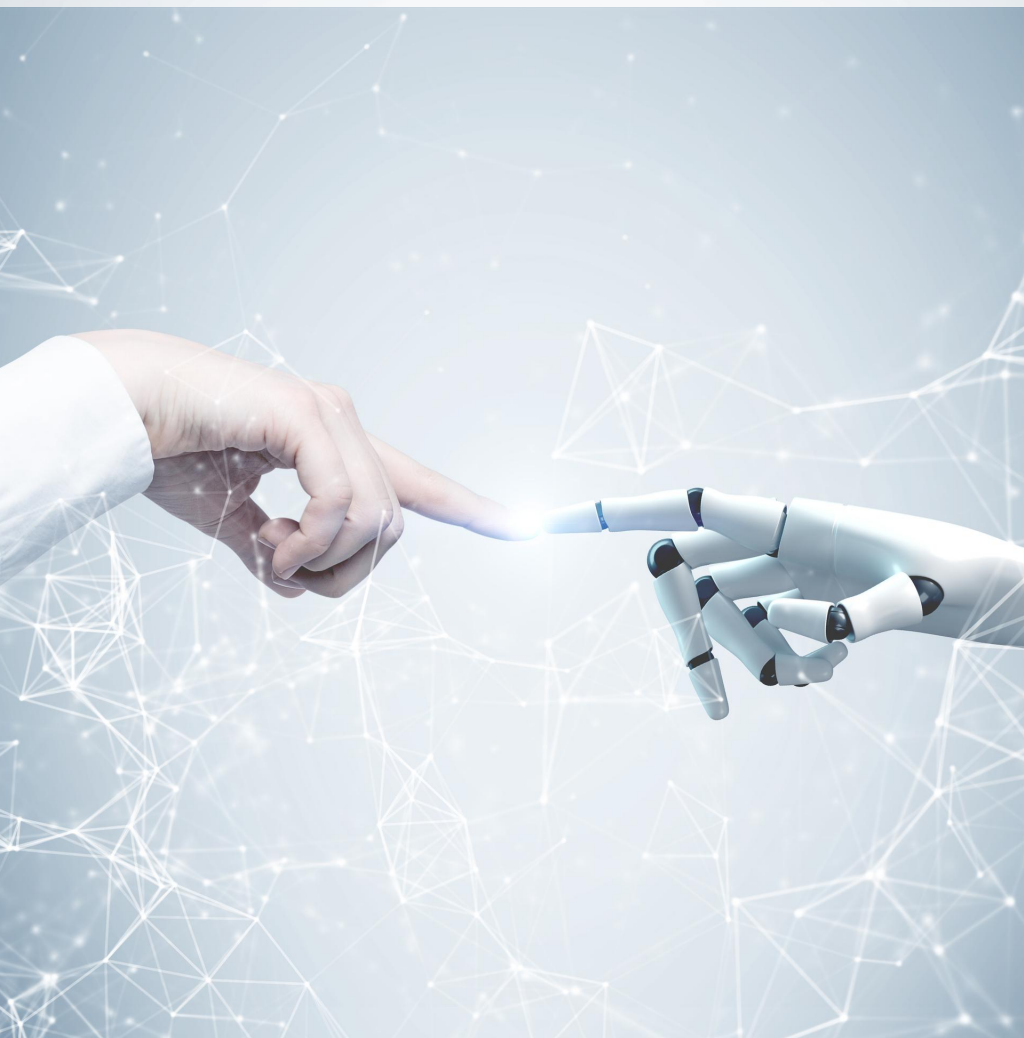


# LRD COLLOQUIUM 2020 RESEARCH PAPER SERIES



LEGAL RESEARCH AND DEVELOPMENT DEPARTMENT

THE LAW SOCIETY OF SINGAPORE

# About the Colloquium

The Colloquium on 'The Role of Lawyers in the Age of Disruption: Emerging Regulatory Challenges' was held as a live webinar on 19 May 2020, amidst Singapore's circuit-breaker period, and attended by over 320 members of The Law Society of Singapore. It aimed to be a platform for legal practitioners, emerging scholars, industry experts and students to contribute to developing thought leadership in topics relating to the ethical and regulatory challenges arising from technology's impact on the legal profession.

The Colloquium sought to examine two important questions. First, how should we re-examine the role of lawyers in an age of disruption, especially with increasing automation, competition and liberalisation? Second, given that professional regulation sets the parameters of lawyers' business models, practice structures and professional values, how should lawyers, law practices and potential new entrants to the legal market be regulated or re-regulated in the future of legal work?

These issues were discussed over the course of four panel sessions focusing on the following themes:

- Panel 1: **The Role of Lawyers in the Age of Disruption**
- Panel 2: **Legal Ethics & Technology**
- Panel 3: **Alternative Legal Service Providers - To Regulate or Not to Regulate?**
- Panel 4: **Law Practices and the Future of Work**

To explore these questions, 13 research papers were presented across the four panel sessions, helmed by expert moderators and commentators.

For a snapshot of the highlights of the Colloquium, please visit the [LRD Research Portal](#) for our post-event feature article [here](#).

# Disclaimer

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## Panel 3

Alternative Legal Service Providers  
- To Regulate or not to Regulate?

# The Regulation of Alternative Legal Service Providers in Singapore

Jennifer Lim Wei Zhen & Andrew Wong

## THE REGULATION OF ALTERNATIVE LEGAL SERVICE PROVIDERS IN SINGAPORE

Jennifer Lim Wei Zhen\* & Andrew Wong\*\*

*The advent of alternative legal service providers ('ALSPs') has disrupted the traditional legal service delivery model globally and burgeoned into a multibillion-dollar industry in recent years. Whilst the emergence of ALSPs has provided legal service consumers with options that often come at reduced costs and/or greater efficiency, ALSPs have largely not been subject to similar standards of regulation that have been de rigueur for legal practitioners in the profession. Upon giving an overview of the emergence of ALSPs, this paper considers what the objectives of regulation might be, as well as the inherent regulatory challenges. A broad examination of the present regulatory landscape is given, within which the paper raises potential regulatory issues that may arise and propose guidelines and/or frameworks that may be considered*

### I. INTRODUCTION

Alternative legal service providers ('ALSPs') have been thrown into the spotlight in the recent decade, and much ink has been spilled about the growth of burgeoning into a multibillion-dollar section of the legal industry that saw revenues grow to over \$10 billion in 2017, and a compound annual growth rate of almost 13 percent between 2015 to 2017.<sup>1</sup>

Broadly speaking, ALSPs are service providers that perform many of the tasks traditionally done by law firms whilst seeking to deliver them in a manner that differs from a traditional law firm. Often, they do so by leveraging technology and relying on flexible and multidisciplinary teams that are able to integrate business, technology, and the law.<sup>2</sup>

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<sup>1</sup> Thomson Reuters Legal Executive Institute, 'Alternative Legal Service Providers 2019 – Fast Growth, Expanding Use and Increasing Opportunity' (Thomson Reuters, 2019) <<https://legal.thomsonreuters.com/en/insights/reports/alternative-legal-service-provider-study-2019>> accessed 1 May 2020.

<sup>2</sup> Sundaresh Menon, 'Law Schools: A Time of New Burdens and New Beginnings' (James P White Lecture, Indiana, 30 October 2018) <[www.supremecourt.gov.sg/docs/default-source/default-document-library/james-white-lecture---law-schools---a-time-of-new-burdens-and-new-beginnings-\(301018\).pdf](http://www.supremecourt.gov.sg/docs/default-source/default-document-library/james-white-lecture---law-schools---a-time-of-new-burdens-and-new-beginnings-(301018).pdf)> accessed 1 May 2020.

## The Regulation of ALSPs in Singapore

At the consumer level, the market's demand (for example, by in-house legal departments) for more cost-effective solutions and standardised processes has been a key driver for ALSPs' growth. These entities have arisen to fulfil the needs of corporations and corporate legal departments to do things more efficiently or at a lower cost, or to leverage specialised expertise in areas such as e-discovery.

However, this has not been the only factor. ALSPs emergence has also been made possible by the increasing disaggregation of legal work and technological advancements that has brought law into the digital age. From a historical perspective, a paper by Professors David B. Wilkins and Maria J. Esteban sets out a detailed overview of the multiple large-scale forces that reshaped the market for legal services, and in many ways, set the stage for the genesis of ALSPs. Briefly, these include:

- (i) the increasing integration of the global economy during the past two decades, which led to the advent of outsourcing and offshoring;<sup>3</sup>
- (ii) the emergence of flexible staffing options that was brought about by the internet revolution and cost control needs;<sup>4</sup>
- (iii) the increasing need for professional service firms become more multidisciplinary, so as to address the complexities that corporate clients face as a result of going global before the turn of the millennium – these often involved problems at the intersection of business, strategy, finance, technology and law;
- (iv) following the global financial crisis in 2008, the increased urgency for legal service providers to respond to the persistent challenge of 'more for less';
- (v) the software revolution that drove traditional legal service providers to adopt practices pioneered in the technology sector, such as the agile approach to project management; and

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<sup>3</sup> David B Wilkins and Maria J Esteban, 'Taking the "Alternative" out of Alternative Legal Service Providers: Remapping the Corporate Legal Ecosystem in the Age of Integrated Solutions' (SSRN, 27 April 2019) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3379056](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3379056)> accessed 1 May 2020.

<sup>4</sup> Wilkins and Esteban (n 3).

- (vi) the aggressive push by the Big Four accountancy firms to not just invest in legal technology, but also develop their capabilities to resolve issues at the intersection of law, business, strategy and technology – in order to build multidisciplinary practices that offer integrated solutions.

Today, the word ‘alternative’ in ALSP is a misnomer to say the least. After all, in the 2017 study by Thomson Reuters,<sup>5</sup> 51 percent of law firms and 60 percent of corporate legal departments were using an ALSP. In the 2019 report, we saw that corporations have at least doubled their use of ALSPs for a wide range of services in four of the five most common use cases identified. On the law firm front, about one-third of those surveyed stated that they plan to establish their own ALSP affiliate within the next five years. In a 2019 white paper by Thomson Reuters Executive Institute has also reported that large law firms have become more aggressive in leveraging the ALSP model by managing multiple ALSPs for client matters, establishing partnerships with existing ALSPs, or even creating their own in-house ALSPs.

Suffice to say, ALSPs have become mainstream in the legal services industry and can no longer be thought of as a passing trend. The question then arises – given that the ALSP carrying out the ‘legal work’ may not necessarily be a legally qualified lawyer, should they be regulated? And if so, how? The answer is a decidedly nuanced ‘it depends’.

## II. REGULATORY OBJECTIVES

Before going further, it is appropriate to first consider what the objectives of any such regulation might be, and if regulation is indeed a need. Whether it be fully licensed legal practitioners, ALSPs or corporate legal departments, any form or model of legal service delivery can be said to serve the same purpose of fulfilling the legal needs of their consumers.

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<sup>5</sup> Thomson Reuters Legal Executive Institute, ‘Alternative Legal Service Providers – Understanding the Growth and Benefits of These New Legal Providers’ (*Thomson Reuters Legal Executive Institute*, February 2017) <[https://static.legalsolutions.thomsonreuters.com/static/pdf/Alternative-Legal-Service-Providers\\_Long.pdf](https://static.legalsolutions.thomsonreuters.com/static/pdf/Alternative-Legal-Service-Providers_Long.pdf)> accessed 1 May 2020.

## The Regulation of ALSPs in Singapore

As such, amidst the evolving legal marketplace, the key objective remains the same – to protect the interests of the end-users, be it businesses or individuals. As will be explained below, the end user differs when we consider the different types of ALSPs. However, regardless of category, a useful guideline would be that ALSPs should not violate the core values of the legal profession – which include protecting the public, ensuring access to justice, and upholding the rule of law. Alternative or not, it is the authors' view that a provider of legal services should not exhibit a disregard for ethics, and neither should they provision products or services that go below basic standards of quality.

Whilst protecting the interests of businesses and individuals, the regulation should be counterbalanced with the need to promote competition, efficiency and innovation within the legal industry and specifically, the legal service providers. This is especially important given the shifting landscape of the industry and the trifecta of forces creating unprecedented change – globalisation, technology and the growing commercialisation of practice<sup>6</sup>. As such, it is suggested that the level of regulation, if any, should not be pegged at a level where the barriers to entry to the ALSP sector is prohibitive.

The authors submit that the ideal regulatory approach would therefore be one that balances the countervailing policy considerations of consumer protection and quality assurance, against the need to promote healthy competition, efficiency and innovation within the legal industry.

While, at present, there are no additional specific regulations for ALSPs as a segment as a whole in the marketplace, it should be emphasised that they remain subject to existing regulations. As such, we should be reminded that there are existing laws and regulation governing industries and businesses that would naturally apply to ALSPs as well. These include principles of confidentiality that can be contractually provided for, data protection laws, common law principles of negligence, as well as misrepresentation.

Therefore, before beginning to craft additional regulations for ALSPs, regulators should then be asking if there is even a need for this additional layer of regulation and protection, and if so, how these additional regulations can complement and supplement existing laws.

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<sup>6</sup> Menon (n 2).



### III. REGULATORY CHALLENGES

Given the demand-driven emergence of ALSPs, the categories of ALSPs in the market have naturally been quite varied. Inherently, this multi-faceted nature poses challenges for regulators.

First, it is apparent that a one-size-fits-all broad brush regulatory approach cannot be applied. Different ALSPs operate on different structures, and seek to serve different markets, each of which come with their own considerations and challenges. A corollary of this is that there is difficulty in definition as well – ‘ALSP’ is an umbrella term and it may well be the case that certain categories require regulation whilst others do not. In Singapore, a current example would be the category of law firms that are affiliated with the Big 4 accountancy firms but are regulated as Singapore Law Practices. These firms include Eng and Co. LLC (part of the global PwC network), Sabara Law (part of the Deloitte Legal Network) and Atlas Asia Law Corporation (part of the global EY network).

The varied nature of ALSPs can be illustrated by the following table, which has been partially adapted from the 2019 Thomson Reuters Report:<sup>7</sup>

Services Provided	Structure of ALSPs
<ul style="list-style-type: none"><li>• Litigation and Investigation Support</li><li>• Legal Research</li><li>• Document Review</li><li>• eDiscovery</li><li>• Regulatory Risk and Compliance.</li></ul>	<ul style="list-style-type: none"><li>• Tie-Up with Law Firm</li><li>• Tie-Up with Big4 Accountancy Firms</li><li>• Captive Legal Process Outsourcing (“LPOs”)</li><li>• Independent LPOs</li><li>• Managed Services</li><li>• Contract and Staffing Services</li></ul>

Second, the issues that arise may become more complex when we consider scenarios involving multiple legal service providers, with different regulatory levels. For instance, where the users of the ALSPs are fully licensed practitioners themselves. This could take place on an ad hoc engagement basis with ALSPs providing specific expertise that support the core service the lawyers provide, or in tie-ups with law firms or captive Legal Process Outsourcing.

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<sup>7</sup> Thomson Reuters (n 1).

## The Regulation of ALSPs in Singapore

In outsourced portions of the core service, are lawyers held responsible for the full supervision of the ALSP and in ensuring quality? Should ALSPs have to take up any form of insurance? These are questions and considerations that should be considered in any policy or regulation. Nonetheless, the regulatory objective should remain the same, and perhaps it is a question of the mechanics and methodology of such regulation and how they might be formulated to manage such issues.

### IV. CATEGORICAL APPROACH TO THE REGULATION OF ALSPS IN SINGAPORE

A categorical approach is taken here to the regulation of ALSPs by splitting the market into three main categories with different regulatory needs and issues: (1) ALSPs based on alternate business structures, (2) ALSPs based on alternative resourcing; and (3) ALSPs providing services based on specific expertise or legal products.



Whilst this may not be a comprehensive coverage of all ALSPs, they represent a majority of the market. These categories may also overlap, for instance, services based on specific expertise may be provided via a captive LPO. However, it is with this categorical approach that we hope to offer some structure within the crowded ALSP marketplace, for ease of identifying relevant regulatory issues and concerns in a targeted manner.

#### A. ALSPs – integrated structures

The category typically involves alliances and collaborations between cross-disciplinary practices. A few possible structures that have sprung up are as follows: (i) law firms with captive LPOs; (ii) law firms which have incorporated additional entities targeted at providing other legal services; and (iii) law firms which have partnered with firms in other disciplines (e.g. accounting firms).

These structures have arisen as a response to multidisciplinary demands as well as cost pressures from clients. In unpacking how these differing issues manifest in the regulation considerations of these structures, the authors submit that consumer protection remains as a key guiding consideration: both in quality assurance and in terms of protection of their finances.

### **1. Law firms with captive LPOs**

LPOs, also known as offshoring, onshoring and legal process offshoring, has been defined as the exporting of legal services to low-wage markets overseas. This has taken the form of (usually larger) firms investing in offshore centres in countries such as India and China. For instance, Clifford Chance has its own offshore centre in India ('captive LPO'), and other firms such as Allen & Overy, Eversheds, Orrick, Reed Smith and WilmerHale also have their own Captive LPOs.

The move towards LPOs has been sparked by the growing need for legal firms to be more efficient and cost-effective. Aside from the lower cost, LPOs are also typically technology-enabled, using tools such as e-discovery platforms to process and deliver data. By leveraging these advantages, law firms are able to deliver value – as such, it is no surprise that the LPO market has been growing by leaps and bounds, with a 2019 report projecting that the global LPO market size will reach US\$35.9 billion by 2025.<sup>8</sup>

A primary concern surrounding this mode of business structure might relate to the security and confidentiality of client data which is being handled and transmitted to such LPOs, as well as the prevention of conflicts of interest (especially if independent LPOs were used, as opposed to captive LPOs). For law firms with captive LPOs, the legal practitioners handling the matter are ultimately subject to professional regulations concerning conflicts, security and client confidentiality and need to ensure compliance measures are imposed downstream in their dealings with the LPOs. Where applicable, the output of these LPOs would eventually be checked and cleared by legal professionals before use. Given this, perhaps regulation could be imposed in the domain of law firms'

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<sup>8</sup> Research and Markets, 'Legal Process Outsourcing Market Size, Share & Trends Analysis Report By Location (Offshore, On-Shore), By Service (E-discovery, Patent Support, Litigation Support), and Segment Forecasts, 2019 – 2025' (Research and Markets, May 2019) <[www.researchandmarkets.com/reports/4031959/legal-process-outsourcing-market-size-share-and?utm\\_source=GNOM&utm\\_medium=PressRelease&utm\\_code=vrfvc6&utm\\_campaign=1267967+-+Legal+Process+Outsourcing+\(LPO\)+Market+Outlook+to+2025+-+%2435.9+Billion+Opportunity+Analysis+by+Location+%26+Service&utm\\_exec=joca220prd](https://www.researchandmarkets.com/reports/4031959/legal-process-outsourcing-market-size-share-and?utm_source=GNOM&utm_medium=PressRelease&utm_code=vrfvc6&utm_campaign=1267967+-+Legal+Process+Outsourcing+(LPO)+Market+Outlook+to+2025+-+%2435.9+Billion+Opportunity+Analysis+by+Location+%26+Service&utm_exec=joca220prd)> accessed 1 May 2020.

internal management, with a view to ensure that professional duties are being complied with especially when offshoring is used. For instance, if a firm utilises captive LPOs, the onus for compliance should remain on them.

### **2. *Legal disciplinary / multidisciplinary practices***

Currently, the regulatory landscape is confined to restricting such ABS by the caveat that such law firms are strictly confined to providing legal advice.<sup>9</sup> Amendments to the Legal Profession Act in 2015 have allowed law firms to form Legal Disciplinary Practices ('LDPs')<sup>10</sup> where non-lawyers can hold up to 25 percent equity in a Singapore law firm, provided that these non-lawyer partners or shareholders have to be employees of the firm, and the law firm can only deliver legal services.<sup>11</sup> Such non-lawyer employees have to be registered as regulated non-practitioners under section 36B of the Legal Profession Act. This was a significant change that opened up the possibility of Alternative Business Structures ('ABS') to the traditional law firm model in Singapore, where hitherto only lawyers could hold equity.

However, ABS seeking to provide multi-disciplinary services that go beyond legal services are currently not permitted.<sup>12</sup> In response to the restrictions on multi-disciplinary legal practices, some law firms have taken to incorporating additional entities in order to provide other services. For instance, Rajah & Tann Asia has incorporated an affiliated firm, Rajah & Tann Technologies, which provides e-Discovery and contract review services.

Whilst the current regulatory state gives Singapore law firms the additional flexibility to attract and retain talent (outside the lawyer pool), the question then turns to whether regulations should go even further to relax requirements (for instance, by increasing the allowed equity percentage) or even allowing multidisciplinary practices. As we move towards the liberal end of the regulatory spectrum, the issues that arise in the regulation of such structures are multi-fold as well, and mirrors that of captive LPOs. For instance, the regulation on managing conflicts of interests and issues of privilege and

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<sup>9</sup> Thio Shen Yi, 'New Wine, New Wineskins' (*Singapore Law Gazette*, June 2016) <<https://v1.lawgazette.com.sg/2016-06/1588.htm>> accessed 1 May 2020.

<sup>10</sup> Sarjit Singh Gill and Shirin Swah, 'Regulation of the Legal Profession in Singapore: Overview' (Thomson Reuters Practical Law, updated as of Feb 1 2020) <[https://uk.practicallaw.thomsonreuters.com/w-009-1078?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-009-1078?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)> accessed 1 May 2020.

<sup>11</sup> Thio (n 9).

<sup>12</sup> Gill and Swah (n 10).

confidentiality have to be clear and instructive, as these issues will inevitably arise in multidisciplinary structures that are not by owned just lawyers, and provide a range of services that are not limited to legal. Where multiple disciplines exist in a single entity, it remains important that professional and ethical standards of legal service provision should remain pegged to that of the legal profession. In other words, lawyers should remain officers of the Court regardless of what entity or structure they operate their businesses in.

***B. ALSPs – alternate resourcing (or ‘lawyers on demand’)***

The advent of ALSPs has also birthed alternatives to the resourcing of lawyers from only law firms. Companies such as Axiom and Lawyers on Demand have sprung up to offer lawyers on a contract basis (‘contract lawyers’). Even traditional ‘Big 4’ law firms such as Rajah & Tann have started to offer lawyers on a contract basis, via the setting up of Rajah & Tann Asia Resources.<sup>8</sup> These include secondments to companies, and the offering of legal services on a project basis.

Two sets of regulatory issues arise from this phenomenon: (i) the regulation of the companies that provide the contract lawyers; and (ii) the regulation of the legal counsel offered on a contract basis.

***1. The regulation of companies providing contract lawyers***

There are two perspectives governing the regulation of the companies which provide contract lawyer, which boil down to whether these companies are seen as (a) law practices, or (b) employment agencies. If companies are seen as law practices, then they should be registered as law practices and regulated as such. As for the latter perspective, such companies may be seen as employment agencies because what they do is to match appropriate legal counsel with companies on a project basis, similar to how recruitment or employment agencies conduct placements of employees with companies.

Currently, Lawyers on Demand is registered as a foreign law practice, as they service foreign clients as well. Axiom, on the other hand, is not registered as a foreign law practice. Rather, Axiom Global Solutions Pte Ltd (Axiom SG) is a registered employment agency. This is possibly because that as a corporate entity, they do not offer legal advice,

and their model is to place legal consultants with clients: a matching service between people with legal background and clients who require in-house lawyers<sup>13</sup>.

### 2. *The regulation of contracted lawyers*

In regulating the contracted lawyers, some principles to consider may include (a) the scope of work they are providing, and (b) the intended clientele (e.g. law firm, in-house lawyer, or company seeking legal advice).

#### *(a) Scope of Work Provided by Contract Lawyers*

##### In-House Counsel

If the scope of work provided by contract lawyers falls within the same scope as that performed by in-house lawyers, the regulation would be similar to the regulation of in-house lawyers, which are governed by the following provisions.

Legal Counsel are governed by Section 34(ec) of the Legal Profession Act, which is a specific exception to Section 33 of the Legal Profession Act on the prohibitions against unauthorised persons acting as advocate or solicitor.

##### Section 34 of the Legal Profession Act

*(ec) any legal counsel (by whatever name called) in an entity acting solely for the entity in any matter to which it is a party, other than by —*

- (i) appearing or pleading in any court of justice in Singapore, except where such appearance or pleading is otherwise permitted under any written law;*
- (ii) appearing in any hearing before a quasi-judicial or regulatory body, authority or tribunal in Singapore, except where such appearance is otherwise permitted under any written law; or*
- (iii) attesting any document which is required to be attested by an advocate and solicitor;*

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<sup>13</sup> Axiom Law, 'Join Our Team' (Axiom) <[www.axiomlaw.com/careers/lawyers/available-positions?job=31632](http://www.axiomlaw.com/careers/lawyers/available-positions?job=31632)> accessed 1 May 2020.

### Locum Litigators

If the scope of work provided by contract lawyers falls within the scope of a litigator (*'locum litigator'*), it is possible to be regulated by locum solicitor provisions, which regulates solicitors who practices on a temporary or free-lance basis for one or more law practices.<sup>14</sup> This would mean that such locum litigators need to be formally hired by such law practices. Section 2 of the Legal Profession Act defines a 'locum solicitor' as follows:

*'Locum solicitor' means an advocate and solicitor engaged (whether concurrently or otherwise) on a temporary or freelance basis by one or more law firms, law corporations, limited liability law partnerships or solicitors practising on their own account;*

This would mean that the locum litigator would need to cease practice as a full-time advocate and solicitor and apply for a locum solicitor practising certificate. Note however that only Singaporeans and Permanent Residents are eligible to apply to practice as a locum solicitor. Locum solicitors are also subject to the same pre-requisites required of lawyers before they apply for a practising certificate, and also regulated by the same standards such as those encapsulated in the Legal Profession Act and Legal Profession Act (Professional Conduct) Rules.

#### *(b) Intended clientele*

The extent of regulation also would depend on the intended clientele. For instance, if the intended clients were other law firms who required extra staffing for projects on a contract basis, there need not be overregulation of contract lawyers. If the intended clientele for contract lawyers were lay persons, perhaps a greater extent of regulation might be warranted, though not necessarily required.

### **C. ALSPs – provision of services based on specific expertise or legal products**

This category of ALSPs comprises those who either provide services that require (i) specific expertise (such as e-discovery, cybersecurity, document review, regulatory risk

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<sup>14</sup> Yasho Dhoraingam, 'The Launch of the Locum Solicitor Scheme' (*Singapore Law Gazette*, March 2005) <<https://v1.lawgazette.com.sg/2005-3/Mar05-News3.htm>> accessed 1 May 2020.

and compliance), or (ii) legal products (patent/wills). This section explores the regulatory concerns associated with each, and seeks to propose principles for addressing some of these concerns.

### **1. *Services based on specific expertise***

This category could include ALSPs such as eDiscovery, contract review and digital forensic service providers. Traditionally, discovery and contract review would be tasks manually performed by lawyers, but which are now possible to outsource to ALSPs that have specific expertise in the respective area.

In this category, we may see scenarios involving multiple legal service providers with different regulatory levels. For instance, fully licensed lawyers may work with ALSPs providing specific expertise that support the core service that the lawyers provide. For example:

- (i) Where a litigation support provider is engaged by a disputes lawyer, they provide services that supplement and support the core service that the disputes lawyer is providing to his or her client.
- (ii) In this scenario, the lawyer is fully regulated as a licensed legal practitioner and adheres to professional standards that are imposed upon lawyers, whilst also maintain ancillary requirements such as professional indemnity insurance.
- (iii) In using an ALSP and outsourcing parts of the work, the lawyer undoubtedly remains responsible for the core service. However, should the quality of service of the ALSP turn out to be substandard and ultimately results in damage to the client in the matter at hand, there is then the inevitable question of liability and how it should be apportioned.
- (iv) Whilst the lawyer falls within the regulated legal profession, the ALSP is not held to any regulated standard, and quality assurance is therefore governed largely by contractual obligations.



Given that these ALSPs may support the core service provided by fully-licensed lawyers, are lawyers held responsible for the full supervision of the ALSP and in ensuring quality? Should ALSPs be obliged to take up any form of insurance? Whilst regulatory concerns such as confidentiality and the standard of the service provided by such ALSPs may be addressed in contractual undertakings, this may place an onerous burden on consumers to be discerning and savvy when dealing with such providers.

The above could then be juxtaposed to examples of managed legal services, such as that of DXC Technology and UnitedLex (an ALSP). In this example, United Lex was engaged in the large-scale digital transformation of DXC's in-house legal department, to address the challenges of integrating two large legal departments during the merger that led to the formation of DXC Technology. In this scenario, where the ALSP is engaged to resolve what is essentially an internal business problem by applying a multidisciplinary approach that goes beyond the legal domain, it is submitted that the regulatory need is relatively minute.

With this comparison, perhaps the necessity of regulation in this category depends on the scope and manner in which the ALSP has been engaged by a consumer. As we can see, there are several issues that should be weighed when examining this category of ALSPs, and in considering whether such ALSPs should have their own regulatory regime.

## **2. *Services based on legal products***

This category of ALSPs seek to provide legal work products, such as the drafting of a will, or a lasting power of attorney, or the filing of trademark applications.

A principled-approach to the regulation of ALSPs seeking to provide legal work products is proposed, with an examination of factors such as: (a) whether the service provided constitutes legal advice or if it relates more towards the provision of legal information or a legally related service; (b) whether the end-users for their 'legal service' and 'work product' provided are legally-trained personnel (e.g. lawyers and/or in-house lawyers) or for the average man on the street ('layman').

## The Regulation of ALSPs in Singapore

- (a) *Does the service provided constitute legal advice or the provision of legal information?*

It is submitted that if the content and service provided falls within the category of provision of 'legal information', these need not be subject to additional regulation. If the content and service provided falls within the category of the provision of 'legal advice' then these could potentially be subject to additional regulation.

The modus operandi of some of these alternative legal services can be in the form of: (a) asking the end-user to input information and assisting in translating that information into a legal document ('form-filling'); or (b) providing various legal options; or (c) drafting a document.

If the service provided is in the context of forms such as Lasting Powers of Attorneys which require form-filling, such that the services provided by ALSPs are confined to the receiving of information from the end-user, and the input of such information into standard forms (such as Lasting Power of Attorneys), then such services need not be subject to higher standards of regulation. Any misinformation conveyed could be regulated by for instance misrepresentation in common law. If a service provided also merely outlines the types of legal options that are possible and available to a user, but does not make any evaluative judgment as to which legal option should be recommended in their specific circumstance, this would not constitute the provision of legal advice.

However, if the service provided is in the context of generating work products that incorporate legal-advice, the extent to which the ALSP should be regulated is also contingent on the standard of advice which the ALSP is holding out themselves to be providing, including whether such advice provided is held out to be that of the standard of a layman or a lawyer. This can be examined through the lens of two case studies.

### Case Study 1: OCBC Online Will Generator

For instance, OCBC Will Generator is a service to help persons generate wills for free without having to visit a lawyer.<sup>15</sup> They had caveated on their website that:

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<sup>15</sup> OCBC Bank, 'OCBC Online Will Generator' (OCBC Bank, 2017) <[www.ocbc.com/personal-banking/lifegoals/willgenerator/#/](http://www.ocbc.com/personal-banking/lifegoals/willgenerator/#/)> accessed 1 May 2020.

*The Online Will Generator utilises a basic Will template and has been prepared upon the advice and with the assistance of Hin Tat Augustine & Partners and does not necessarily deal with every important topic or nor cover every aspect of the topics with which it deals. The Online Will Generator is intended for general use only and does not contain or convey any legal or other advice. You should seek legal advice from appropriately qualified lawyers for more specific Will requirements.*

It can be seen that the OCBC Will Generator had caveated that the standard of advice provided was for basic needs and general use, and was based on legal advice provided by a law firm for a general use, while highlighting that advice on specific will requirements should be sought from qualified lawyers.

From a regulatory point of view, this strikes a balance between the principles of consumer protection against the apportionment of liability, in that the OCBC Will Generator is held out to the standard of a basic will, and the standard of this product had been vetted by a law firm. At the same time, the caveats in place that the will does not deal with more specific requirements, helps to ensure that consumers do not overly rely on the OCBC Will Generator for a higher level of service than what it warrants itself to provide.

*(b) Is the intended end-user a legally-trained personnel or a layman?*

The other consideration for the level of regulation is whether the end-user is legally trained. This can be seen from the lens of our second case study: the regulation of patent agents.

#### Case Study 2: The Regulation of Patent Agents

Patent agents seek to help clients draft and file patent applications: applications which were traditionally done by lawyers, although it is not strictly necessary to engage a lawyer to file patent applications. Companies can still choose to file their own patent applications without consulting a lawyer.

In Singapore, both local and foreign patent agents are registered with the Intellectual Property Office of Singapore ('IPOS')<sup>16</sup>, and are regulated by the Patents (Patent Agents)

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<sup>16</sup> Intellectual Property Office of Singapore (IPOS), 'Patent Agent' (*Intellectual Property Office of Singapore (IPOS)*, 2020) <[www.ipos.gov.sg/resources/patent-agent](http://www.ipos.gov.sg/resources/patent-agent)> accessed 1 May 2020.

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Rules 2001. Patent Agents need to meet certain criterion and possess the requisite qualifications in order to be eligible to apply to be a registered patent agent. Specifically, pursuant to Circular No.1/2017<sup>17</sup> and the 2017 Amendments to the Patents (Patent Agents) Rules, to be registered as a patent agent, individuals must fulfil the following requirements:

- (i) Graduate Diploma in IP and Innovation Management (specialisation in patent agency) by the Singapore University of Social Sciences
- (ii) Master of IP and Innovation Management (specialisation in patent agency) by Singapore University of Social Sciences
- (iii) Graduate Certificate in Intellectual Property Law by the National University of Singapore; or
- (iv) be an Examiner with at least seven years of experience in search and examination work in Singapore with a good performance record, completed courses for papers A and C and passed QE papers A and C.

Applying the earlier principles, this registration of patent agents operates is similar to a licensing model, where agents need to have undergone qualifying courses and obtained the requisite qualifications before being able to be registered (or 'licensed') as a patent agent. This is necessary because the intended end-user are individuals and companies who are not legally-trained per se. This is in contrast to LPOs such as eDiscovery ALSPs, where the intended end-users are legally-trained lawyers themselves.

## V. REGULATORY PERSPECTIVES FROM OTHER INDUSTRIES

The legal industry is not alone in being disrupted by the evolving technological landscape of the society we live in. In brief comparison, the recent regulatory update in the healthcare sector introduces a framework that regulators could draw upon in considering the regulation of ALSPs.

In January 2020, the Healthcare Services Bill (the 'Bill') was passed in Singapore Parliament, replacing the Private Hospitals and Medical Clinics Act ('PHMCA') that was

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<sup>17</sup> Intellectual Property Office of Singapore, 'Amendments to the Patents (Patent Agents) Rules to be brought into Force on 1 May' (*Intellectual Property Office of Singapore*, 7 April 2017) <[www.ipos.gov.sg/docs/default-source/resources-library/patent-agent-forms-and-fees/circulars/pa-circular-1-\(2017\)---amendments-to-the-patent-agents-rules-\(effective-1-may-2017\).pdf](http://www.ipos.gov.sg/docs/default-source/resources-library/patent-agent-forms-and-fees/circulars/pa-circular-1-(2017)---amendments-to-the-patent-agents-rules-(effective-1-may-2017).pdf)> accessed 1 May 2020.

enacted four decades ago. This marks a transition from the premise-based licensing regime under the PHMCA to a services-based licensing regime, where healthcare service providers will be licensed based on the type of service they provide, with specific licensing conditions tailored to each type of service providers.<sup>18</sup>

The Ministry of Health ('MOH') has grouped the licensable healthcare services into six broad categories – hospital services, ambulatory care services, long-term residential care services, non-premise based services, health support services and special services. A provider may be required to have multiple licenses depending on the services provided, whilst specific services may require other licenses as a pre-requisite.

This new regulation is a response to changes to the healthcare landscape in Singapore, such as emerging new healthcare services and models (e.g. telemedicine), as well as technological advancements in the industry such (e.g. cell, tissue and gene therapy). In updating the regulatory framework to ensure relevance to current and emerging models of care, the key objective is targeted at consumer protection (in the healthcare context) – to ensure that patient safety and welfare are safeguarded and to ensure the continuity of patient care.<sup>19</sup> As earlier stated, the authors submit that consumer protection this should be the key guiding consideration in regulation of ALSPs as well.

With a modular services-based licensing regime, the framework allows for flexibility and enables innovation to thrive, whilst ensuring safeguards and accountability. These safeguards include the requirement of licensees to appoint certain key personnel (e.g. Principal Officers) responsible for ensuring operational compliance and are required to be involved in the daily management of the licensable healthcare service. Services that involve greater complexity will require licensees to appoint Clinical Governance Officers, who will be responsible for clinical and technical oversight of these prescribed services. In their framework, the MOH has adopted a risk-based regulatory approach – whilst the Bill covers services such as traditional Chinese medicine and allied health professionals (a diverse group including dietitians, physiotherapists and speech therapists), these will not be licensed under the Bill for the time being. Instead, they will continue to be

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<sup>18</sup> Teo Mae Shaan, 'Changes to Healthcare Regulations in Singapore' (*Shook Lin & Bok*, January 2020) <[www.shooklin.com/images/publications/2020/January/Changes-to-Healthcare-Regulations-in-Singapore.pdf](http://www.shooklin.com/images/publications/2020/January/Changes-to-Healthcare-Regulations-in-Singapore.pdf)> accessed 31 May 2020.

<sup>19</sup> Ministry of Health Singapore, 'FAQ on Healthcare Services Act (HCSA)' (*Ministry of Health Singapore*, 8 January 2020) <[www.moh.gov.sg-admin.cwp.sg/docs/librariesprovider8/default-document-library/hcsa\\_6jan2020/hcsa-public-faq\\_8-jan-2020\\_1200.pdf](http://www.moh.gov.sg-admin.cwp.sg/docs/librariesprovider8/default-document-library/hcsa_6jan2020/hcsa-public-faq_8-jan-2020_1200.pdf)> accessed 1 May 2020.

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regulated under existing legislation (in this case the Traditional Chinese Medicine Practitioners Act and the Allied Health Professions Act) whilst the Ministry further assesses the necessity of licenses for these services in the future.<sup>20</sup> Conversely, we note that this is not the case in the legal industry – save for specific providers such as Patent Agents, most ALSPs are not regulated specifically under any existing legislation at all.

On the other hand, specific services such as that of beauty and wellness are out of scope the Bill's scope, as they do not involve the assessment, diagnosis, prevention, alleviation or treatment of a medical condition or disorder. It is suggested that if a similar services-based licensing framework is adopted for the legal industry, ALSPs that clearly do not provide legal advice or legal services could be excluded from its scope e.g. legal operations and specific fields of expertise such as non-legal research.

Given the above, it is clear that there are symmetries between the healthcare industry and the legal industry – a consistent regulatory objective of consumer protection, evolving modes and models of service provision that may be brought about by technological advancements, the multi-faceted groups of service providers in the market, as well as the need for a more robust regulatory framework to enable innovation within the market whilst ensuring that there are sufficient safeguards and regulatory oversight. It is therefore submitted that the healthcare regulatory framework set out by the HCS Bill could be a good starting point for regulators of ALSPs and the legal industry.

## VI. CONCLUSION

On balance, it can be seen that there is no one-size-fits-all regulatory approach to ALSPs: for ALSPs differ in business corporate structure, intended-users and the types of services they provide (for not all would touch on legal advice). It is submitted that the underlying touchstone for regulation is whether the intended end-user is legally trained, and whether the type of service provided by the ALSP would constitute legal advice. This would guide regulators in balancing the considerations of protection of the public, against providing competition and more efficient, consumer-centric solutions to the public. Overall, the ideal regulatory landscape would strike a balance between these considerations. Applying these principles, it could also be possible that our regulatory landscape may

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<sup>20</sup> Edwin Tong, 'Opening Speech for Second Reading of Healthcare Services Bill' (Singapore, 6 January 2020) <[www.moh.gov.sg/news-highlights/details/opening-speech-for-second-reading-of-healthcare-services-bill-by-mr-edwin-tong-senior-minister-of-state-ministry-of-health-6-january-2020](http://www.moh.gov.sg/news-highlights/details/opening-speech-for-second-reading-of-healthcare-services-bill-by-mr-edwin-tong-senior-minister-of-state-ministry-of-health-6-january-2020)> accessed 31 May 2020.

open up to allow for alternative business structures in the form of multi-disciplinary practices to operate to provide centralised solutions for clients. In this regard, the healthcare services industry has given us a glimpse of what a service-based licensing regime might look like. It may be difficult for ALSPs to be clearly segmented by service types, but perhaps a categorical licensing regime based on the 3 categories delineated earlier in this paper might be a possible starting point.

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