

## KEYNOTE ADDRESS

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2018 UNCITRAL ABLI EMERGENCE CONFERENCE, “ASIAN PERSPECTIVES  
ON THE FUTURE OF THE HARMONISATION AND CONVERGENCE OF  
BUSINESS LAWS”

9.30 AM TO 10 AM, 25 JULY 2018 (WED)

Chief Justice Sundaresh Menon

Mr Luca Castellani, Secretary of UNCITRAL Working Group IV

Professor Khory McCormick, Rapporteur of UNCITRAL Working Group II

Professor Yeo Tiong Min, Academic Director of the Asian Business Law Institute

Distinguished Delegates

Ladies and Gentlemen

### I. INTRODUCTION

1. Good morning.
2. I thank the organisers for extending this invitation to speak. It is an honour to be here today with distinguished legal experts, scholars and practitioners from the Asian region, and other parts of the world.
3. I am mindful that I am a non-lawyer – an engineer, actually – speaking about legal convergence before an audience of mostly lawyers. For the past few years, I’ve had to work closely with lawyers at the Ministry of Law. My personal experience is that an engineer and a lawyer can have very meaningful conversations on legal matters, because the law is set out logically and systematically, and engineers like logic and systems. Yet, there is often a “language barrier”, which we overcome through dialogue and by finding common ground to advance our mutual understanding.
4. Interestingly, this “language barrier” can exist even among lawyers. There are in fact different “legal languages.” Civil lawyers have a certain code, and common lawyers another. Among countries with the same legal tradition, there is diversity.
5. My colleagues say this “language barrier” can be a real challenge when lawyers negotiate the details of legal convergence. This is particularly so in Asia, where different legal systems exist. While I have no expertise in the technical aspects

of legal convergence, I believe the approach taken by ABLI and UNCITRAL is the right one – advance dialogue and understanding, discuss the issues logically and systemically, seek common ground along the pathway towards convergence.

6. Today, I will speak on legal convergence from a policy-makers' perspective. As policy-makers in Singapore, we understand the value of business legal convergence. I will focus on two main issues:
  - a. First, Singapore's experience with legal convergence.
  - b. Second, how to advance legal convergence in Asia.
7. Before I turn to these issues, it would be useful to recall the desired outcomes of business legal convergence.

## **II. DESIRED OUTCOMES**

8. Our desired outcomes stem from our economic reality.
9. In our region, trade and investments are growing at a rapid rate.
  - a. Asian economies are leading global economic growth.
  - b. By 2030 -
    - i. Asia is expected to account for 40% of the world's GDP; and
    - ii. ASEAN is expected to be the world's fourth-largest economy.
10. As Asian countries, our shared goal is to unlock our full economic potential and sustain our economic growth and development, for the benefit of the people. You are probably familiar with two important initiatives – the ASEAN Economic Community, and the Belt and Road Initiative.
  - a. The AEC enjoys the commitment of all ASEAN Member States to achieve regional economic integration. It aims to provide access to opportunities in ASEAN's market of US\$2.6 trillion and over 622 million people.
  - b. The Belt and Road Initiative, initiated by China, is stimulating the creation of new economic opportunities for the region.
11. However, businesses in Asia have said that they face difficulties tapping on these huge economic opportunities. The difficulties they have identified include trade restrictive measures, such as those relating to cross-border data transfers, as

well as cross-border regulatory complexities, such as legal uncertainty and the poor enforcement of judgments.

12. In summary, from the business perspective, Asia's cross-border legal infrastructure is not yet adequately supporting the region's economic aspirations.
13. Legal convergence can provide solutions to these business challenges, by providing a robust cross-border legal infrastructure that facilitates access to economic opportunities for businesses. This in turn animates the achievement of prosperity for our people.
14. This also requires a stable and transparent rules-based environment, where the rule of law is upheld.

### **III. SINGAPORE'S EXPERIENCE**

15. I turn now to Singapore's experience. I think our experience has demonstrated the value of legal convergence.
16. I will briefly touch on examples of how Singapore has harnessed international legal convergence efforts to give businesses needed legal certainty. In various areas of business operations, different countries have applied different legal rules and approaches. Sometimes, it is not clear what legal rules a country will apply. There have hence been international efforts to establish clear and uniform rules that countries can adopt in their national laws. I will focus on efforts in three fundamental areas of business operations:
  - a. First, contracts - for the formation of business relationships and transactions.
  - b. Second, dispute resolution – to deal with the curve-balls that disrupt business relationships.
  - c. Third, re-structuring and insolvency – for businesses that have run into financial trouble.

#### *Contracts*

17. On contracts: Businesses may face uncertainty as to how the law will determine what contractual rights and obligations they have. Singapore has used legal convergence to give businesses greater clarity about what rules govern their cross-border contracts, both offline and online.

- a. In 1995, Singapore became a party to the UN Convention on the International Sale of Goods, also known as the CISG.
  - i. The CISG has been successful globally, with 89 States Parties, including China, Japan, and the United States.
- b. In 1998, Singapore was one of the first countries to enact legislation based on the UNCITRAL Model Law on Electronic Commerce.
- c. In 2006, we were one of the first countries to sign the UN Convention on the Use of Electronic Communications in International Contracts, a Convention that Singapore played a part in developing.<sup>1</sup>

### *Dispute resolution*

18. On dispute resolution: Businesses need the assurance that their dispute resolution outcomes will be enforceable overseas. However, because of legal diversity, they face uncertainty as to when a country will enforce a foreign judgment or arbitration award; even more so for mediated settlements. Singapore is using legal convergence to give businesses greater assurance, across the suite of dispute resolution options.
  - a. For arbitration – Singapore is, like many other countries, party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
    - i. I would pause here to acknowledge that without legal convergence through the New York Convention, international commercial arbitration would not be the reliable and popular mode of international dispute resolution it is today.
  - b. For litigation – Singapore was the first country to enact a dedicated law to implement the Hague Convention on Choice of Court Agreements. We are also actively involved in developing the proposed Hague Convention on the Recognition and Enforcement of Foreign Judgments.
  - c. For mediation – Singapore played a leading role in developing the UNCITRAL Convention and amended Model Law on the enforcement of mediated settlement agreements. We look forward to hosting the signing ceremony for this Convention in 2019. I hope that the Singapore

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<sup>1</sup> Singapore was the Chairperson of the Working Group IV on Electronic Commerce, as well as Vice-Chairperson at the 38<sup>th</sup> UNCITRAL plenary session.

Convention on Mediation will be a useful addition to the dispute resolution landscape.

### *Re-structuring and insolvency*

19. Businesses involved in cross-border insolvency or re-structuring have run into difficulties coordinating their efforts across the different countries in which they have assets. For example, it is often uncertain whether an insolvency proceeding will be recognised in the other countries where the business has its assets. That is why Singapore enacted legislation in 2017 to adopt the UNCITRAL Model Law on Cross-Border Insolvency, which provides a uniform framework to help address these difficulties.

### *Value reaped*

20. These are some of the ways in which Singapore has used legal convergence to provide solutions to business challenges. The value of legal convergence, when implemented effectively, is reflected by Singapore's record.
  - a. Singapore has become a base for international companies to access the region's economic opportunities.
    - i. An estimated 37,400 international companies have their headquarters in Singapore.
    - ii. This includes around 7,000 MNCs.
    - iii. More than half of these international companies run their Asia Pacific operations from Singapore
21. Apart from facilitating economic benefits, legal convergence has also helped Singapore's legal professionals grow their knowledge capital.
  - a. At minimum, incorporating international legal convergence instruments in our domestic laws has given Singapore lawyers the opportunity to acquire expertise in these international legal frameworks. This puts them in good stead to support transnational business.
  - b. There is also a first mover advantage that comes with being among the first to adopt legal convergence initiatives. It has allowed Singapore's legal professionals to develop know-how and thought leadership to operationalise legal convergence.
    - i. For example, this year, the Singapore Courts issued its first judgments on the UNCITRAL Model Law on Cross-Border

Insolvency<sup>2</sup> and the Hague Convention on Choice of Court Agreements,<sup>3</sup> in cases argued by Singapore lawyers. The decision on the Choice of Court Convention may be the first made in any country.

#### **IV. ADVANCING LEGAL CONVERGENCE IN ASIA**

22. I now come to the legal convergence project in Asia.
23. Greater legal convergence will benefit the region, not only Singapore. It is in our common interest for the region to unlock its economic potential, so that we may prosper together.
24. As more countries come on board the Asian legal convergence project, I would like to suggest three guiding principles.
  - a. First, convergence should be relevant to real business needs. It should be able to help solve real business challenges. Convergence is a means, not an ends.
  - b. Second, there should be inclusive representation of interested countries in the process. Different perspectives need to be taken into account. Laws need to be operable in diverse local environments.
  - c. Third, convergence should be respectful of the region's diverse legal traditions and systems. Complete uniformity is not always required or desirable. It may seem paradoxical, but legal convergence can and should accommodate diversity. Hence, a range of legal convergence tools has been developed to accommodate different degrees of diversity, from treaties, to model laws, to guiding principles.
25. In short, three "Rs" - Relevance, Representation, and Respect.
26. Singapore is happy to support and facilitate the process of Asian legal convergence. Several things are being done.
27. One is that Singapore continues to support UNCITRAL's work, as it has for a long time. As I've mentioned earlier, Singapore has been actively involved in drafting UNCITRAL texts, and has adopted several. These important texts

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<sup>2</sup> Re: Zetta Jet Pte Ltd and others [2018] SGHC 16.

<sup>3</sup> Ermgassen & Co Ltd v Sixcap Financials Pte Ltd, [2018] SGHCR 8.

provide businesses, lawyers and judges with a common reference point and language, regardless of their nationality or legal tradition.

28. The Ministry of Law is also supporting the work of ABLI, which the Chief Justice spoke about just now. I have a few reflections on ABLI's work.

- a. One is that its approach to legal convergence reflects the three "Rs".
  - i. On relevance - It decides on the projects it will undertake based on consultations with stakeholders from the business and legal communities. This ensures that its output is relevant to real needs.
  - ii. On representation - its output relies on contributions by experts who are local to the countries they are writing about.
  - iii. Finally, on respect - ABLI is neutral and does not pre-judge solutions. Its working methods ensure that any recommendations for how to operationalise legal convergence are based on a respect for each country's context and perspectives.
- b. ABLI's Foreign Judgments Project is of particular interest, as the Ministry of Law oversees Singapore's foreign judgments policy.
  - i. The high quality of analysis of the compendium of country reports published in December last year gave us valuable insight into our region's legal landscape.
  - ii. We look forward to the Statement of Principles that will be produced in the second phase of this Project. It will be an unprecedented common reference point for policy-makers around the region to understand the legal gaps that we may need to fill, and how we could do so. The work involved is complex, and could be successful only with the help of some of our region's leading legal experts.

29. I am confident that ABLI's ground-up and context-specific work will achieve its aim of being a unique and important enabler of legal convergence in the region.

30. Another exciting effort is the recent launch of the ASEAN Law Academy by the Centre for International Law at the National University of Singapore.

- a. The Academy was announced by Singapore's Prime Minister Mr Lee Hsien Loong at the 32<sup>nd</sup> ASEAN Summit in April this year.

- b. The inaugural ASEAN Law Academy is taking place right now.
  - c. It aims to promote a greater understanding of the different legal systems in ASEAN, to enhance legal integration.
  - d. It emphasises effectiveness through a collaborative and practice-based approach.
31. ABLI and the ASEAN Law Academy are equipping the region's legal professionals to understand each other despite their different "legal languages". This cultivates a supportive environment for the legal convergence project to grow.
32. Legal convergence in Asia is gathering momentum. This week, as the Chief Justice has mentioned, Singapore is pleased to host several major events relevant to legal convergence, not least the present UNCITRAL ABLI Emergence Conference.

## V. CONCLUSION

33. These are all serious efforts, which is heartening.
34. A 2017 report by UNESCAP found that a lack of political commitment to develop common solutions for cross-border commerce cost one region over US\$54 billion per year in lost export opportunities.
35. Thankfully, there is growing political will in the region to advance legal convergence. Singapore is here to support and facilitate this project.
36. Thank you for giving me your attention this morning. I am sure that you will have a fruitful Conference today.