications, and government infrastructure expanded rapidly to support the booming trade and industry of the British Empire. Although Singapore was largely unaffected by

World War I (1914–18), still it experienced the same postwar boom and depression as the rest of the world. Along with the influx of Chinese migrants over the previous decades came secret societies and kinship and place-name associations that grew to have great influence on society. Political activities surfaced in Singapore among the large Chinese population, first in the early 1900s between advocates of reform and revolution in China. Then, in the 1930s there was increased interest in developments in China, and many supported either the Chinese Communist Party or the Chinese Nationalist Party (Guomindang). The Malayan Communist Party (MCP) was established in 1930 and competed with local branches of the Guomindang. Both sides, however, strongly supported China against the rising tide of Japanese aggression. Some years earlier, in 1923, in reaction to Japan's increasing naval power, the British began building a large naval base at Singapore. It was costly and unpopular, but when completed in 1941, this "Gibraltar of the East" posed an attractive target for Japan.

Japan attacked Malaya in December 1941, and by February 1942 the Japanese had taken control of both Malaya and Singapore. They renamed Singapore Shōnan ("Light of the South") and set about dismantling the British establishment. Singapore suffered greatly during the war, first from the Japanese attack and then from Allied bombings of its harbor facilities. By the war's end, the colony was in poor shape, with a high death rate, rampant crime and corruption, and severe infrastructure damage. During the 1942–45 occupation period, a favorable view of the colonial relationship had lapsed among the local population, as it had in other British colonies, and upon the return of the British, resulted in demands for self-rule. In 1946 Singapore became a separate crown colony with a civil administration. When the Federation of Malaya was established in 1948 as a move toward self-rule, Singapore continued as a separate crown colony. The same year, the MCP launched an insurrection in Malaya and Singapore, and the British declared a State of Emergency that was to continue until 1960. The worldwide demand for tin and rubber had brought economic recovery to Singapore by this time, and the Korean War (1950–53) brought even further economic prosperity to the colony. However, strikes and student demonstrations organized by the MCP throughout the 1950s continued to arouse fears of a communist takeover in Malaya.

In 1953 a British commission recommended partial internal self-government for Singapore. In this milieu, other political parties began to form in 1954. One was the Labour Front led by David Marshall, who called for immediate independence and merger with Malaya. The same year, the People's Action Party (PAP) was established under the leadership of Lee Kuan Yew, a Cambridge-educated lawyer. The PAP also campaigned for an end to colonialism and a merger with Malaya. Following Legislative Assembly elections in 1955, a coalition government was formed with Marshall as chief minister. As a result of further talks with London, Singapore was granted internal self-government while the British continued to control defense and foreign affairs. In 1957 Malaya was granted independence, and the next year the British Parliament elevated the status of Singapore from colony to state and provided for new local elections.

The PAP swept the elections held in May 1959, and Lee Kuan Yew was installed as the first prime

minister. The PAP's strongest opponents were communists operating in both legal and illegal organizations. The most prominent was the Barisan Sosialis (Socialist Front), a left-wing party that retained favor in the 1960s and early 1970s. There also were fears that communists within the PAP would seize control of the government, but moderates led by Lee held sway. In 1962 Singaporean voters approved the PAP's merger plan with Malaya, and on September 16, 1963, Singapore joined Malaya and the former British territories on the island of Borneo—Sabah and Sarawak—to form the independent Federation of Malaysia. Only Brunei opted out of the federation.

Singapore as Part of Malaysia: Between 1963 and 1965, Singapore was an integral part of the Federation of Malaysia. Union with Malaya had always been a goal of Lee Kuan Yew and the moderate wing of the PAP. Once the PAP ranks were firmly under Lee's control, he met with the leaders of Malaya, Sabah, and Sarawak to sign the Malaysia Agreement on July 9, 1963, under which the independent nation of Malaysia was formed. Lee declared Singapore's independence from Britain on August 31, 1963; dissolved the Legislative Assembly; and called for an election to obtain a new mandate for the PAP pro-merger government. Many political opponents of the merger were jailed, and the PAP won a majority of seats in the assembly. Despite threats of military confrontation (Konfrontasi) from Indonesia and actual raids on Sabah and Sarawak by Indonesian commandos, the merger took place on September 16, 1963. The new federation was based on an uneasy alliance between Malays and ethnic Chinese. Communal rioting ensued in various parts of the new nation, including usually well controlled Singapore. In the end, the merger failed. As a state, Singapore did not achieve the economic progress it had hoped for, and political tensions escalated between Chinese-dominated Singapore and Malay-dominated Kuala Lumpur, the capital of Malaysia. Fearing greater Singaporean dominance of the federation and further violence between the Muslim and Chinese communities, the government of Malaysia decided to separate Singapore from the fledgling federation.

Independent Singapore: After separation from Malaysia on August 9, 1965, Singapore was forced to accept the challenge of forging a viable nation—the Republic of Singapore—on a small island with few resources beyond the determination and talent of its people. Under the leadership of Lee Kuan Yew and the PAP, the new nation met the challenge. Konfrontasi with Indonesia ended in 1966, while trade with Japan and the United States increased substantially, especially with the latter, since Singapore became a supply center for the increasing U.S. involvement in the Second Indochina War (1954–75). In 1967 Singapore joined Brunei, Indonesia, Malaysia, the Philippines, and Thailand in forming the Association of Southeast Asian Nations (ASEAN) for the purpose of promoting regional stability, economic development, and cultural exchange. In 1968 Britain announced its decision to withdraw from its military bases in Singapore within three years. Because of defense implications and the amount of British spending (accounting for about 25 percent of the gross national product [GNP] of Singapore), this was sobering news. The government called for new elections, seeking a new mandate to proceed. Because the PAP won all 58 parliamentary seats, the government was able to pass stricter labor legislation and thus help overcome the nation's reputation for frequent labor disputes and strikes. Former British naval base workers were

retrained to work in what became the Sembawang Shipyard, and eventually a major shipbuilding and ship repair center. By the 1970s, Singapore had achieved status as a world leader in shipping, air transport, and oil refining. No longer was Singapore as dependent on peninsular Malaysia for its economic prosperity.

Economic Success: In the 1970s through the 1990s, Singapore experienced sustained economic growth. Along with Hong Kong, South Korea, and Taiwan, it was called one of the "Four Tigers" of Asian economic prosperity. Labor-intensive industries were relocated to other ASEAN nations and were replaced by high-technology industries and services. The PAP developed a stable and corruption-free government, marked by strong central development planning and social policies. Despite paternalistic and at times authoritarian governmental practices and one-party dominance, the PAP maintained its large popular mandate. A Singaporean identity, distinct from that of the Malay and Chinese, emerged as the nation increasingly integrated itself into the global economy. In 1990 Lee Kuan Yew stepped down as prime minister, and Goh Chok Tong, the first deputy prime minister and first minister of defense, took over as part of the succession to a new generation of leaders. The Asian economic crisis of 1997–98 was not the major setback for Singapore that it was for other Southeast Asian nations; the regional economic downturn did bring fluctuating growth rates to Singapore but no serious problems. Except for oil-rich Brunei, Singapore remained the most prosperous nation in the region. After 14 years in office, in 2004 Goh stepped down in favor of Lee Hsien Loong, the minister of finance and son of Lee Kuan Yew. The elder Lee agreed to stay on as minister mentor and Goh as senior minister in order to oversee the transition of the new generation of leaders. Lee Hsien Loong was confirmed in office in a democratic election held on May 6, 2006.

SECTION 1 INTRODUCTION

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

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

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

SECTION 2 CONSTITUTIONAL AND LEGAL HISTORY

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

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

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

1.2.3 Early 19th century: Singapore was under the rule of the Sultan of Johor, who was based in the Riau-Lingga archipelago. A mixture of Malay customary and adat laws (localised traditional laws and customs in Indonesia and Malaysia) formed the basis of a rudimentary legal system for a community of fishermen numbering no more than 200.

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

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

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

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

1.2.8 March 1824: Singapore's status as a British possession was confirmed by the Anglo-Dutch Treaty and the Treaty of Cession. The Dutch withdrew all objections to the British occupation of Singapore and ceded Malacca in exchange for the British relinquishing control of its factories in Bencoolen and Sumatra to the Dutch. Later that year, a second treaty was entered into with Sultan Hussein and Temenggong Abdu'r Rahman, by which the Johor Sultanate ceded Singapore to the British in return for increased cash payments and pensions.

The Fledgling Legal System – A Fitful & Chaotic Start (1826 - 1867)

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

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

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

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

1.2.13 1868: The Supreme Court of the Straits Settlements was established following the abolition of the Court of Judicature. In 1873, there was further re-organisation with the

Supreme Court given the jurisdiction to sit as a Court of Appeal. Prior to this, appeals were to the King-in-Council. In 1878, as a result of the changes to the judicial system in England, the local courts were restructured accordingly to mirror those of the English High Court.

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

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

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

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

The Path to Self-Government (1948 – 1959)

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

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

1.2.19 1955: In the first Legislative Assembly elections, the Labour Front – led by David Saul Marshall – displaced the Progressive Party as the leading party, winning 10 of the available 25 seats. The People's Action Party (hereafter the 'PAP'), founded in the same year, won 3 seats. Marshall was made Chief Minister and was adamant on accelerating the movement

towards self-government. Constitutional talks on self-government began in 1956 in London with a non-partisan mission comprising representatives from all the parties in the Assembly.

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

1.2.21 8 May 1958: The Constitutional Agreement was signed in London. The British Parliament passed the State of Singapore Act on 1 August marking Singapore's transition from a colony to a self-governing state in 1959.

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

Singapore in Malaysia (1963 – 1965)

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

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

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

Disengagement from Malaysia and Independence (1965)

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

1.2.27 December 1965: Yusof bin Ishak was appointed as the Republic's first President on 22 December 1965. The Singapore Parliament completed the constitutional and legal procedures and formalities to accord with Singapore's independent status on 22 December 1965, including rectifying the anomaly of the Singapore High Court being part of the Malaysian judiciary. Singapore's second constitutional commission, headed by Chief Justice Wee Chong Jin, was established to examine how the rights of the minorities (racial, linguistic and religious) could be constitutionally safeguarded. In its 1966 report, the Wee Commission recommended that the constitutional provisions on fundamental liberties, the judiciary, the legislature, the general elections, minority rights, the special position of the Malays and the amendment procedures be entrenched (that is amending these provisions require a two-step process: a two-thirds majority in Parliament followed by a two-thirds majority at a national referendum). One recommendation that was accepted was the creation of the State Council, an advisory body, to offer advice to Parliament on proposed legislation and their impact on the minorities. This body is now known as the Presidential Council for Minority Rights.

The Development of an Autochthonous Legal System

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

1.2.29 1979: Constitutional provisions were made for the creation of Judicial Commissioners to facilitate the disposal of business in the Supreme Court for limited renewable periods of between 6 months and 3 years. Judicial Commissioners may also be appointed to hear and determine a specified case only. Except for the fact that there is no security of tenure, Judicial Commissioners exercise the same powers, perform the same functions, and enjoy the same immunities as a High Court Judge. Earlier, in 1971, the Constitution was amended to allow for the appointment of supernumerary judges, which enables High Court Judges who have reached the mandatory retirement age of 65 years to remain on the Bench for further periods on a contract basis.

1.2.30 1993: Abolition of all appeals to the Privy Council (by 1989, appeals to the Privy Council were severely restricted). A permanent Court of Appeal, presided by the Chief Justice

and two Justices of Appeal (JAs), was designated Singapore's highest court. In November 1993, the Application of English Law Act (Cap 7A, 1994 Rev Ed) came into force and specified the extent to which English law is applicable in Singapore.

1.2.31 11 July 1994: The landmark Practice Statement on Judicial Precedent declared that the Privy Council, Singapore's predecessor courts, as well as the Court of Appeal's prior decisions no longer bound the permanent Court of Appeal. The Practice Statement reasoned that '[t]he development of our law should reflect these changes [that political, social and economic circumstances have changed enormously sinceSingapore's independence] and the fundamental values of Singapore society'. Increasing confidence in the growing maturity and international standing of Singapore's legal system as well as the concern that Britain's increasing links with the European Union would render English law incompatible with local developments and aspirations gave impetus to the legal autochthony effort.

Reception of English Law

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

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

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

SECTION 3 COMMON LAW IN SINGAPORE

Common Law roots

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

The Doctrine of Judicial Precedent

1.3.2 In essence, the common law system of Singapore is characterised by the doctrine of judicial precedent (or stare decisis). According to this doctrine, the body of law is created incrementally by judges via the application of legal principles to the facts of particular cases. In this regard, the judges are only required to apply the ratio decidendi (or the operative reason for the decision) of the higher court within the same hierarchy. Thus, in Singapore, the ratio decidendi found in the decisions of the Singapore Court of Appeal are strictly binding on the Singapore High Court, the District Court and the Magistrate's Court. The court decisions from England and other Commonwealth jurisdictions are, on the other hand, not strictly binding on Singapore. Other judicial statements (obiter dicta) made by the higher court in the judgment which do not directly affect the outcome of the case may be disregarded by the lower court.

1.3.3 The lower court is able, in some cases, to avoid having to apply the ratio decidendi in a prior higher court's decision if (a) it can materially distinguish the facts of the case before the lower court from those in the prior higher court's decision; or (b) the higher court's decision was made per incuriam (that is, without abiding by the doctrine of stare decisis) in the first place.

Influences of and Departures from English Common Law

1.3.4 The heavy influence of the English common law on the development of Singapore law is generally more evident in certain traditional common law areas (such as Contract, Tort and Restitution) than in other statute-based areas (such as Criminal Law, Company Law and the Law of Evidence). With respect to the latter, other jurisdictions such as India and Australia have strongly influenced the approach and content of some of these statutes.

1.3.5 However, the erstwhile tendency of Singapore courts to adhere to English decisions has recently given way to significant departures from the English courts (even in the traditional

common law areas). There is also a greater recognition of local jurisprudence in the development of the common law inSingapore.

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

Brief Comparisons: Common Law and Civil Law Systems

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

1.3.8 Firstly, the civil law systems place relatively less weight on prior judicial decisions and do not abide by the doctrine of stare decisis, unlike the common law system as described in Section 3.2 and 3.3 above. The common law courts such as Singapore generally adopt an adversarial approach in litigation between the disputing parties whilst the civil law judges tend to take a more active role in the finding of evidence to decide the outcome of the case. Thirdly, whilst numerous legal principles have been developed by common law judges, the civil legal judges are more reliant on general and comprehensive codes governing wide areas.

1.3.9 However, the divergence between the common law and civil law systems is now less marked than in the past. Common law jurisdictions have, for instance, embarked upon legislative programmes to fill the perceived gaps of the common law. In this regard, Singapore has recently enacted various statutes to govern many specific areas of law (such as the Contract (Rights of Third Parties) Act 2001 (Cap 53B, 2002 Rev Ed), the Competition Act 2004 (No 46 of 2004) and Consumer Protection (Fair Trading) Act) (Cap 52A, 2004 Rev Ed).

Common Law and Equity

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

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

Publication of Law Reports

1.3.12 Without the regular publication of judicial precedents accessible to the judges and lawyers, the common law in Singapore would not have developed as quickly and extensively. The Singapore Law Reports constitute the major publication of Singapore court decisions since 1992. Prior to that, the Malayan Law Journal was responsible for the publication of local cases beginning in 1932. Local law books and journal articles on important areas have also contributed to the burgeoning common law in Singapore.

Muslim Law (in Personal Legal Matters)

1.3.13 Apart from the Common Law and Equity, the Syariah Court also administers Muslim law in specific personal legal matters governing marriages, divorces, the nullity of marriages and judicial separations under the Administration of Muslim Law Act (AMLA) (Cap 3, 1999 Rev Ed) in respect of Muslims or parties married under Muslim law (though the High Court has concurrent jurisdiction with the Syariah Court on specific matters relating to maintenance, custody and division of property). Significantly, with respect to issues of inheritance and succession, the AMLA expressly accepts particular Islamic texts as proof of Muslim law.

SECTION 4 THE CONSTITUTION

Supreme Law

1.4.1 The Constitution (1999 Rev Ed) is the supreme law of the land. It is mandated that any legislation contrary to the Constitution shall be void.

1.4.2 The provisions of the Constitution may only be amended by the votes of two-thirds of the total number of elected Members of Parliament. In respect of specific constitutional amendments seeking to amend the discretionary powers of the Elected President and the

provisions on fundamental liberties, however, at least two-thirds of the total number of votes cast by the electorate in a national referendum is also required.

Fundamental Rights

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

Powers and Functions of Organs of State

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

SECTION 5 THE LEGISLATURE

Function

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

The Law-Making Process

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

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

Composition

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

Elected MPs

1.5.5 The elected MPs are drawn from candidates who have emerged victorious in general elections held every 4 to 5 years. At present, Parliament is dominated by the ruling PAP with a smallish representation from the opposition political parties. They are drawn from a combination of single-member constituencies as well as Group Representation Constituencies (GRCs). Established in 1988, each GRC consists of 3 to 6 members, at least one of whom must be of a designated minority race. The underlying aim for the GRC is to entrench multiracialism in Singapore politics.

Non-Elected MPs

1.5.6 The non-elected MPs, on the other hand, do not enjoy voting rights on constitutional amendments, money bills and votes of no-confidence in the Government. They consist of two different categories: the Non-Constituency Members of Parliament (NCMPs) and the Nominated Members of Parliament (NMP).

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

SECTION 6 THE EXECUTIVE

Eligibility, Functions and Powers of the Elected President

1.6.1 The head of the Executive is the Elected President. The qualifications for presidential office are stringent. Apart from integrity, good character and other requirements, the presidential candidate must have held high office for not less than three years in a designated constitutional position, statutory board, large company or a similar or comparable position in an organisation or department of equivalent size or complexity (whether in the public or private sector) which has given him or her the requisite experience and ability to handle the responsibilities of the job. The Presidential Elections Committee has been set up to ensure the requirements are adhered to.

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

The Cabinet

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

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

Government's Legal Advisers

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

SECTION 7 THE JUDICIARY

International Reputation

1.7.1 The great efficiency and strength of the Singapore Judiciary has won her several accolades and a strong international reputation (see the rankings of the world's legal systems by Political and Economic Risk Consultancy (PERC) and Institute for Management Development (IMD)). Strict case management and Alternative Dispute Resolution methods (see Section 9 below) have reduced drastically the backlog of cases which had plagued both the Supreme Court and Subordinate Courts in the 1980s. The Honourable Chief Justice Chan Sek Keong, since his appointment with effect from 11 April 2006, has focused on implementing initiatives to enhance access of justice and the development of substantive jurisprudence in Singapore. Community courts have, for instance, been established to deal with special types of cases and offenders (such as youthful offenders, offenders with mental disabilities, family violence cases and cases involving race relations).

Function and Powers

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

The Court of Appeal

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

The High Court

1.7.4 The High Court Judges enjoy security of tenure whilst the Judicial Commissioners are appointed on a short-term contract basis. Both, however, enjoy the same judicial powers and immunities. Their judicial powers comprise both original and appellate jurisdiction over both civil and criminal matters. The recent appointment of some High Court judges to specialise in

arbitration matters at the High Court adds to the two existing specialist courts: the Admiralty and the Intellectual Property Court.

The Constitutional Tribunal

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

The Subordinate Courts

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

The District and Magistrates' Courts

1.7.7 The District Courts and the Magistrates' Courts share the same powers over specific matters such as in contractual or tortious claims for a debt, demand or damage and in actions for the recovery of monies. However, the jurisdictional monetary limits in civil matters for the Magistrates' Courts and District Courts are $60,000 and $250,000 respectively. The courts also differ in terms of criminal sentencing powers. Imprisonment terms imposed by the Magistrates' Courts are limited to two years and for the District Courts, seven years.

The Small Claims Tribunals

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

Family Courts

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

The Courts and Information Technology

1.7.10 The Judiciary has also taken major strides in utilising information technology in the courts which has, in part at least, enhanced its efficiency. The Technology Courts were, for instance, set up to enable the sharing of information by lawyers and judges and the giving of evidence by witnesses via video conferencing. Legal actions involving a company or an individual may be monitored using a facility known as Casewatch. The Electronic Filing System (EFS), a joint project by the Judiciary, Singapore Network Services and the Singapore Academy of Law to enable the filing, extraction and service of court documents as well as the tracking of case information by electronic means, has recently undergone further refinements to upgrade services to end-users. It has been reconstituted as the Electronic Litigations Systems (ELS) in order to further integrate technology into the litigation processes. Various information technology innovations have also been utilised to facilitate and streamline various criminal processes, namely the registration and management of criminal cases (SCRIMS), the processing of traffic charges between the police and the courts (TICKS 2000) and the payment of fines for minor traffic offences (ATOMS).

SECTION 8 LEGAL EDUCATION AND LEGAL PROFESSION

Functions of Lawyers in Singapore

1.8.1 The legal profession in Singapore is 'fused' - the Singapore lawyer may act as both an Advocate as well as a Solicitor. As an Advocate and Solicitor of the Supreme Court of Singapore, he or she has the right to appear and plead before the Singapore courts of justice. The opportunities of a Singapore lawyer are fairly varied – he or she may, for example, wish to serve as a legal or judicial officer in the Singapore Legal Service, an in-house counsel of a company or practise law in a local or international law firm. In the local set-up, the lawyer may handle litigation, corporate work, conveyancing and intellectual property work. The lawyer in the international law firm is generally limited to corporate, finance and banking transactions involving foreign laws. The legal profession has, like the courts, undergone increased specialisation of functions in recent years as we find more lawyers involved in more esoteric areas such as biotechnology and asset securitisations.

Admission to the Singapore Bar

1.8.2 A sound legal education is instrumental to the 'birth' and subsequent development of the Singaporelawyer. To be admitted to the Singapore Bar, an aspirant has to first attain the status of a 'qualified person' by obtaining a law degree from the National University of Singapore or from one of the approved overseas universities of the United Kingdom, United States, Australia, Canada and New Zealand. Apart from the National University of Singapore, the Singapore Management University (SMU) has set up a new law school and it is likely to welcome its first intake of law students in August 2007.

The law graduates from the approved foreign universities are also required to complete the Diploma in Singapore Law conferred by the National University of Singapore. The second important hurdle is to clear the Postgraduate Law Course exams conducted by the Board of Legal Education. Finally, the law graduate is required to fulfill the prescribed period of pupillage with an Advocate and Solicitor in private practice for six months as well as specified dining requirements. Upon fulfillment of the above requirements, he or she is admitted to the Singapore Bar.

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

Legal Education

1.8.4 With the increased internationalisation of legal services, legal education in Singapore has placed greater emphasis on the need for undergraduates to acquire knowledge of and exposure to foreign legal systems and international law. Recent overtures by the Law Society's Continuing Professional Development (CPD) Committee have made important inroads in stressing the need for the Singapore lawyer to continually keep abreast of legal developments. The Government also reviews the supply of lawyers periodically to ensure that the supply of lawyers meets the growing demand for legal talent. Thus far, there have been three major reviews in 1993, 2001, and 2005.

Forms of Legal Practice

1.8.5 For the lawyer who chooses to set up a legal practice, one prominent feature of the legal landscape in recent times has been the proliferation of vehicles for the setting up of legal practices and cooperative alliances amongst the law firms. Apart from the erstwhile sole proprietorships and partnerships, the legal profession has also seen the creation of the law corporation with the associated benefits of limited liability. There also exists the avenue of forming Joint Law Ventures and Formal Law Alliances between foreign and local law firms (subject to the approval of the Attorney General) with the attendant advantages of marketing the venture or alliance as a single service provider and centralised billing for clients.

The government, in August 2006, has given in-principle approval to a special scheme to allow local firms doing regional work involving foreign law and cross-border transactions, to hire foreign lawyers under special conditions. It is envisaged that these lawyers will eventually be allowed to practise Singapore law in prescribed areas such as banking, finance, corporate and other areas of legal or regional work.

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

Discipline of the Legal Profession

1.8.7 To maintain discipline within the legal profession, the Supreme Court wields considerable power over both practising and non-practising Advocates and Solicitors. Sanctions include striking the lawyer off the Roll, suspension for a specified period and censure. The precise sanction administered depends on the severity of the lawyer's misconduct, defect of character and other acts and omissions.

Lawyers' Fees and Legal Aid

1.8.8 Whilst lawyers' fees in Singapore are relatively modest compared to those in the United Kingdomand Australia, they can still constitute a hefty proportion of the income earned by an average Singaporean. In Singapore, the losing party generally has to pay the costs (including lawyers' fees) reasonably incurred by the victorious party. Singapore lawyers are not permitted to charge contingency fees under the Legal Profession Act. In this regard, the Singapore Legal Aid Bureau has been established under the Legal Aid and Advice Act (Cap 160, 1996 Rev Ed) for the purposes of providing legal advice and legal services in civil matters to the needy. In respect of criminal matters, the Law Society of Singapore operates the Criminal Legal Aid Scheme (CLAS) for needy accused persons.

Professional Bodies

1.8.9 Apart from the Law Faculty, two other important statutory bodies serve the legal community inSingapore. The Law Society primarily upholds the interests of the practising lawyers whilst the Singapore Academy of Law seeks to advance the legal profession as a whole.

SECTION 9 ALTERNATIVE DISPUTE RESOLUTION

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

1.9.2 In tandem with Singapore's quest to be a total business centre, great efforts have been expended towards making Singapore a major centre for dispute resolution (similar to London, New York and Paris). The Singapore Government is a strong proponent of ADR and has put in

place substantive institutional and infrastructural framework to support this endeavour. The Judiciary is also firmly behind the ADR initiatives in settling disputes and its Rules of Court (Cap 322, Rule 5, 1999 Rev Ed) provide ample opportunity for ADR even within a litigation setting. Various modes of ADR could still be relied upon even if litigation proceedings have begun. For instance, litigants or their legal representatives may either apply to the court for the matter to be referred to mediation, or directly to the Singapore Mediation Centre itself.

1.9.3 In 1986, Singapore acceded to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Under this Convention, each contracting State is required to recognise and enforce arbitral awards made in another contracting State. Arbitral awards rendered in Singapore are potentially enforceable in more than 120 jurisdictions. The International Arbitration Act (Cap 143A, 2002 Rev Ed), which incorporates the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, gives effect to the Convention.

1.9.4 In 1991, the Singapore International Arbitration Centre (SIAC) was established. This was followed by the establishment of the Singapore Mediation Centre (SMC) in 1997. In 1994, mediation of civil disputes was first introduced in the Subordinate Courts through the Court Mediation Centre. Since then, mediation is routinely conducted in the Small Claims Tribunals, the Family Court, the Juvenile Courts, and the Ministry of Community, Youth and Sports' Maintenance of Parents Tribunal (Cap 167B). In "e@dr" (http://app.subcourts.gov.sg/e-adr/index.aspx), electronic technology has been harnessed for parties in e-commerce transactions to resolve their disputes through the internet.

1.9.5 As part of the national effort to foster a mediation culture, the Community Mediation Centres Act (Cap 49A, 1998 Rev Ed) was enacted in 1997 to spearhead the community mediation endeavour, which is seen as an effective means of settling relational disputes on the ground, especially in multi-racial, multi-religious Singapore. There are now four regional Community Mediation Centres (CMCs) and several satellite mediation venues. The emphasis is to develop an Asian model of mediation drawing on the customary and influential role of the traditional leaders of the various races such as the penghulu (Malay kampong headman), the panchayat (the Indian community council) and the senior clansmen of the Chinese clan associations in mediating conflicts within those communities.

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

SECTION 10 CONCLUSION

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

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

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