The Role of Scientists, Experts and Stakeholders in the Law-Making Process in Singapore

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GOVERNMENT INSTITUTIONS CONCERNED WITH LEGISLATION

Legislature, Parliament & President

The Republic of Singapore is a parliamentary democracy with a written Constitution. The Constitution is the supreme law of the country.

The Singapore Parliament has a single House. The Singapore Parliament is modeled after the British Westminster system of parliamentary democracy where Members of Parliament are voted in at regular General Elections. The leader of the political party that secures the majority of seats in Parliament will be asked by the President to become the Prime Minister. The Prime Minister will then select his Ministers from elected members of Parliament to form the Cabinet. The Ministers are head of the various Ministries which administer the Government.

The President is the Head of State, and is elected by the people. The President exercises and performs such powers and functions as are conferred by the Constitution and other written laws. The role of the President is largely ceremonial.

Under the Constitution, the legislative power of Singapore is vested in the Legislature. The Legislature consists of the President and Parliament. The Legislature enacts laws known as Acts of Parliament. To enact new Acts or amend existing Acts, Bills are introduced in Parliament. A Bill must pass three readings in Parliament and be assented to by the President before it becomes law and is known as an Act. Acts must be consistent with the Constitution, which is the supreme law.

Attorney-General's Chambers

The Attorney-General is the legal advisor to the Government and the Pubic Prosecutor. The Attorney-General is not an elected member of Parliament or a member of the Cabinet. He is appointed by the Prime Minister and has security of tenure.

Ministries responsible for the administration of legislation may seek advice from the Attorney-General's Chambers on whether the proposed implementation of a policy requires amendment to the existing legislation or the enactment of any new legislation.

After a Ministry has obtained in-principle approval from the Cabinet on a proposed Bill, the Ministry will approach the Attorney-General's Chambers for the drafting of the Bill. Usually a draft Bill is submitted by the Ministry to the Attorney-General's Chambers for vetting. The Legislation Division of the Attorney-General's Chambers is responsible for the vetting and drafting of all Government Bills in Singapore. Consultations and discussions take place between the draftsman and the representatives of the Ministry to enable the draftsman to better understand the policy concerned so as to facilitate the drafting.

The Legislation Division is the central drafting office of Singapore and responsible for drafting all Government Bills and Subsidiary Legislation. Its work includes (a) drafting and vetting all Bills and Subsidiary Legislation; (b) advising Ministries and Statutory Boards on legislation for implementing Government policies; and (c) providing legal advice to Ministries and Statutory Boards.

Ministry of Law

The Minister of Law, like all Government Ministers, is an elected Member of Parliament and a member of the Cabinet. The Ministry of Law's primary responsibility involves formulating and implementing the broad legal policies of the Government. This role is distinct from that of the Attorney-General, who is the Government's legal advisor and the Public Prosecutor.

If a Bill relates to matters falling within its responsibilities (for example, the regulation of the legal profession), the Ministry of will initiate the Bill. In addition, before any proposed Government Bill can be introduced in Parliament by any other Ministry, approval from the Ministry of Law must first be obtained. The Ministry of Law vets all Bills to ensure that they comply with the general legislative policy of the Government.

Government Ministries and Statutory Boards

A new policy proposed by a Ministry may require the enactment of a new Act or an amendment to an existing Act. In such cases, the Ministry will have to seek in-principle approval from the Cabinet to the policy before approaching the Attorney-General's Chambers for the drafting of the new Bill or amendment Bill. Such Bills are known as Government Bills.

The lead Ministry is the Ministry that has responsibility for administering legislation on a particular matter. In Singapore there are also Statutory Boards that are responsible for administering legislation. A Statutory Board is a legal entity established by an Act of Parliament. It reports to a Government Ministry, but has more independence than a Government department. The Government of Singapore home page lists almost 70 Statutory Boards.

An example of a Statutory Board is the Agency for Science, Technology and Research (A*Star). A*STAR sets the direction and course for developing Singapore's Science and Technology. Through the Biomedical Research Council (BMRC) and the Science and Engineering Research Council (SERC), it promotes, supports and oversees the public sector R&D research activities in Singapore. Both Councils fund the A*STAR public research institutes which conduct cutting-edge research in specific niche areas in science, engineering and biomedical science.

Other examples of Statutory Boards in Singapore are:

- Agri-Food and Veterinary Authority of Singapore (AVA)
- Defence Science and Technology Agency (DSTA)
- Economic and Development Board (EDB)

- Health Sciences Authority (HAS)
- Intellectual Property Office of Singapore (IPOS)
- Maritime and Port Authority of Singapore (MPA)
- National Environment Agency (NEA)
- National Parks Board (NPB)

Statutory Boards are not only created by an Act of Parliament, but they often have the responsibility to administer other Acts of Parliament. In such cases, they often take the lead in proposing new legislation or amendments to existing legislation.

THE LEGISLATIVE PROCESS IN SINGAPORE

How a Bill becomes an Act

Introduction and First Reading

Most Bills are Government Bills which are introduced by the Minister whose Ministry is concerned with the administration of the matter governed by the Bill. On the First Reading of a Bill, the long title of the Bill is read aloud. The Bill is then handed over to the Clerk of Parliament who is responsible for printing and circulating the Bills to the Members of Parliament. After First Reading all Bills are published in the *Government Gazette Bills Supplement*.

Second Reading

After a Bill has been read a second time, it is committed to a Committee of the whole Parliament unless Parliament on motion commits it to a Select Committee. The Committee has the power to make such amendments to the Bill as it thinks fit. At second reading the Minister concerned explains the purpose and intent of the Bill and outlines its provisions. Members of Parliament then debate the Bill. After the Bill has been considered by the Committee of the whole Parliament, the Bill is then reported from the Committee of the whole Parliament where it is ready to be read a third time.

Select Committee

Where a Bill requires special consideration, Parliament may on motion commit it to a Select Committee comprising selected Members of Parliament. The public is invited to make written representations to the Select Committee on the Bill and may be invited to give evidence before the Select Committee on the matter. The deliberations and enquiries of the Select Committee are confined to the Bill and the relevant amendments. After the Bill has been amended by the Select Committee, the Bill as amended is annexed to the Report of the Select Committee. After the Bill has been considered by the Select Committee, the Bill is then reported from the Committee of the whole Parliament where it is ready to be read a third time.

Third Reading

On the Third Reading of the Bill the amendments, if any, will be proposed. The debate at the Third Reading is confined to the contents of the Bill. Any reasoned amendment which raises matters not included in the Bill must be ruled out of order. The Bill is then put to vote.

Presidential Council for Minority Rights

Under the Constitution, all Bills passed by Parliament (except for money Bills, urgent Bills and Bills affecting defence, security, public safety, peace or good order in Singapore) must be forwarded to the Presidential Council for Minority Rights to ensure that they do not discriminate against any racial or religious community.

Presidential Assent

After the Bill has been scrutinised by the Presidential Council of Minority Rights, the Bill is presented to the President for his assent. A Bill becomes law (i.e. An Act of Parliament) only when it has been assented to by the President.

Coming into force

The date the Act comes into force is usually determined by the Minister in charge of the Act and notified by a commencement Notification published in the *Gazette Supplement*.

Subsidiary Legislation

Acts of Parliament usually set out general principles and establish a regulatory framework. Many Acts of Parliament contain provisions that give the Ministry or Statutory Board that is charged with administering the Act the authority to issue rules and regulations to further the purposes and objectives of the Act, without having to refer such rules and regulations to Parliament for approval. Parliament in effect "delegates" to the Minister or Statutory Board concerned the authority to issue rules and regulations under the Act. Such rules and regulations are known as "Subsidiary Legislation" because they are "subsidiary" to the Act under which they are issued, that is, they must be consistent with the Act under which they are issued. The Subsidiary Legislation published in the *Government Gazette Subsidiary Legislation Supplement*.

It is necessary to give the Ministry or Statutory Board administering an Act of Parliament the power to issue rules and regulations if the legislative scheme governing a matter requires a high degree of flexibility and if the details must be modified on a regular basis. This enables the Ministry or Statutory Board to act quickly and decisively in issuing rules and regulations, without having to seek approval from Parliament. The safeguard is that Subsidiary Legislation must not be inconsistent with the Act under which it is issued or any other Act of Parliament or the Constitution.

In Singapore all Subsidiary Legislation is also drafted and vetted by the Legislation Division of the Attorney-General's Chambers. The Attorney-General's Chambers vets the Subsidiary Legislation

to ensure that it is not inconsistent with the Act under which it is issued or with any other Act of Parliament or the Constitution. The completed draft is sent back to the Ministry or Statutory Board to be signed and published in the Gazette.

Involvement of scientists and experts in formal legislative process

The involvement of scientists, experts and practitioners in the formal legislative process described above is very limited. Once a Government Bill has been drafted and introduced in Parliament, it is debated by Parliament, but it is usually approved by Parliament very quickly, with few if any amendments. However, there are cases where the Government decides that a Bill raises issues of fundamental public importance to society or to a particular sector of society. In such cases the Bill is referred to a Select Committee of Parliament. The Select Committee will hold public hearings and invite views and testimony from special interest groups as well as the general public. Examples of Bills which have been referred to Select Committees are:

- Building Maintenance and Management Bill (Bill no. 6/2004)
- Administration of Muslim Law (Amendment) Bill (Bill no. 18/1998)
- Advance Medical Directive Bill (Bill no. 40/1995)
- Maintenance of Religious Harmony Bill (Bill no. 14/1990)
- Human Organ Transplant Bill [Bill no.26/1986)

LAW-MAKING PROCESS IN PROPOSING AND PREPARING GOVERNMENT BILLS

Initiation of New Legislation by the Government

Almost all legislation in Singapore is initiated by the Government. Sometimes new policy initiatives requiring legislation are initiated by the Prime Minister's Office. In other cases new legislation or amendments to existing legislation are initiated by the Ministry charged with the responsibility of regulating that activity.

If the proposed legislation relates to a narrow issue of interest only one the Ministry or Statutory Board, that Ministry or Statutory Board will work with the Legislative Division of the Attorney-General's Chambers to prepare the draft Bill.

If the proposed legislation is broader in scope and cuts across the responsibilities of several Ministries, an inter-ministerial committee will be established with representatives from the Attorney-General's Chambers and all Ministries that will be affected. In such cases someone from the Ministry that will be responsible for administering the legislation will chair the committee.

Informal consultations on proposed legislation

Although the level of consultation in the formal legislative process in Singapore is rather limited, the level of consultation at the informal level is much greater, especially in some areas. It often follows this pattern. First, there is consultation when the legislation being proposed may have a significant impact on the economy or on a sector of society. Second, the Ministry or Statutory Board concerned usually actively seeks consultation from experts and from representatives of the major stakeholders who will be affected by the new legislation. Third, consultation usually takes place at an very early stage, when the Government has identified the problem, but is still exploring what type of legislation is required. Fourth, although the consultation often takes place informally and in private, so that views can be freely exchanged without anyone having to "loose face", in certain cases it is more public.

The policy of the Singapore Government is to engage in informal consultations with experts and stakeholders on the proposed legislation. The procedures vary according to the level of public interest or concern that is likely to be generated by the proposed legislation, the sectors of the economy that are likely to be affected by the proposed legislation, and the importance of the proposed legislation to Singapore's economic development.

If the proposed legislation is "lawyers' law" that is not likely to be of much interest to the general public or any sectors of the economy, only members of the legal profession are likely to be consulted.

If the proposed legislation is of importance to a fairly narrow segment of the economy, such as the shipping industry, experts in maritime law and representatives of the shipping industry who will be affected by the proposed legislation will be consulted.

If the proposed legislation is in any area which is of critical importance to the Government's economic development plans, such the goal to make Singapore a regional financial centre, the Government will consult very widely with national and international representatives from the private sector.

If the proposed legislation involves the development of an important sector of the economy, such as biomedical research, which raises issues of ethics and public policy, the Government may appoint a Committee comprised of members of the Government as well as scientists, doctors and respected community leaders.

I will illustrate this with examples of the consultation process followed with respect to legislation in three areas: (1) legislation on maritime security and international conventions; (2) legislation governing the financial services sector; and (3) legislation governing biomedical research.

Proposed Legislation on Maritime Security and International Conventions

Most Government Ministries or Statutory Boards have a policy of consulting experts and the stakeholders who will be affected by proposed legislative changes. The consultation is usually done informally, when the Ministry or Statutory Board is considering whether to propose new legislation or amend existing legislation. In many cases the same procedure is followed when the agency concerned is considering whether to ratify an international treaty.

The Government agency with the responsibility for maritime matters is the Maritime & Port Authority of Singapore (MPA). The MPA is a Statutory Board which was created by the Maritime and Port Authority Act (CAP 170A, Revised Singapore Statutes). The MPA was formed in 1996 by merging the former Marine Department, the former National Maritime Board, and the former regulatory departments of the former Port of Singapore Authority. The MPA's mission is to protect Singapore's strategic maritime interests and promote Singapore as a major port and international maritime centre. It is Singapore's national sea transport representative, and is responsible for safeguarding Singapore's maritime and port interests in the international arena. In this role, it is the agency which participates in meetings of the International Maritime Organization (IMO) and which is responsible for implementing and administering IMO conventions on navigational safety and pollution from ships.

The MPA also acts as the Government's adviser on matters relating to sea transport, marine and port services and facilities. It manages vessel movements, ensures navigational safety and manages the marine environment in the port. The MPA also acts as a developer, working with other agencies to make Singapore a top maritime centre by building a strong merchant shipping fleet and by meeting the training needs of the shipping/port industry.

The main legislation regulating ships registered in Singapore is the Merchant Shipping Act (Cap 179, Revised Singapore Statutes). Under that Act the MPA exercises regulatory functions in respect of merchant shipping and particularly in respect of safety at sea, the manning of vessels and the prevention of pollution at sea. The MPA is given the power under section 100 of the Merchant Shipping Act, with the approval of the Minister of Transport, to issue regulations to give effect to the provisions of any international convention or agreement concerning or relating to ships, ships' safety, ships' equipment, property or goods carried in ships or persons employed on ships and to which Singapore is a party. The MPA also exercises regulatory functions in respect of the port under the Maritime and Port Authority Act. Section 41 of the Act gives the MPA the power, with the approval of the Minister of Transport, to make regulations for the control and management of the port.

As the agency responsible for the regulation of ports and shipping and for the implementation of the IMO Conventions, the MPA takes the lead in preparing legislation to implement IMO Conventions and make them part of Singapore law. The MPA works closely with the Legislation Division of the Attorney-General's Chambers to prepare the necessary implementing legislation to make the provisions part of Singapore law. If it is necessary to pass an Act of Parliament to

implement an IMO Convention, the Bill will be prepared by the MPA and the Legislative Division of the Attorney-General's Chambers, and will be formally introduced by the Minister for Transport. If an IMO Convention can be implemented by the issuance of Subsidiary Legislation, the regulations will be drafted by the MPA and the Legislative Division of the Attorney-General's Chambers. The regulations will be issued by the Chairman of the MPA in the exercise of the powers granted to him under the Merchant Shipping Act or the Maritime & Port Authority Act, and will be published in the Government Gazette Subsidiary Legislation Supplement.

Before introducing any Bill in Parliament, the Legislative Division of the Attorney-General's Chambers will check to make certain that the draft legislation is consistent with the Constitution and with other Acts of Parliament. Before any regulations are issued by the Chairman of the MPA as Subsidiary Legislation, the Legislative Division of the Attorney-General's Chambers will ensure that the regulations are consistent with the parent Act under which they will be issued and that they are consistent with all other Acts and Subsidiary Legislation in force in Singapore.

In practice the MPA advises the shipping community in Singapore well in advance if it intends to ratify an IMO convention, propose new legislation or issue new regulations to implement an IMO convention. When it is considering whether to become a party to an IMO convention, the MPA will consult the shipping community and obtain its views. Its consultation will often be with the Singapore Shipping Association. After it has decided to become a party to a convention, it will advise the shipping community generally and give it notice as to the new requirements and the time frame by which they will have to comply with the new requirements. It will also organize seminars or talks to brief the shipping community on how it will be affected by the new legislation. The new legislation or new regulations will be completed before the IMO convention enters into force for Singapore, and the new legislation or regulations will be timed to come into operation in Singapore on the same day that the IMO convention enters into force for Singapore.

Once laws and regulations become part of Singapore law, they will generally be enforced quite vigorously from the day the come into operation. The MPA officers are honest and efficient, and they are supported by a judiciary which is renowned for its efficiency. Of course, it must be remembered that Singapore is a city-state with no provincial or local governments, and where MPA officers are never more than 30 minutes from any ship or port facility.

Proposed legislation relating to Singapore as an international financial centre

The Monetary Authority of Singapore (MAS) is the most active agency of the Singapore Government when it comes to public consultation on regulatory changes. MAS is Singapore's central bank, and it has been entrusted to promote monetary stability as well as credit and exchange policies conducive to the growth of the economy. One of its objectives is to supervise the banking, insurance, securities and futures industries, and develop strategies in partnership with the private sector to promote Singapore as an international financial centre. The MAS administers various Acts of Parliament pertaining to money, banking, insurance, securities and the financial sector in general.

The MAS consults and collaborates with stakeholders in the financial sector through discussions, committees and working groups. It consults in areas such as financial sector development, monetary policy formulation and consumer financial education. In the securities sector the MAS conducted more than 38 consultations between 1998 and 2003. The MAS also sought inputs from the banking and insurance sectors on proposed changes that would affect them. For example, it established an Economic Review Committee working group in 1997 to review strategies to develop Singapore as a financial centre. The members of this working group were primarily from the private sector, and legal officers from the Attorney-Generals' Chambers were also included. The report of the Economic Review Committee is available on the MAS home page.

The MAS has formalised its consultative approach, and has made public consultation on regulatory changes a standard procedure. It has issued a set of internal guidelines that require public consultations. The MAS engages in selective consultation rather than public consultation when the proposed changes to regulations are market sensitive, highly technical or would affect only a small segment of the industry. The requirement for either public or selective consultation is waived only in situations where consultation in advance would adversely affect the effectiveness of the proposed regulations or for very sensitive issues like monetary policy.

The MAS public consultation guidelines were published in an article in ETHOS, a quarterly publication of the Institute of Policy Development of the Civil Service College. Among other things, the guidelines state that each consultation should be accompanied by a consultation paper published on the MAS website. A visit to the home page of the MAS shows a quick link to Industry Consultations, which includes links to all of the current Consultation Papers and Reports, as well as an archive of past reports.

The MAS admits that public consultation lengthens the policy-making process and requires both MAS and industry to devote more of their resources to the consultation process. Nevertheless, the MAS believes that the consultation process improves the policy-making process in several ways. First, it enables the MAS to tap on practitioners' knowledge and understanding of the market to validate and refine policies. Second, market players help the MAS identify and deal with implementation issues in advance. Third, consultation provides an avenue to explain and garner support for policies. Fourth, making proposed policy changes known in advance helps provide greater certainty and enables the affected parties to prepare for the new policies. Finally, a more consultative and transparent approach is consistent with Singapore's stature as an international financial centre.

Role of experts in preparing legislation on biomedical research

Singapore is striving to make biomedical sciences a major sector of its economy. The Singapore Government has recognised that the rational and responsible management of bioethical issues is integral and critical to Singapore's development effort in biomedical sciences. In December

2000, the Cabinet appointed a Bioethics Advisory Committee to address the potential ethical, legal and social issues arising from biomedical sciences research in Singapore.

The Bioethics Advisory Committee is charged to ensure that Singapore's decisions regarding the biomedical sciences and research are solidly based on good science and high ethical and legal standards. The Committee actively gathers information and views from the international and local community, and after careful deliberation, it makes its recommendations to the Life Sciences Ministerial Committee.

The Bioethics Advisory Committee members were appointed by Cabinet in December 2000. The Committee members are senior, respected members of the Singapore community, who were selected by Cabinet based on their particular expertise and experience. The Committee comprises eleven members that are drawn from a wide range of backgrounds, including legal and biomedical experts and members from Ministries and the media. The Committee is not primarily intended to be a committee of experts in particular fields; rather, the Committee proactively seeks views and consults with expertises in various areas. The Committee receives submissions from experts, as well as the wider community, and considers them together in light of all the relevant considerations.

The work of the Bioethics Advisory Committee since its establishment in December 2000 can be summarized as follows:

- In February 2001, Subcommittees were established on Human Stem Cell Research, Human Genetics, and Publicity and Education
- In November 2001, it issued a Consultation Paper on Human Stem Cell Research and Cloning. The Consultation Paper was released to 39 religious and professional groups
- In February 2002, it issued a Consultation Paper on Human Tissue Research. It was released to 66 religious, public interest and professional groups
- In June 2002, it released a Report on the Ethical, Legal and Social Issues in Human Stem Cell Research, Reproductive and Therapeutic Cloning.
- In July 2002, the Government announced that its acceptance of the recommendations in the June report.
- In November 2002, it released a report on Human Tissue Research
- In November 2004, it released a report of Research Involving Human Subjects: Guidelines for IRBs

On 20 July 2004, the Government introduced the Human Cloning and Other Prohibited Practices Bill (Bill No. 34/2004) in Parliament. The Bill was drafted in accordance with the recommendations set out in the reports of the Bioethics Advisory Committee. When the Bill was introduced in Parliament at second reading, the Senior Minister of State for Health referred to the work of the Bioethics Advisory Committee as follows:

In December 2000, the Bioethics Advisory Committee (BAC) was appointed by Cabinet to examine the ethical, legal and social issues arising from biomedical research and development in Singapore, and to recommend policies to the Ministerial Committee for Life Sciences on these issues. In February 2001, the Human Stem Cell Research Sub-

committee was formed under BAC to specifically deal with the ethical, legal and social issues arising from human stem cell research. The BAC made its recommendations on how stem cell research should be conducted in its report which was accepted by Cabinet in May 2002. The BAC recommended that there should be a complete ban on the implantation of a human embryo created by the application of cloning technology into a womb, or any treatment of a human embryo intended to result in its development into a viable infant. In other words, it recommended banning human reproductive cloning. This Bill will ban human reproductive cloning without stopping stem cell research that may provide cures for millions of people with diseases like diabetes and stroke.

The Bill was passed by Parliament and assented to by the President in September 2004 and is known as the Human Cloning and Other Prohibited Practices Act 2004.

CONCLUSIONS ON ROLE OF SCIENTISTS, EXPERTS AND PRACTITIONERS IN THE MAKING OF LEGISLATION

Scientists, experts and other persons outside the Government play an important role in the preparation of proposed legislation in Singapore. In certain cases of public interest, a formal committee will be established to advise the Government in a particular area. This committee then undertakes consultations and issues reports that are made public.

One Government agency, the Monetary Authority of Singapore (MAS), has adopted a policy of engaging in public consultations for all proposed legislation relating to the development of Singapore as a financial services centre, and it uses its home page for this purpose. However, it also establishes committees of experts on proposed legislation when it believes that particular persons have expertise and experience which will assist it in preparing the proposed legislation.

In most other cases the process by which experts outside the Government are consulted is informal. Respected scientists, lawyers, businessmen, bankers, accountants, etc, are often consulted with respect to proposed legislation when the Government believes that they have expertise and experience which will assist in preparing the proposed legislation. This is especially so in areas where proposed regulations will affect particular sectors of the economy. The methods of consultation vary. Sometimes experts will be asked to serve as members of committees comprising members of the Government and the private sector. At other times they will simply be asked to comment on proposed legislation or give their views on how the proposed regulations will affect the private sector. The Government agencies have found that it is in their interest to consult the stakeholders who will be affected by regulations because it is more likely that the stakeholders will understand and comply with the regulations if they have been consulted about them from the outset.

In almost all cases the persons from outside the Government who are consulted are not remunerated. They volunteer their time when asked to assist the Government in an area where their expertise and experience is required.

Appendix: Home Pages relating to the Law-Making Process in Singapore

Singapore Statutes Online http://statutes.agc.gov.sg/

Singapore Government Home Page http://www.gov.sg/

The Cabinet http://www.cabinet.gov.sg/

Parliament http://www.parliament.gov.sg/

President http://www.istana.gov.sg/

Ministry of Law http://www.minlaw.gov.sg

Attorney-Generals' Chambers http://www.agc.gov.sg/

Statutory Boards http://www.gov.sg/govtlist_Statu.htm

Monetary Authority of Singapore http://www.mas.gov.sg/masmcm/bin/pt1Home.htm

Maritime & Port Authority of Singapore http://www.mpa.gov.sg

A*Star http://www.a-star.gov.sg/astar/index.do

Bioethics Advisory Committee http://www.bioethics-singapore.org/