

# **The Education and Training of Judges and the Implications of the Development of the ASEAN-China Free Trade Area**

*Address by Judge of Appeal Chao Hick Tin, Supreme Court of Singapore*

Distinguished guests, ladies and gentlemen

## **I. Introduction**

1 The topic for this session relates to the education and training of judges, or what I would call “judicial learning”, a subject which is close to our hearts. The societies we serve demand that there should be timely and efficient dispensation of justice. The judiciary must ensure that it is well-equipped to meet this demand.

2 In this presentation, I will touch on two broad areas. First, I will provide a brief overview of the judicial competencies needed for the proper discharge of the judicial function. I will draw upon Singapore’s experience as an example of how a judicial learning programme could be structured to maintain and enhance such competencies. Second, I will consider some of the challenges which the development of the ASEAN-China Free Trade Area (“FTA”) will present to the judiciaries of member states, and offer some thoughts on how our judicial learning programmes can evolve to meet these challenges. While I will be sharing Singapore’s experience with you, I will also be listening with keen interest to the experiences of our colleagues from China and the other ASEAN countries.

## **II. The education and training of judges**

3 The need for judicial learning is obvious. Long gone are the days when conventional wisdom was that every experienced advocate would become magically equipped for the job within minutes after taking on the appointment. We no longer think so now. Not only are the courts being tasked to grapple with increasingly complex cases, many of the cases are also highly technical, touching on matters which are not confined to the law. Thus, judges need to broaden their horizons.

(a) *Essential judicial competencies*

4 Clearly, the conception and design of any judicial learning programme requires a close and careful scrutiny of the skills and abilities needed to discharge the judicial function properly. In my view, the necessary competencies can be categorised into three broad heads. First, knowledge of the law. A sound grasp of substantive and procedural law is a minimum requirement for judges to perform their jobs fairly and effectively. Judges dealing with specialised areas of law should also acquire an understanding of the legal principles underlying the particular area of law concerned, so that they can make reliable findings on any technical issues presented to them for adjudication. Second, judges need the skills which may be conveniently labelled “court craft”. This refers to skills and abilities such as the effective management of parties and proceedings, the assessment of witnesses’ credibility and clear communication, both orally and in writing, to mention but a few. Thirdly, judges need to acquire a general awareness of the social and economic context in which the judiciary performs its duties. Legal problems cannot be considered and resolved in a vacuum. There is a growing consciousness that judges need to be mindful of the sensitivities involved in every case and appreciate the wider implications that their decisions might have on society. This will also enhance public confidence in the judiciary.

5 A comprehensive and structured judicial learning programme is critical to maintaining and enhancing such competencies. At this juncture, I think it may be appropriate for me to refer to Singapore's experience in crafting and implementing a judicial learning programme.

*(b) The Singapore experience*

6 First, to better appreciate our programme, I need to provide some context. Like many other common law jurisdictions, our judges and judicial officers have traditionally been recruited from the ranks of experienced lawyers with substantial legal experience. In recent years, however, judicial recruitment has undergone some changes. Younger and less experienced lawyers are being appointed to junior judicial posts, with the opportunity to progress to more senior judicial offices. Furthermore, our judicial appointees now come from increasingly diverse backgrounds such as academia, in-house counsel and the Singapore Legal Service. Given the difference in judicial appointees' experience and the diversity of their backgrounds, we face significant challenges in ensuring that our judicial learning programme meets the training needs of each individual appointee.

7 We have a Board of Judicial Learning, which was established in November last year to set the strategic direction for judicial learning in Singapore, as well as oversee the design and organisation of formal training programmes for judges and judicial officers of both our State Courts and our Supreme Court. Such tasks were previously within the exclusive remit of the respective courts. Despite this integration, it is nevertheless envisaged that the previously established judicial learning bodies of each court will continue to play a key role by fleshing out the strategic direction and policies of the Board and making recommendations in line with the specific needs and operating environment of the respective courts.

8 Our present judicial learning programme comprises three main components. First, every new judicial appointee will go through a robust two-week orientation programme, which aims to familiarise appointees with their respective courts and ease the transition from their previous job to their current appointment. The programme covers the three categories of competencies I mentioned earlier, and is customised in accordance with the background and training needs of each appointee. Second, there is a *mandatory* Continuing Judicial Education component, which ensures that our judges and judicial officers are kept abreast of the latest developments in areas of substantive law and general practice, and also equipped with the necessary skills to deal with the evolving requirements and pressures of their office. Finally, we are in the midst of strengthening our knowledge management framework to facilitate knowledge sharing and information dissemination amongst judges and judicial officers. We are leveraging on information technology to create online knowledge management portals which act as one-stop repositories of relevant knowledge and learning materials.

9 This is a very brief overview of our judicial learning programme. I turn now to the second area of my presentation, the development of the ASEAN-China FTA and its impact on judicial learning.

### **III. The development of the ASEAN-China FTA and its implications for the judiciary**

10 With the development of the ASEAN-China FTA, trade between the two sides has flourished. In 2009, prior to the coming into effect of the FTA on 1 January 2010, ASEAN's total trade volume with China was approximately US\$178.1 billion.<sup>1</sup> As at December 2013, China was ASEAN's largest external trading partner, with a total trade volume of

---

<sup>1</sup> <http://www.asean.org/images/archive/documents/ASEAN%20community%20in%20figures.pdf>

approximately US\$319.4 billion.<sup>2</sup> The ASEAN-China FTA is the largest globally in terms of population size, with 1.9 billion people, and the third largest in terms of economic size, with a cumulative GDP of US\$5.8 trillion. The potential of this integrated market has attracted multinational corporations with their attendant transnational operations. Overall, we have seen a rapid increase in the volume and diversity of cross-border business transactions taking place.

11 What does this mean for the judiciaries of the ASEAN member states and China? I will not attempt to provide an exhaustive list of the possible implications, but will offer the following thoughts.

12 Generally, dualist States like Singapore require the incorporation of treaties by way of domestic law before the treaties can have any domestic legal effect. Thus, the responsibility for implementing free trade agreements is largely borne by the Executive and Parliament. Nevertheless, the Singapore courts will strive to interpret or enforce our domestic legislation, whenever possible, in a manner consistent with the free trade agreement that is sought to be implemented by the domestic legislation concerned. At a more fundamental level, courts facilitate and promote trade, commerce and investment by protecting the rights of private parties through the adjudication of commercial disputes and the enforcement of judgments. Therefore, transparent, just, efficient and incorrupt judiciaries which uphold the rule of law would naturally contribute to the smooth and stable functioning of a FTA.

13 With the increased regionalisation of business operations and commercial transactions, it is inevitable that judiciaries will be called upon to resolve increasingly complex cross-border disputes. I use the term “inevitable” notwithstanding the popularity of

---

<sup>2</sup> [http://www.asean.org/images/resources/2014/Jan/StatisticUpdate28Jan/table20\\_as20Dec13.pdf](http://www.asean.org/images/resources/2014/Jan/StatisticUpdate28Jan/table20_as20Dec13.pdf)

international arbitration, because there will always be commercial parties that prefer to submit their disputes to judicial resolution. And in any event, private arbitrations still require effective supervision by the courts, albeit in limited specified circumstances.

14 This development brings with it several unique challenges. Courts will likely be faced with what I shall term “conflict of laws” issues. In recent years, disputes over the most appropriate forum in which to hear proceedings have taken on a new level of complexity and intensity. The anti-suit injunction is fast becoming the weapon of choice of parties. When should domestic courts decline to exercise their jurisdiction over proceedings properly instituted in their courts? At other times, a domestic court may have to apply foreign law where the proper law of the contract before it is the law of another jurisdiction. The position in Singapore has been that the content of foreign law is a question of fact and not law. This means that the court must receive evidence of what the foreign law in question is. This process brings with it the attendant challenges of dealing with foreign law experts from a different legal background and culture. More generally, judges must be prepared to manage foreign litigants, who might lack familiarity with the basic elements of the domestic legal system such as its procedural rules, and who may not even speak the same language.

15 On a more aspirational note, I think our courts can play a more facilitative role in the development of the ASEAN-China FTA by promoting the convergence and harmonisation of legal principles. It is envisaged that this will occur incrementally as domestic courts draw guidance from each other’s jurisprudence when adjudicating on commercial disputes. Complete uniformity of legal principles is no doubt an unrealistic expectation. Nor is it, in my view, desirable in light of the sheer diversity of legal systems in this part of the world. Nevertheless, even a modest degree of convergence and harmonisation of legal principles will hasten economic integration within the FTA and engender greater business confidence in

commercial parties looking to carry out cross-border transactions. We should also take advantage of our diversity by drawing on each other's strengths.

16 Underpinning all this is the need to overhaul judicial attitudes. Judges should develop an appreciation of and firmly adhere to the principle of promoting and protecting free trade and investment in applying and interpreting the domestic law. This means that domestic insularity is no longer an option. Judges ought to take a broader international perspective in discharging their judicial role. An understanding and awareness of the context and environment in which judges now operate is more likely to foster comity and cooperation between the judiciaries of the ASEAN-China FTA.

#### **IV. Judicial education and training in a new legal landscape**

17 Although there has been widespread debate and discussion amongst key figures in the legal industry and institutions of higher learning about the correct approach and the programmes needed to produce international lawyers for the global economy, less has been said about the role of judges and their judicial education. Perhaps, this is because it is less of a priority in the face of caseloads and backlogs; or perhaps, it is because some take the view that you cannot teach old dogs new tricks. Nevertheless, it should be obvious by now that it is imperative that our judicial learning programmes undergo a transformation in order to equip our judges with an international perspective and understanding of law in a global setting. In closing, I offer some suggestions on the future direction which judicial education and training should take to prepare our judges for this new global landscape.

(a) *Incorporating an international component*

18 First, there needs to be a systematic inclusion of an international component in the judicial learning curriculum. Primers on private international law rules and principles as well as the substantive law of treaty interpretation would be useful in resolving disputes with a cross-border free trade element. Further, as I earlier alluded to, a greater understanding and appreciation of different legal systems and their respective jurisprudential underpinnings would not only render disputes involving foreign law less bewildering, but also expand the judiciary's intellectual tool-kit in resolving disputes. Thus, as part of the legal knowledge management initiative in our Supreme Court, our judges and judicial officers are regularly updated on ground-breaking decisions and other legal developments in foreign jurisdictions, with a particular focus on certain areas of law.

19 In order to be sensitised to the broader regional and international context in which they now have to make their decisions, judges and judicial officers should be briefed at least generally about the mechanics of the ASEAN-China FTA and the member states' obligations thereunder. This is best carried out by the government agencies that are most intimately acquainted with the ASEAN-China Free Trade Agreement, for instance, officers from the Foreign and/or Trade Ministries. In order to cultivate greater awareness of the socio-economic impact of court decisions, the judicial learning programme should seek to broaden the range of perspectives which judges are exposed to by creating opportunities for them to interact with different stakeholders, be it representatives of business or non-governmental organisations, and whether in a formal or informal setting.

*(b) Globalised judicial education*

20 Second, with the intensification of the inter-connectedness between member states, a common commitment to principles and standards of effective quality judicial education assumes even greater importance. In this regard, the mutual exchange and cross-fertilisation

of ideas and best practices concerning judicial education can enhance and enrich the way judges of each country learn. Localised efforts should, therefore, be supplemented by “globalized judicial education”. This was a term coined by Justice Clifford Wallace, Senior Judge and former Chief Judge of the US Court of Appeals for the Ninth Circuit, in his address at the First International Conference of the International Forum for Training of the Judiciary. He described the “globalization” of judicial education as the “widening of horizons, [the] establishing [of] synergistic relationships as countries explore and experiment together with education curricula and methodologies”.

21 In this regard, I should add that Singapore is a member of the International Organization for Judicial Training and an active participant in the conferences which it organises. In May this year, we participated in the Biennial Meeting of Commonwealth Judicial Educators organised by the Commonwealth Judicial Education Institute, where a judge of our High Court made a presentation on our judicial learning programme. The following month, a district judge attended an intensive study programme for judicial educators organised by the same institute. Our State Courts have hosted delegations from several countries in relation to judicial learning.

22 Concrete steps should therefore be taken to create opportunities for dialogue and the exchange of ideas between the judiciaries and the judicial learning bodies of member states. Regional initiatives like the Mekong Delta Judicial Training Institute (which Cambodia, Laos, Thailand and Vietnam are party to) allow for the pooling of resources and provide a platform for courts in different jurisdictions to share experiences and improve on methodologies for judicial education and training. As an opportunity for ASEAN-China judicial dialogue, this conference is certainly a step in the right direction.

## **V. Conclusion**

23 In conclusion, the ASEAN-China FTA and the challenges it poses should be viewed positively. We should wholeheartedly embrace it, bearing in mind its aims and the benefits which it will generate for all the countries concerned. It presents us with the opportunity to take the quality of judicial learning in this part of the world to new heights. With universal values like the rule of law and justice at stake, the improvement of judicial education and training is clearly a goal worthy of pursuit with our best efforts.