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Keynote Address by Prof S Jayakumar, Minister for Law and Minister for Foreign Affairs, at the Opening of the 4th LAWASIA Business Law Conference 2000 on 1 November 2000 at the Shangri-La Hotel.

Distinguished Guests, Ladies and Gentlemen :

I am very happy to join you this morning.

2. The theme for your Conference, "Legal & Business Challenges in the 21st Century", is timely. A major challenge for us is that the pace at which we live, work and trade are being changed by the forces of globalisation and rapid advancement in technology. The Asia-Pacific countries face these challenges together with countries outside the region. Asia, however, has an additional challenge in that we are just recovering from the 1997 regional financial crisis. How do these challenges affect the lawyer and the legal system? And what is the role of the legal system and the lawyer in helping to meet these challenges?

The Role of Legal Framework in Economic Competitiveness

3. One lesson from the regional financial crisis is the importance of having good governance, sound financial institutions and a sound legal and regulatory

framework. Not only does a sound and effective legal framework help businesses to thrive and bring in investments in good times, it also helps sustain the business environment in bad times.

4. The legal framework clearly has a role in building a conducive business environment. In Singapore, for example, we have not viewed the legal system and administration of justice as a separate autonomous portfolio – the commitment to the rule of law is an inseparable and integral part of the people’s lives, and it also features strongly in the nation’s economic development policies. We realised early that a sound legal infrastructure is essential for the creation of a thriving business and investment environment. The private sector and potential investors need clear laws to know how their activities will be affected by government regulations. They must feel assured that their business contracts will be honoured by the legal system. When disputes arise, they must know that their legal claims will be adjudged by a competent judiciary, impartially and without delay.

5. But these values are true not only for Singapore. They apply to all countries. International surveys of economic competitiveness of countries always include the legal framework and the administration of justice as key criteria in ranking such countries. One example is Heritage Foundation's 1999 Index of Economic Freedom, which identifies the rule of law and the protection of property rights as a key driving force for economic growth. In the 2 August 2000 issue of “*Asian Intelligence*”, the Political and Economic Risk Consultancy (PERC) said "we regard the judicial system as probably the single most important institution a country can have".

6. So, as the economic outlook brightens, one major challenge for countries in this region is to put in place the legal infrastructure appropriate to their development needs, not only with the aim of attracting investments, but also with the aim of promoting practices which will enable the business environment to weather future storms.

Challenges from Globalisation and Advancement in Technology

7. Let me now turn to the challenges of globalisation and technological advancements. We all know that these forces deeply impact every area of human activities and social relationships. But lawyers have to ask themselves: what challenges do these forces pose for the profession and legal systems?

8. In the information age and the knowledge-based economy, rising reliance on knowledge and information as an economic resource implies that intellectual property rights will be a major legal battlefield of the future. Owners of intellectual property rights are constantly seeking new ways to exploit and protect their intellectual property rights. They also seek to establish new categories of intellectual property rights and want stronger legal protection for intellectual property rights. Users of products and services, on the other hand, are constantly pushing the frontiers of what they can do without getting on the wrong side of the law. They seek clarification of the limits of intellectual property protection and the establishment of new limitations on such protection. A recent skirmish on this legal battlefield which caught the headlines is the case between Napster and the Recording Industry Association of America. Napster provides a service to over 30 million users, allowing them swap music files with each other over the Internet. The RIAA says Napster facilitates music piracy. Napster said it is just like a manufacturer of video cassette recorders, who cannot be held liable for copyright infringements committed by persons who bought its video cassette recorders. Some in the music industry fear that Napster will destroy the industry. Other artists support Napster as it can be a new kind of promotional tool for artists without recording companies' backing. Yet others claim that the Internet music genie cannot be put back in the bottle and Napster, if shut down, it will be replaced by more detrimental versions.

9. The Internet has popularised e-commerce. The advent of e-commerce requires new legal solutions on issues concerning authentication, security, privacy and jurisdiction. Because an Internet website can be accessed at the same time from many countries, difficult problems concerning jurisdiction arise. In one recent case, a New York company set up a subsidiary in Antigua to run an Internet gambling site – legal in Antigua but illegal in New York. The company was nevertheless held to be susceptible to the jurisdiction of the courts in New York because there was evidence that persons in New York had been gambling at the website.

10. Traditional concepts of jurisdiction, coupled with the ability to reach halfway across the globe instantaneously through the Internet, also pose serious challenges to governments in the fight against cyber-crimes, calling for concerted international efforts on this front. The draft Council of Europe Convention on Cyber Crime should logically have been a welcome instrument for all who are concerned about on-line security. The truth is that it has been met with suspicion

from developing countries as an instrument formed in private by the developed world to be foisted upon the developing world as a fait accompli and has come under serious attacks from civil liberty groups as failing to pay due regard to privacy concerns and as impeding research into on-line security solutions. The lesson here is that, not only should governments seek international solutions to new legal problems, it has to be done with sufficient early consultation to avoid hitting serious speed bumps later on.

11. The legal challenges ahead are posed not only by developments in information technology. Challenges will also emerge from developments in biotechnology as well. We are all familiar with the debate over whether the results of the human genome project should be patentable. A significant part of the progress made in recent years on the human genome project resulted from private investments in the hope of obtaining patent rights over the human genome data. However, there have been recent political calls to make the human genome data freely available in light of the importance of such data.

12. Turning to a more practical example, there is an ongoing debate in the US and UK about the usage which insurance companies can make of genetic information which indicates a predisposition towards contracting certain types of disease. There are proposals in the US to pass laws to prevent insurance companies from using results of genetic testing to discriminate against particular persons. The argument goes that genetic testing is useful for disease prevention and treatment and patients should be encouraged to undergo genetic testing. But if patients fear that genetic information can be accessed by insurance companies and used as a basis to discriminate against them, they would not go for genetic testing. Advances in genetic testing has brought about hope for better disease prevention and treatment and, at the same time, fears of abuse by major institutions. In such cases, a legislative response may well be proper in order to allay these fears so as to facilitate the fuller realisation of the benefits of technological advancement.

13. New legal problems are arising daily to challenge traditional legal norms and legal solutions. The challenge ahead is in seeking appropriate and timely solutions to these problems. The solutions we choose will help influence the path of future business, social and technological developments.

Meeting the Challenges

14. What can each country do to gear up for these challenges? What are the roles that various participants in the legal system can play in helping to meet these challenges?

15. Governments obviously are key players, as they are responsible for putting in place and shaping the laws and legal systems. At the rate at which technological changes are affecting the way we live and do business, no one knows how our societies will develop in 20 years' time. It is no longer practicable for Governments to attempt to assume the commanding heights and "masterplan" everything in detail in the long term. For this reason, the Info-communications Development Authority of Singapore, has decided to call its recently published "Infocomm 21" strategies a "blueprint" and not a "masterplan". The idea is that you cannot "masterplan" in a "revolution". What you need to do is to understand the general directions to take and act with speed and flexibility.

16. Under this paradigm, Governments' main role will be that of facilitator and enabler. Governments must be vigilant to clear away regulatory impediments to progress. One example of this is the pace at which many countries are putting in place electronic commerce legislation to remove legal obstacles to electronic commerce caused by traditional legal categories and concepts. In this region, Australia, Hong Kong, Singapore and South Korea were among the early adopters of such legislation. Philippines put their legislation in place 2 months ago. India's legislation came into operation two weeks ago. In the same week, the Japanese Cabinet approved the tabling of an e-commerce bill. To be truly vigilant, formal mechanisms must be put in place to review legislation at regular intervals to keep them up to date.

17. Another role which Governments need to play effectively is international law-making. With globalisation, legal problems increasingly require transnational solutions. We have seen a rapid increase in the number of international law-making instruments. One example is the TRIPS Agreement, by far the most comprehensive multilateral convention on intellectual property rights, which seeks to ensure that all countries protect intellectual property rights at a minimum acceptable standard. Another example is the recently finalised United Nations Convention on Transnational Organised Crime, which will be open for signature next month. The wide-ranging impact of these initiatives means that Governments must commit sufficient resources to participate effectively in shaping these initiatives, or risk having ready-made international documents foisted upon them without consultation.

18. In this region, the ASEAN countries have also been busy laying down a cross-ASEAN framework to ensure that all ASEAN countries are prepared to meet the challenges posed by information technology and electronic commerce head on. Three weeks from now, at the ASEAN summit, the heads of ASEAN governments will sign the e-ASEAN Framework Agreement. This agreement seeks to establish an ASEAN Information Infrastructure by promoting cooperation among ASEAN countries to develop and strengthen their competitiveness in the Info-Communications Technology sector. It will also seek to establish a common approach among ASEAN countries towards e-commerce regulatory and legislative frameworks. In particular, ASEAN countries will be asked to expeditiously put in place national laws on e-commerce transactions in keeping with international norms, to adopt measures to protect intellectual property rights arising from e-commerce, and to encourage the use of alternative dispute resolution mechanisms for on-line transactions.

19. Having outlined what Governments can do to help meet the legal challenges of the future, it is important to emphasise that we cannot rely solely on the Government to meet these challenges. The entire legal fraternity must be involved as well. Lawyers are the key players in the legal system. Their professionalism and competence have a direct impact on the effective functioning of the legal system. With rapid development of new business models and business methods, new legal issues surface for timely resolution before they fester into social problems. Businessmen need lawyers to advise them and support their business activities. Lawyers will need to be able to follow where their clients go and meet their needs. If clients want to do “business at the speed of thought” (as Bill Gates put it), lawyers must not be far behind too.

20. The lack of adequate legal service support can impede the growth and development of new business methods and businesses. The lack of lawyers with adequate skills and knowledge to work the justice system can impede the efficiency and effectiveness of the justice system. It is therefore important for lawyers to constantly upgrade their legal competence and constantly update their knowledge of developing areas of law.

21. Recognising this, the Singapore government has consciously put in place measures to ensure that Singapore has the relevant legal competencies to support business activities in important growth sectors. We have opened up our legal sector to allow Singapore law firms to enter into joint ventures and formal alliances

with foreign law firms, in order to upgrade our legal capabilities in banking, finance and corporate matters. Another initiative was the setting up of an IT law think-tank by the Singapore Academy of Law to promote learning and new thinking in this fast changing area of law. The think-tank will be able to provide useful input to the Government in addressing many of the critical legal challenges posed by information technology and electronic commerce. The work of the think-tank will also help promote the awareness and proficiency of the Singapore law profession in information technology and e-commerce laws, in order to help build the legal competencies to support Singapore's drive to be an Info-Communications Hub. The Ministry of Law will continue to pay close attention to the need to ensure an adequate level of legal expertise to support the growth of the Infocomms sector and put in place further initiatives as required.

22. Professional organisations representing lawyers at the national level can help their lawyers cope with international competition and other new challenges, by providing retraining and skills upgrading for their lawyers and by scouring out efficiency tools to be exploited by their lawyers. Professional organisations can also harness the combined knowledge and experience of their lawyers to assist Governments in their efforts to keep the legal framework relevant and updated. In this regard, it is worthwhile to mention two forward-looking initiatives from the Law Society of Singapore. The Law Society is currently looking into implementing a system of compulsory continuing education for lawyers to ensure that they continually update their knowledge and upgrade their skills. They have also given their support to a new legal portal called WWLegal.com, which aims to increase the efficiency of the smaller law firms in Singapore by performing certain back-office functions on their behalf.

23. Regional organisations such as LAWASIA can, on the international level, expand and complement the efforts of national organisations. Organisations like LAWASIA can harness the resources and experiences of many countries, but you can also facilitate inter-regional understanding, cooperation and harmonisation. The role of regional organisations will take on greater significance with the trends of globalisation and internationalisation I have outlined.

Conclusions

24. We live in exciting times, with immense possibilities before us. These are also challenging times; there are risks as well as opportunities depending on whether we seize the moment and make the correct policy choices. Lawyers,

whether as individuals, practitioners or as organised professional groups nationally or internationally, have a role to play in this process. I wish you all fruitful deliberations at this Conference as you ponder upon the challenges ahead of us.

25. On that note, I am pleased to declare open the 4th LAWASIA Business Law Conference.

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