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The Joint Law Venture: A Pilot Study

Jayanth K. Krishnan

Indiana University Maurer School of Law, jkrishna@indiana.edu

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The Joint Law Venture: A Pilot Study

By
Jayanth K. Krishnan *

Abstract

This pilot study evaluates the effectiveness of law firms entering into joint ventures, an increasingly eyed business model particularly by American and British lawyers seeking to expand into promising financial markets. One country at the center of the joint venture experiment has been Singapore. With the strong encouragement of the Singaporean government (which has long embraced foreign investment), various elite law firms from the United States and Britain have been partnering with domestic Singaporean law firms for over the past decade. Because these foreign firms were traditionally barred from practicing Singaporean law on their own, the 'joint law venture,' or JLV as it came to be called, was initiated to provide the Americans and British with an opportunity to access the highly-desired, lucrative local market – through the use of their Singaporean joint venture colleagues. In return, the Singaporean firms were to benefit by gaining international legal contacts, learning 'best practices' from their foreign counterparts, and enhancing their reputations by being tied to prestigious law firm powerhouses.

Until now, no work has fully investigated whether these JLVs have actually fared as well as their advocates had hoped. Therefore, based on fieldwork conducted in Singapore, including in-depth interviews of the relevant parties, this project fills this gap – uncovering how due to economic misalignment, cultural misunderstandings, and a sheer breakdown of necessary human relationships, in more cases than not the JLV has been a failed business model. For these reasons, I argue that American and British law firms may wish to think seriously before pursuing the JLV route – not just in Singapore but perhaps even in other markets in which they are already present or are contemplating entering.

* Professor of Law and Charles L. Whistler Faculty Fellow, Indiana University-Bloomington, Maurer School of Law. (Email: jkrishna@indiana.edu). This study falls under the aegis of the Maurer School's Center on the Global Legal Profession. I wish to thank Umakanth Varottil, whose close reading, trenchant comments, and generous assistance with all of his contacts throughout Singapore made this study possible. Also for their insights, I am appreciative to Marc Galanter, Jonathan Gingerich, Bill Henderson, Zia Mody, Michelle Olson, Laurel Terry, and David Wilkins. And finally, to the numerous lawyers and other professionals who gave me a detailed tour of how the law firms-universe works in Singapore, although I cannot thank you by name (due to my promise of anonymity to each of you), I am in your unqualified debt for the time and education you gave to me.

Table of Contents

Introduction.....	2
I. Surveying the Literature and Identifying the Gaps.....	6
II. Background on the Singaporean Context.....	10
A. Political Stability and Economic Success.....	10
B. The Singaporean Legal Profession and the Inviting Environment for Joint Law Ventures.....	13
III. An Empirical Analysis of the JLV.....	17
A. Background.....	17
B. The Upside – And Why Relationships Matter.....	19
C. The Downside – And Why Relationships Matter.....	23
IV. The Rajah Committee Report – And Where To Go From Here.....	27
A. Enhancing the JLV	27
B. The QFLF	29
V. Conclusion	31

Introduction

The current economic downturn has forced large law firms in the United States to scale back their hiring practices, lay-off employees, and reconsider their overall business structure.¹ One prominent scholar has argued “that the bubble has permanently burst on the traditional BigLaw [or big law firm] model.”² As such, the ramification of the economic crisis is that regional and local law firms will play a more prominent role in the delivery of legal services.³ The thought is that because they incur lower costs (in terms of salaries and fees) and are generally more attentive to client-needs, these smaller firms are likely to receive greater amounts of work that otherwise would have headed to the elite law firms.⁴

¹ For a detailed listing of firms that have been suffering under the present economic crisis, the legal professions blog, Law Shucks (together with David Lat’s blog, Above the Law, see e.g., <http://abovethelaw.com/2009/06/13/>) has been maintaining copious data on the number of lay-offs occurring at law firms in Britain and the United States. See <http://lawshucks.com/layoff-tracker/>,

² See commentary by Professor William Henderson on the widely read legal blog, Brian Leiter Law Reports, April 30, 2009, at <http://leiterlawschool.typepad.com/leiter/2009/04/the-upheaval-in-the-market-for-new-lawYERS-at-the-big-law-firms-temporary-or-permanent.html>. Also see, John P. Heinz, *When Law Firms Fail*, 43 SUFFOLK L. REV. (forthcoming Nov. 2009). And see Larry E. Ribstein, *The Death of Big Law*, University of Illinois Law & Economics Research Paper LE 09-025 (2009), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1467730.

³ See Henderson, *supra* note 2.

⁴ *Id.*

This pilot study will seek to add a more international dimension to the analysis. As big law firms in the United States have struggled, so too have their counterparts in Britain. The result is that many large law firms in both countries are focusing on markets that until now have been untapped. The mega-firm of DLA Piper, for example, in October of 2008 opened an office in Kuwait, noting that the country's strong economic presence within the Gulf Cooperation Council served as the impetus for this move.⁵ Similarly, a partner from a high-powered British firm recently commented that places like "Jakarta and Vietnam are the hot markets now where [Western] lawyers can mint money."⁶ And a report by the Bloomberg news group notes that the slumping global economy "has encouraged . . . firms led by Cleary Gottlieb, Skadden, Arps, Slate, Meagher & Flom, and Dewey & LeBoeuf to accelerate foreign expansion programs"⁷

That American and British law firms are 'going international' is not a new development. But because these law firms have not experienced such hard-hitting economic conditions in more than a generation, the manner in which they are looking to create business in other countries merits scholarly attention. One method being used to enter newer markets is the establishment of what is called the JLV, or joint law venture. The structure of this entity is straightforward. An American firm, for instance, decides it wants to expand, say, into country X. While X allows foreign lawyers to conduct international transactions within its borders, it has stringent licensing requirements that effectively bar the American (and all other foreign) lawyers from practicing X's domestic laws. Yet the American firm has been eyeing country X precisely because it believes there is potential for earning a great amount of money from the local business sector. As a result, the American firm contacts, develops a relationship with, and eventually enters into a joint law venture with a local firm from X. The JLV is a legally distinct body that now has as one of its main advantages the ability to practice, through it locally-licensed lawyers, the laws of country X.⁸

⁵ See Joint Venture Agreement Announced between Leading Kuwaiti Law Firm and DLA Piper, October 8, 2008, <http://www.dlapiper.com/global/media/detail.aspx?news=2821>.

⁶ Author interview with elite law firm partner, June 9, 2009 (anonymity requested of both name and firm).

⁷ See Lindsay Fortado, *Law Firms Find Work Abroad as U.S. Mergers Hit a Low*, BLOOMBERG.COM, April 10, 2008, <http://www.bloomberg.com/apps/news?pid=20601109&sid=aAwmFwVMjgaM&refer=home>. For a later article that appeared in November of 2008 affirming this position, when the U.S. economy was arguably at one of its lowest points, see, John Bringardner, *U.S. Law Firms Expanding Abroad*, NEW YORK TIMES, Nov. 23, 2008, <http://www.nytimes.com/2008/11/23/world/americas/23iht-lawyers.1.18063294.html>.

⁸ For enlightening work on this subject of joint law ventures in Japan, see Bruce E. Aronson, *The Brave New World of Lawyers in Japan*, 21 COLUMBIA J. ASIAN LAW 45 (2007); Bruce E. Aronson, *Elite Law Firm Mergers and Reputational Competition: Is Bigger Really Better? An International Comparison*, 40 VAND. J. TRANS. LAW 763 (2007). David Wilkins, who is cited extensively later in this study (*infra* notes 25 and 31), has also discussed joint ventures, but in a different vein (noting the emerging relationships between lawyers and their clients.) See e.g., David B. Wilkins, *Team of Rivals? Toward a New Model of the Corporate Attorney/Client Relationship*, in CURRENT LEGAL PROBLEMS (forthcoming 2009); David B. Wilkins, *Do Clients Have Ethical Obligations to Lawyers?* 11 GEO. J. LEGAL ETHICS 855 (1998). For other studies of relevance, see, David A. Gantz, *Doi Moi, the VBTA, and WTO Accession, The Role of Lawyers in Vietnam's No Longer Cautious Embrace of Globalization*, 41 INT'L. LAWYER 873 (2007); Jeff Coburn, *All for One: Strategic Alliances Are Good for Business, Clients*, 17 (5) LEGAL MGMT. 46 (1998);

In theory then, the JLV appears like an optimal route for the American law firm to pursue. Theoretically, there are also benefits for the local firm in country X. It has an opportunity to gain international contacts, learn skills and ‘best practices’ from the American counterparts, and link itself to a high-prestige U.S. firm. Therefore, it seems as though the JLV is a win-win strategy for both sides.

But is it really? Below, I preliminarily test this theory by looking at a country that has been considered a major hub for JLVs for over the past decade. The wealthy Asian country of Singapore, with a population of 4.8 million, is a significant financial center, where business elites from states like Japan, China, Indonesia, and Malaysia interact with one another as well as with economic players from India, the Middle East, Europe, and North America. Since becoming fully independent in 1965, Singapore has made economic development a primary goal, successfully achieving gross domestic product and per capita income numbers that are among the highest in the world.⁹ As part of its development plan, Singapore has aggressively liberalized its economy, including its legal services sector. For decades foreign law firms have been granted admission into the country, but they have been prohibited from practicing Singaporean law.¹⁰ Then about ten years ago the government sought to expand the scope under which foreign law firms could work. Upon consultation with lawyers from the United States and Britain, as well as its own domestic bar, the Singaporean government began allowing for the establishment of the JLV in the late 1990s, believing it would positively serve all parties involved. And indeed between 2000 and 2009 eleven JLVs were created between elite foreign law firms on the one side and local Singaporean firms on the other.

Jonathan Barsade, *The Effect of EC Regulations Upon the Ability of U.S. Lawyers to Establish a Pan-European Practice*, 28 INT’L. LAW 313 (1994); Roger J. Goebel, *Professional Qualification and Educational Requirements for Law Practice in a Foreign Country: Bridging the Gap*, 63 TUL. L. REV. 443 (1989). While she does not focus on the subject of joint law ventures (notwithstanding a mention in footnote #30), Carole Silver, in a 2007 study, discusses how globalization has led American law firms to emphasize the importance of recognizing what she terms “[t]he rise of local players.” For a discussion on this reliance, see Carole Silver, *Local Matters: Internationalizing Strategies for U.S. Law Firms*, 14 INDIANA J. GLOBAL LEGAL STUDIES 67, 77-89. (Also for a discussion on joint relationships in terms of law firms and legal outsourcing companies, see Jayanth K. Krishnan, *Outsourcing and the Globalizing Legal Profession*, 48 WILLIAM AND MARY LAW REVIEW 2189 (2007); and Mary C. Daly and Carole Silver, *Flattening the World of Legal Services? The Ethical and Liability Minefields of Offshoring Legal and Law-Related Services*, 38 GEO. J. INT’L. L. 401 (2007); Mimi Samuel and Laura Currie Oates, *From Oppression to Outsourcing: New Opportunities for Uganda’s Growing Number of Attorneys in Today’s Flattening World*, 4 SEATTLE J. FOR SOC. JUSTICE 835 (2006); Laurel S. Terry, *The Legal World is Flat: Globalization and Its Effects on Lawyers Practicing in Non-Global Law Firms*, 28 N.W. J. INT’L L. & BUS. 527 (2008). And there has been work on joint ventures between law firms and non-legal entities, see e.g., John S. Dzienkowski and Robert J. Peroni, *Multi-Disciplinary Practice and the American Legal Profession: A Market Approach to the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83 (2000); Gregory Steven Swan, *The Political Economy of Interprofessional Imperialism: The Bar and Multidisciplinary Practice, 1999-2001*, 21 J. LEGAL PROF. 151 (2000).

⁹ For data that bears this point out, see World Economic Outlook Database-April 2009, International Monetary Fund, <http://www.imf.org/external/pubs/ft/weo/2009/01/weodata/index.aspx>.

¹⁰ Author interview with lawyer from a well-known Singaporean firm, June 9, 2009 (anonymity requested.) For brief background on this point, see Warren B. Chik, *Brief Notes: Recent International Developments in Singapore*, 7 SINGAPORE J. INT’L & COMP. LAW 267 (2003).

Yet to-date no sustained work has evaluated how effective these JLVs have functioned in Singapore. Therefore, during part of the summer of 2009 I spent time in the country conducting fieldwork on this subject. As I quickly learned upon my arrival, more than half of these eleven JLVs have since been disbanded. In fact, as I also learned, in 2007 the government formally adopted a new set of procedures (that came into force earlier this year, 2009) intended to facilitate the liberalization of the legal services sector.¹¹ With these facts as my starting points, I set out to understand why many of the JLVs had not lived-up to their theoretical accolades – and of those that remain standing, why they have managed to do so. Employing the well-accepted empirical method of semi-structured interviews, I met with nine high-ranking lawyers representing six of the eleven JLVs. Subsequently, upon my return to the States I carried-out phone interviews with three other lawyers respectively representing three additional, separate JLVs. (There were also follow-up email exchanges with several of these respondents, and I conducted interviews with lawyers in Singaporean, U.S., and U.K. firms that have affirmatively decided not to opt for the joint entity.¹²) The data gathered reveal a telling account, detailed below, illustrating some pluses – but also many pitfalls – that have accompanied the JLV. And it is for these reasons why I will argue that in the future American and British law firms should think seriously before pursuing the JLV route – not just in Singapore but even perhaps more broadly in other markets in which they are already present or are contemplating entering.

Before moving to my findings, though, this project will proceed in the following manner. Section One will review those studies that have discussed the structure of law firms over the years. In addition, I draw on those works by business and economics scholars that have explored international joint ventures, in particular, and explain how these studies can apply to my research and help fill an important gap in the legal professions' scholarship. Section Two briefly covers Singapore's meteoric economic rise and the political environment in which this growth has occurred. From there, I describe the nature of the Singaporean legal profession and how the American and British presence and the JLV fit within this landscape. Section Three then presents the findings of my fieldwork and interviews, which cast doubt on the theory that JLVs are necessarily an ideal vehicle for Western law firms to expand into newer markets. Finally, Section Four assesses where to go from here and by offering the beginnings of alternative models of what globalizing law firms interested in migrating into untapped

¹¹ We will be focusing on these government measures in detail towards the end of the study. For background on what occurred, the Singaporean government's Ministry of Law website has the relevant information at <http://www.mlaw.gov.sg/qflp/>.

¹² The nature of my interviews with these all of individuals at times touched on professionally delicate matters. Based on my consultation with my university's human subjects institutional review board, which granted me full approval to conduct my research, I promised all of my respondents that their identities would be kept confidential. For that reason, throughout the course of this study, I redact the names of my interviewees in my citations and the firms for which they work.

markets might do in the future, given the challenges now known to confront the joint law venture.

I. Surveying the Literature and Identifying the Gaps

Notwithstanding Erwin Smigel's riveting book on Wall Street lawyers from over four decades ago or Paul Hoffmann's 1973 work, *Lions in the Street*, little was written or known about the structure and business model of American law firms until after 1979.¹³ It was in that year when the attorney, writer, and publisher, Steven Brill, launched *The American Lawyer*, a monthly magazine that has since developed into a leading publication that tracks various aspects of the legal profession, including how law firms function.¹⁴ Within its "Firms" section, the magazine discusses work being done, management issues, employment, and the overall legal environment in which lawyers are currently operating.¹⁵ There is also its most well-known feature, which consists of ranking the top law firms in the United States on the basis of gross profits, profitability per partner, and salaries of full-time and summer associates.¹⁶

The American Lawyer has spawned other similar types of publications. (The American Bar Association, for instance, has a weekly e-mailing that, among other items, contains data, news, and human interest stories on what is happening in the law firm world.¹⁷) And there are numerous blogs that cover this sector of the legal profession with great interest.¹⁸

With more information available on law firm practices, academic studies soon emerged as well. For example, during the late 1980s, Robert Nelson published *Partners with Power*, which revealed a transition by particularly corporate law firms towards more specialized, non-litigation oriented practices.¹⁹ A few years later, Marc Galanter and Thomas Palay wrote *Tournament of Lawyers*, arguing that the structure of large law firms could be explained by the

¹³ See ERWIN O. SMIGEL, *THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATIONAL MAN?* (1964); PAUL HOFFMANN, *LIONS IN THE STREET: THE INSIDE STORY OF THE GREAT WALL STREET LAWYERS* (1973). For a discussion of this point, and an ensuing account of the development of the scholarly literature, see Eli Wald, *The Other Legal Profession and the Orthodox View of the Bar: The Rise of Colorado's Elite Law Firms*, 80 U. COL. L. REV. 605 (2009).

¹⁴ For background and content of this magazine, see AMERICAN LAWYER.COM, <http://www.law.com/jsp/tal/index.jsp>. Also, see Wald, *supra* note 13 at footnote 419.

¹⁵ See *id.* at <http://amlawdaily.typepad.com/amlawdaily/work/index.html>.

¹⁶ *Id.*

¹⁷ See *e.g.*, ABA JOURNAL WEEKLY NEWSLETTER, <http://abajournal.com/weekly/>.

¹⁸ See *e.g.*, Above the Law, www.abovethelaw.com, Law Shucks, <http://lawshucks.com/layoff-tracker/>, The Legal Profession Blog, http://lawprofessors.typepad.com/legal_profession/, Empirical Legal Studies Blog, www.elsblog.org.

¹⁹ See ROBERT L. NELSON, *PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM* (1988). For a concise summary of the works that came out post-1980, see JOHN P. HEINZ, ROBERT L. NELSON, EDWARD O. LAUMANN, AND REBECCA L. SANDEFUR, *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* 12-13 (2005); and see Wald, *supra* note 13 at 612-20.

race to partnership – that then in turn would lead to a need to hire more associates, which then would lead to even larger firms.²⁰ In 2008, Galanter, this time together with William Henderson, followed-up on that study by noting that although the race-to-the-partnership thesis was still both relevant and applicable, there were concerning ramifications of this tournament that the original model had not initially foreseen.²¹ Namely, the obsession with growth and economic profitability led firms to shun other worthwhile causes, such as thinking about the need for racial and gender diversity, taking-up *pro bono* cases, and mentoring younger lawyers.²² According to Galanter and Henderson, the existing structure of big law firms effectively only allowed for a culture that valued ‘the bottom dollar’ – and little else.

In-between *Tournament of Lawyers* and that 2008 article, other studies examined this point and, more broadly, the subject of how firm structure and culture intersected as well.²³ For example, a number of authors found that gender-equity, in terms of salaries or promoting women to partners, was simply not part of law firm culture.²⁴ And similarly, arcane cultural norms along with

²⁰ See MARC GALANTER AND THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRMS* (1991). Note HEINZ ET. AL also discuss this work and note that there were challenges made to the Galanter-Palay thesis, see *supra* note 19 at 12 (citing Robert L. Nelson, *Of Tournaments and Transformations: Explaining the Growth of Large Law Firms*, WISC. L. REV. 733 (1992); Kevin A. Kordana, *Law Firms and Associate Careers: Tournament Theory Versus Production-Imperative Model*, 104 YALE L. J. 1907 (1995)); and see Wald, *supra* note 13 at 612-20.

²¹ See Marc Galanter and William D. Henderson, *The Elastic Tournament: The Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867 (2008)

²² *Id.* For another study that has examined the issue of how law firm practice setting and structure affects similar types of issues, see Stuart Scheingold and Anne Bloom, *Transgressive Cause Lawyering: Practice Sites and the Politicization of the Professional*, 5 INT’L. J. OF THE LEGAL PROFESSION, 209 (1998).

²³ Again, for a detailed account of this development, see Wald, *supra* note 13 at 612-20. For a study of norms, culture, and partnerships see EMMANUEL LAZEGA, *THE COLLEGIAL PHENOMENON: THE SOCIAL MECHANISMS OF COOPERATION IN A CORPORATE LAW PARTNERSHIP* (2001) (also discussed in HEINZ ET AL, *supra* note 19 at 13); and see, Marc Galanter and Simon Roberts, *From Kinship to Magic Circle: The London Commercial Law Firm in the Twentieth Century*, 15 INT’L J. OF THE LEGAL PROFESSION 143 (2008).

²⁴ See e.g., Timothy O’Brien, *Why Do So Few Women Reach the Top of Big Law Firms*, N.Y. TIMES, March 16, 2006, <http://www.nytimes.com/2006/03/19/business/yourmoney/19law.html>; Fiona M. Kay and John Hagan, *Raising the Bar: The Gender Stratification of Law Firm Capital*, 63 AM. SOCIOLOGICAL REV. 728 (1998) (discussing how such barriers exist beyond U.S. firms and into Canadian firms too); Fiona M. Kay, *Flight From Law: A Competing Risks Model of Departures from Law Firms*, 31 L. & SOC’Y REV. 301 (1997); Jo Dixon and Carol Seron, *Stratification in the Legal Profession: Sex, Sector, and Salary*, 29 L. & SOC’Y REV. 381 (1995); Elizabeth Chambliss, *Organizational Determinant of Law Firm Integration*, 46 AM. U. L. REV. 669 (1997). For important earlier studies, also see John Hagan, *The Gender Stratification of Income Inequality Among Lawyers*, 68 SOCIAL FORCES 835 (1989); Carrie Menkel-Meadow, *The Feminization of the Legal Profession: The Comparative Sociology of Women Lawyers*, in *LAWYERS IN SOCIETY: VOL. 3 COMPARATIVE THEORIES* (eds., Richard Abel and Philip Lewis, 1989); CYNTHIA FUCHS EPSTEIN, *ACCESS TO POWER – CROSS NATIONAL STUDIES OF WOMEN AND ELITES* (1981). Note most of these pieces are also discussed in HEINZ ET. AL, *supra* note 19 at 12-13. Also see Wald, *supra* note 13 at 611-616. In addition, in 2006 (later updated in 2008) Keith Buckley, Associate Librarian and Lecturer in Law at Indiana University compiled a “Bibliography on Law Firms and Gender.” For a wealth of informational readings, see <http://firms.law.indiana.edu/research/Gender.pdf>.

hidden and overt biases were cited as barriers for why lawyers of color found it difficult to rise to the upper echelons within big law firms.²⁵

On the comparative front, while there has not been as much written relative to what is found on North American firms, there are still structural observations worth mentioning. John Flood, for example, has been at the forefront of documenting how the increase in international business transactions has affected the organizational structure of law firm practice in Britain and beyond.²⁶ On China, there has been research on how Western law firms have been entering the Chinese market, learning from local counsel, and providing best-practices skills to their domestic counterparts – all as a process of the “boundary-blurring,”²⁷ of legal services. In India, previous work has shown that the present fight over whether foreign lawyers should be permitted access to the domestic market has resulted in both Western and Indian firms restructuring how they operate in order to meet the demands of globalization.²⁸ And some years back a group of scholars joined together to discuss various aspects of legal culture and globalization in Latin America and “Latin Europe,” with bits and pieces relating to the legal profession and the types of work influential lawyers are doing in these regions.²⁹

All of this literature clearly has enhanced the understanding of the institutional and cultural structures of law practice. But it is by no means without its gaps. As Eli Wald has argued, even with the diverse array of studies that exist,

²⁵ David Wilkins’ work is perhaps the most prominent scholarship in this area. For a sample of his writings on this topic, see David B. Wilkins, *Two Paths to the Mountaintop? The Role of Legal Education in Shaping the Values of Black Corporate Lawyers*, 45 STAN. L. REV. 1981 (1993); David B. Wilkins, *Doing Well by Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers*, 41 HOUS. L. REV. 1 (1998); David B. Wilkins and G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the International Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1582 (1998) (also discussed in HEINZ ET AL., *supra* note 19 at 14; and there was a response to this piece by Marc Galanter and Thomas M. Palay, *A Little Jousting about the Big Law Firm Tournament*, 84 VA. L. REV. 1683 (1998)); David B. Wilkins and G. Mitu Gulati, *Why Are So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493 (1996). And like in *supra* note 24, Keith Buckley has compiled a detailed “Bibliography on Race and the Legal Profession.” For another set of valuable readings, see <http://firms.law.indiana.edu/research/Race.pdf>.

²⁶ See e.g., John Flood, *Globalization and Large Law Firms*, in THE NEW OXFORD COMPANION TO LAW (eds., Peter Cane and Joanne Conaghan, forthcoming); John Flood, *Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions*, 10 INDIANA J. GLOBAL LEGAL STUDIES 35 (2007); John Flood, *Resurgent Professionalism? Partnership and Professionalism in Global Law Firms*, in REDIRECTIONS IN THE STUDY OF EXPERT LABOUR (eds., Daniel Muzio, Stephen Ackroyd, and Jean-Francois Chanlat, 2007); John Flood and Fabian P. Sosa, *Lawyers, Law Firms, and the Stabilization of Transnational Business*, 28 N.W. J. INT’L L. & BUS. 489 (2008). Also for work that has discussed the more general role of lawyers in society and the legal profession in other parts of Europe and in Japan, see HERBERT JACOB, HERBERT M. KRITZER, DORIS MARIE PROVINE, AND JOSEPH SANDERS, *COURTS, LAW, AND POLITICS IN COMPARATIVE PERSPECTIVE* (1996).

²⁷ See Sida Liu, *Globalization as Boundary-Blurring: International and Local Law Firms in China*, 42 L. & SOC’Y. REV. 778 (2008).

²⁸ See Jayanth K. Krishnan, *Globetrotting Law Firms*, (GEO. J. LEGAL ETHICS, forthcoming 2009)

²⁹ See LAWRENCE M. FRIEDMAN AND ROGELIO PEREZ-PERDOMO, *LEGAL CULTURE IN THE AGE OF GLOBALIZATION: LATIN AMERICA AND LATIN EUROPE* (2003). By Latin Europe, the volume is referring to Italy and Spain.

there is in some sense a “standard story”³⁰ that has emerged regarding the structure and growth of law firms, which has had the unfortunate effect of narrowing the discourse. Yet in turn it also provides a nice opportunity to consider this subject from a different perspective. To that end, a survey of the relevant legal professions’ scholarship reveals that notwithstanding a few studies,³¹ to-date there has been little critical academic examination of the extent to which law firms are engaging in the specific practice of forming international joint law ventures.

And this lack of literature is somewhat conspicuous, given the reports (cited in the Introduction) that law firms from the West are entering into these relationships – and that academics from other disciplines have looked at the joint venture model, in other business contexts, for some years. In 2009, Sameer Vaidya published an article reviewing the scholarship on joint ventures.³² Working off of the definition by Oded Shenkar and Yoram Zeira on joint ventures,³³ Vaidya notes that the research has been divided into several discrete areas.³⁴ Some studies have looked at the motivations behind the formation of joint ventures.³⁵ Others have focused on the structure of management (such as how leaders are selected and who wields control).³⁶ Still other works have

³⁰ See Wald, *supra* note 13 at 612-20 (analyzing how this standard story does not explain the set of firms in Colorado that he studied, which has achieved great profitability and elite status through the practice of nepotism.)

³¹ See *e.g.*, *supra* note 8. Also, as stated in *supra* note 8, David Wilkins has discussed law firm joint ventures in his work, but from a different perspective. See *e.g.*, see David B. Wilkins, “If You Can’t Join ‘Em, Beat ‘Em!” *The Rise of the Black Corporate Law Firm*,” 60 STAN. L. REV. 1733 (2008) (tracing how in certain situations majority white firms in the United States, on the behest of minority politicians, made “it clear that the only way the firm would be able to win city business was to find a suitable minority joint venture partner . . . that would be cut in on some of this work.” (*Id* at 1764). See also Wilkins, *Team of Rivals?* *supra* note 8. And there been reference to joint ventures between law schools and law firms, see Chad P. Brown and Bernard M. Hoekman, *WTO Dispute Settlement and the Missing Developing Country Cases: Engaging the Private Sector*, 8 J. INT’L ECON. L. 861, 879 at footnote 31 (2005).

³² Sameer Vaidya, *International Joint Ventures: An Integrated Framework*, 19 INT’L. BUS. J. 8 (2009).

³³ Namely that it is a “separate legal organizational entity representing the partial holdings of two or more parent firms in which the headquarters of at least one is located outside the country of operation of the joint venture. This entity is subject to the joint control of its parent firms each of which is economically and legally independent of the other.” Oded Shenkar and Yoram Zeira, *Human Resources Management in International Joint Ventures: Directions for Research*, 12 ACADEMY OF MANAGEMENT REVIEW 546 (1987), as found at Vaidya *supra* note 32 at 9. As we will see below, and as intimated in the hypothetical on pages 3-4 above, this definition captures the JLV model that I am talking about in Singapore.

³⁴ See Vaidya, *supra* note 32 at 9.

³⁵ See *id* at 9-10 (citing studies like those of KATHRYN HARRIGAN, *STRATEGIES FOR JOINT VENTURES* (1985) and Bruce Kogut, *Joint Ventures: Theoretical and Empirical Perspectives*, 9 STRATEGIC MANAGEMENT JOURNAL 319 (1988).

³⁶ See Vaidya, *supra* note 32 at 9-14, (citing, for example, studies like John B. Cullen, Jane L. Johnson, and Tomoaki Sakano, *Japanese and Local Partner commitment to IJVs: Psychological Consequences of Outcome and Investment in IJV Relationship*, 26 J. INT’L. BUS. STUDIES 91 (1995); Paul W. Beamish, *Joint Ventures in LDCs: Partner Selection and Performance*, 2 MANAGEMENT INT’L. REV. 60 (1994); Shenkar and Zeira, *supra* note 33; Benjamin Gomes-Casseres, *Joint Ventures in the Face of Global Competition*, SLOAN MANAGEMENT REVIEW 17 (Spring 1989); Michael J. Geringer, *Strategic Determinants of Partner Selection Criteria in International Joint Ventures*, 22 J. INT’L. BUS. STUDIES 41 (1991). For many more studies listed, see Vaidya, *supra* note 32 at 10-11 and at 13.

concentrated on issues of trust between those involved in the joint venture.³⁷ And there has been scholarship on who holds better bargaining strength, access to resources, and best practice procedures in joint venture dealings.³⁸

According to Vaidya, with joint venture collaborators often having different motives for entering into the relationship – along with the fact that frequently there is a non-integrated management structure, stark salary differentials, a lack of trust, and disparate levels of power between the foreign and domestic partners – it is of little surprise that the literature shows that such entities “have had a high rate of failure, [with] . . . many of them break[ing] up.”³⁹ At the same time, however, even in this current economic climate, Vaidya and others hasten to state that there is little doubt that the vehicle of joint ventures is here to stay.⁴⁰ The question is whether international *JLVs* – for which there is a lack of any sustained data – suffer from similar infirmities found with other joint ventures. This inquiry is addressed in a moment; but first there will be an examination of an environment in which several *JLVs* have taken place – Singapore.

II. Background on the Singaporean Context

A. Political Stability and Economic Success

As stated above, on a per capita basis Singapore enjoys one of the highest standards of living in the world.⁴¹ How it arrived at such an economic pinnacle is

³⁷ See Vaidya, *supra* note 32 at 11-12 (citing, for example, studies like Robert M. Morgan and Shelby D. Hunt, *The Commitment-Trust Theory of Relationship Marketing*, 58 *JOURNAL OF MARKETING* 20 (1994); Anoop Madhok, *Revisiting Multinational Firms' Tolerance for Joint Ventures: A Trust-Based Approach*, 26 *J. INT'L. BUS. STUDIES* 117 (1995); Cullen, Johnson, and Sakano, *supra* note 36; Ann V. Llanaez, and Esteban Garcia-Canal, *Distinctive Features of Domestic and International Joint Ventures*, 38 *Management International Review* 49 (1998)). For many more studies cited, see Vaidya, *supra* note 32 at 11-12.

³⁸ See Vaidya, *supra* note 32 at 12 (citing, for example, Andrew C. Inkpen and Paul W. Beamish, *Knowledge, Bargaining Power, and the Instability of International Joint Ventures*, 22 *ACADEMY OF MANAGEMENT REVIEW* 177 (1997); A. Yan and B. Gray, *Bargaining Power, Management Control, and Performance in the United States-China Joint Ventures: A Comparative Case Study*, 37 *ACADEMY OF MANAGEMENT JOURNAL* 1478 (1994); Wesley M. Cohen and Daniel A. Levinthal, *Fortune Favors the Prepared Firm*, 40 *MANAGEMENT SCIENCE* 227 (1994)). For more studies cited, see Vaidya, *supra* note 32 at 11-12.

³⁹ See Vaidya, *supra* note 32 at 10. Also for another study that discusses the “pitfalls” and the lessons of doing joint ventures, see Suet-Fern Lee and Mark Tan, *Joint Ventures in China – Lessons to be Learned from Danone Versus Wahaha*, 30 *THE COMPARATIVE LAW YEARBOOK OF INTERNATIONAL BUSINESS* (2008) (discussing a specific case in China between a French company and Chinese company that engaged in a food joint venture.)

⁴⁰ See Vaidya, *supra* note 32 at 14; also for further reading, see AIMIN YAN AND YADONG LUO, *INTERNATIONAL JOINT VENTURES: THEORY AND PRACTICE* (2001) (in particular, pages 247-248, which provide also a nice summary of the literature to that point. The authors of this book look specifically to joint venture structures and “argue that an understanding of the key driving and restraining forces for [why there is] joint venture restructuring is pivotal.” *Id.* at 247.

⁴¹ See *supra* note 9 for data and figures.

beyond the scope of this study, but its achievements have been discussed at length elsewhere.⁴² There are, however, certain basic points worth noting before proceeding to an examination of the country's legal profession and a discussion of joint ventures. For example, Singapore has long had a strong English-language influence, mainly from the fact that as early as 1819 it was settled by the British East India Company led then by Sir Thomas Stamford Raffles.⁴³ By 1867 Singapore formally became a colony of Britain, and notwithstanding a four-year period during World War II when the Japanese controlled the island, British rule lasted until the 1950s.⁴⁴ For a brief time thereafter beginning in 1963, Singapore merged with Malaysia, but by 1965 it withdrew and became an independent state with Lee Kuan Yew presiding as prime minister.⁴⁵

There has been no more pivotal a political figure in Singapore's post-1965 era than Lee Kuan Yew. His People's Action Party (PAP) has held overwhelming majorities in every session of Parliament, including prevailing once again in the most recent election in 2006.⁴⁶ As Lee himself has written, the key platform of the PAP has been to provide Singaporeans with security *and* economic prosperity – the latter being accomplished by: making the country's infrastructure among the best in the world, creating value-added goods for export, and opening its borders to foreign investment.⁴⁷ And although there have been various financial

⁴² See e.g., HENRI GHESQUIERE, SINGAPORE'S SUCCESS: ENGINEERING ECONOMIC GROWTH (2007); TILAK ABEYSINGHE AND KEEN MENG CHOY, THE SINGAPORE ECONOMY: AN ECONOMETRIC PERSPECTIVE (2007); HAFIZ MIZRA, MULTINATIONALS AND THE GROWTH OF THE SINGAPORE ECONOMY (1986); R.P. LEBLAC, SINGAPORE: THE SOCIO-ECONOMIC DEVELOPMENT OF A CITY STATE: 1960-1980 (2008); SUDHA V. MENON, SINGAPORE ECONOMY: AN OVERVIEW (2008).

⁴³ For an oft-cited biography on Raffles and work in Singapore (and beyond), see MAURICE COLLINS, RAFFLES – THE DEFINITIVE BIOGRAPHY (1966).

⁴⁴ For a classic treatment of this subject, see C.D. COWAN, NINETEENTH-CENTURY MALAYA: THE ORIGINS OF BRITISH POLITICAL CONTROL (1961). Also, for a political economy and historical examination of this topic, see HIROSHI SHIMIZU AND HITOSHI HIRAKAWA, JAPAN AND SINGAPORE IN THE WORLD ECONOMY: 1870-1965.

⁴⁵ Initially there was limited self-rule allowed by the British in the early 1950s. But by 1959 Singapore achieved full self-rule that saw the People's Action Party (PAP) emerge victorious in elections for the national legislative assembly. Note, in that 1959 election in which the PAP won, Lee Kuan Yew was elected prime minister during that session as well. The political scientist, Diane Mauzy, has written extensively on Singapore, the PAP, and Lee Kuan Yew. For some of her important work on these subjects, see Diane Mauzy, *Electoral Innovation and One Party Dominance in Singapore*, in HOW ASIA VOTES (eds., John Hsieh and David Newman, 2001); DIANE MAUZY AND ROBERT MILNE, SINGAPORE POLITICS UNDER THE PEOPLE'S ACTION PARTY (2002).

⁴⁶ See Mauzy, *supra* note 45; MAUZY AND MILNE, *supra* note 45 at 38-50. For a more recent account of the PAP's dominance, see LEBLAC, *supra* note 42; MENON, *supra* note 42; also the news magazine THE ECONOMIST keeps data and records of the country along the lines of political and socio-economic growth. On this point regarding the PAP, see *Political Forces*, THE ECONOMIST, May 21, 2007, <http://www.economist.com/countries/singapore/profile.cfm?folder=Profile-Political%20Forces>.

⁴⁷ See LEE KUAN YEW, FROM THIRD WORLD TO FIRST: THE SINGAPORE STORY 1965-2000 (2000). In addition, Singapore played a critical role in promoting regional prosperity, development and security. For example, in 1967, Lee led the efforts to form the Association of Southeast Asian States (ASEAN), which had (and continues to have) as its main focus economic, political, and military security within the region. See MAUZY AND MILNE, *supra* note 45 at 176-83; and see more generally, ROBERT S. MILNE AND DIANE MAUZY, SINGAPORE: THE LEGACY OF LEE KUAN YEW (1990); and Hong Lysa, *The Lee Kuan Yew Story as Singapore's History*, 33 J. SOUTHEAST ASIAN STUDIES 545 (2002).

hurdles along the way – the 1997 Asian financial crisis, the 2002-2003 outbreak of the SARS disease, and the current worldwide credit crunch and economic downturn – Singapore has remained better-off, economically, than most other countries around the world.⁴⁸

Lee Kuan Yew's tenure as prime minister ended with his retirement in 1990, but he remains active in government to this day, even continuing to hold a senior ministerial position as his son, Lee Hsien Loong, serves as Singapore's present prime minister.⁴⁹ Politically, the issue of what type of system Singapore is has been of debate among various observers for decades.⁵⁰ Several human rights groups, academics, and political commentators, for example, routinely castigate the government for its historically strict regulations over free speech and political opposition and for its harsh criminal statutes and treatment of defendants in criminal justice matters.⁵¹ The state and its backers bristle at such criticism. They note that the country has regular parliamentary elections and strong public and electoral support for the PAP; moreover, given the almost unrivaled standard of living for those who live within its borders, they scoff at those who seek to critique the 'Singaporean' way of governance.⁵²

Despite the different positions of those who debate this issue, in terms of this project, one point around which there appears consensus is that Singapore has been the model for how to attract foreign investment. One reason cited for why overseas business finds the country so amenable is because "the legal system [for

⁴⁸ Again, for data on Singapore economic and financial health, see *supra* note 9. Also see, DEREK DA CUNHA, SINGAPORE IN THE NEW MILLENIUM: CHALLENGES FACING THE CITY-STATE (2002); *Country Briefings, Singapore - Economic Data*, THE ECONOMIST, May 6th, 2009, <http://www.economist.com/countries/Singapore/profile.cfm?folder=Profile%2DEconomic%20Data>; and see 2009 Index on Economic Freedom, THE HERITAGE FOUNDATION AND WALL STREET JOURNAL, <http://www.heritage.org/index/country/Singapore>.

⁴⁹ For a detailed bio on this and Lee Hsien Loong, see the government of Singapore's website at <http://www.cabinet.gov.sg/CabinetAppointments/Mr+Lee+Hsien+Loong.htm>. Also see YEW, *supra* note 47; MAUZY AND MILNE, *supra* note 45 at xii, 117.

⁵⁰ For an overview of this debate, see Garry Rodan, "Singapore Exceptionalism?" *Authoritarian Rule and State Transformation*, in POLITICAL TRANSITIONS IN DOMINANT PARTY SYSTEMS: LEARNING TO LOSE 231- 251 (eds., Edward Friedman and Joseph Wong, 2008).

⁵¹ For a critical evaluation of the human rights situation in Singapore, see Amnesty International's website section that discusses this point in detail, <http://www.amnesty.org/en/region/singapore>. Also Human Rights Watch has a similar type of site devoted to reports, news articles, and analyses on this subject, at <http://www.hrw.org/asia/singapore>. Also see id; and see 2008 Human Rights Report: Singapore, U.S. Department of State, at <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119056.htm>; and Freedom House's evaluation of Singapore, at <http://www.freedomhouse.org/template.cfm?page=363&year=2005&country=6829>.

⁵² The Singapore government's website addresses these points in detail. See www.gov.sg. But there have also been others who have made these observations. See e.g., Bryan Caplan, Democracy in Singapore: How is One-Party Rule Possible? Library of Economics and Liberty, Nov. 28, 2008, http://econlog.econlib.org/archives/2008/11/democracy_in_si.html#. See YEW, *supra* note 47. In his account of Singapore being indeed an authoritative system, Gordon Silverstein has summarized this pro Lee Kuan Yew perspective at: Gordon Silverstein, *Singapore: The Exception that Proves Rules Matter*, in RULE BY LAW: THE POLITCS OF COURTS IN AUTHORITATIVE REGIMES 73 (eds., Tom Ginsburg and Tamir Moustafa 2008).

financial entrepreneurs] is efficient and highly protective of private property.”⁵³
Below, there is an examination of the context under which law and lawyers
operate within this system.

*B. The Singaporean Legal Profession and the Inviting Environment for Joint
Law Ventures*

According to recent 2009 data from the Law Society of Singapore, which
is the country’s statutorily established body in charge of representing the interests
of lawyers, there are approximately 3,700 licensed practitioners in the country.⁵⁴
Furthermore, while there are 781 registered law firms in Singapore, 685 are small
practices that have “1 to 5 lawyers.”⁵⁵ Throughout the course of my interviews
with both Singaporean and foreign lawyers involved in joint ventures, I repeatedly
was told that while there is no formal breakdown, the conventional wisdom is that
over half of these lawyers practice mainly transactional law.

Given the heavy influence of British colonial rule, the Singaporean legal
profession continues to retain the nomenclature of ‘solicitor’ and courtroom
‘advocate’ (with the term barrister sometimes interchangeably being used for the
latter). Yet it is important to note that the Singaporean bar is unified, whereby
one who is granted a license to practice within the country may do so in court or
in transactional settings.⁵⁶ In order to become a practicing lawyer one typically
graduates with an undergraduate degree in law from the National Singapore
University, the main legal educational institution in the country.⁵⁷ Thereafter, the
law degree holder will engage in a period known as a “pupillage,” where she will
spend six months working under an experienced private or public sector
practitioner.⁵⁸ Because the Singaporean bar recognizes law degrees granted from
several British, Australian, New Zealand, and Malaysian law schools, these
particular law degree holders, depending upon the circumstances, may be exempt
from undertaking a pupillage.⁵⁹

⁵³ See 2009 Index on Economic Freedom, THE HERITAGE FOUNDATION AND WALL STREET
JOURNAL, <http://www.heritage.org/index/country/Singapore>.

⁵⁴ See The Law Society of Singapore, Annual Report 2009,
http://www.lawsociety.org.sg/about/annual_report/2009/src/Lawsoc_Annual_Report_2009.pdf.

⁵⁵ *Id* at 36. Also see, and see Tzi Yong Sam Sim, A Guide to the Singapore Legal System and Legal
Research, GLOBA LEX, Feb. 2007, <http://www.nyulawglobal.org/globalex/Singapore.htm>.

⁵⁶ *Id* at both cites.

⁵⁷ *Id* at both cites. Recently, there has been the arrival of Singapore Management University (in
2007), which “offer[s] a 4 year law or 5 year joint-degree courses.” See Tzi Yong Sam Sim, *supra* note 55.

⁵⁸ See The Law Society of Singapore, Pupillage, C.2
http://www.lawsociety.org.sg/ble/c2_pupillage.htm.

⁵⁹ See *id* at provision #5; also see, The Law Society of Singapore, Section F, at
http://www.lawsociety.org.sg/ble/f_aas15.htm. And for an overview of this subject, see Alexander F.H.
Loke, *The Past, Present, and Future of Legal Education in Singapore*, in THE SINGAPORE LEGAL
SYSTEM 325 (ed., Kevin Y.L. Tan, 1999), at
<http://books.google.com/books?id=RqTwXSKrBOMC&pg=PA325&lpg=PA325&dq=legal+education+singapore&source=bl&ots=ye3u->

As the vast majority of private lawyers in Singapore are in small law practices, most of these have emerged in the post-1965 independence era. There are those, however, that have longer histories – with a handful tending to be the firms that are larger, more prestigious and profitable, and having experimented with the JLV model. For example, upon my request, the Attorney General of Singapore had his staff provide me the complete history and list of JLVs in the country. Table 1 highlights the information.

Table 1⁶⁰

<u>Foreign Law Firm</u>	<u>Singapore Law Firm</u>	<u>JLV Status</u>
Freshfields (U.K.)	Drew & Napier	2000-2007 (Disbanded)
Clifford Chance (U.K.)	Wong Partnership	2003-2009 (Disbanded)
Orrick (U.S.)	Helen Yeo/Rodyk & Davidson	2000-2003 (Disbanded) ⁶¹
Allen & Overy (U.K.)	Shook Lin & Bok	2000-2009 (Disbanded)
Shearman & Sterling (U.S.)	Stamford Partnership	2001-2002 (Disbanded)
White & Case (U.S.)	Colin Ng & Partners	2001-2002 (Disbanded)
Linklaters (U.K.)	Allen & Gledhill	2001-Present
Lovells (U.K.)	Lee and Lee	2001-Present
Baker & McKenzie (U.S.)	Wong & Leow Partnership	2001-Present
Allens Arthur Robinson (Australia)	TSMP Law Corporation	2007-Present
Dacheng (China)	Central Chambers	2009-Present

Of the Singaporean firms in Table 1 that have participated in JLVs, four – Drew & Napier, Rodyk & Davidson, Shook Lin & Bok, and Allen & Gledhill – trace their roots back nearly a century or more.⁶² Lee & Lee has existed since the 1950s, as has another firm not listed in Table 1, Rajah & Tann, which had a more informal alliance, rather than an official joint venture, with the Wall Street firm Weil Gotshal & Manges.⁶³ And another, Colin Ng, is now over two decades old.⁶⁴ (The other Singaporean firms in Table 1 have emerged within the past

⁶⁰ Information provided by the Singapore Office of the Attorney General to author, June 22, 2009. Note the dates in Table 1 were also compiled from different sources including from different lawyers in the respective firms themselves. Also, certain foreign law firm names were shortened in order to fit inside the above table. These include Freshfields Bruckhaus Deringer and Orrick, Herrington & Sutcliffe.

⁶¹ Note Orrick originally entered into a joint venture with the Singaporean firm Helen Yeo, but then Helen Yeo was merged with the Singaporean firm Rodyk & Davidson.

⁶² For a history of each of these firms, information can be found at the respective websites: *See e.g.*, Drew & Napier, Our History, <http://www.drewnapier.com/history-body.htm>; Rodyk & Davidson, History, <http://www.rodyk.com/page/About/1>; Shook Lin & Bok, The Firm, <http://www.shooklin.com/firm.htm>; Allen and Gledhill, About Us, <http://www.allenandgledhill.com/aboutus.html>.

⁶³ *See* Rajah & Tann, History, <http://www.rajahtann.com/RajahTannCMS/misc.aspx?mid=1&aid=5>. For information on the alliance with Weil Gotshal & Manges, *see* *Weil Gotshal Ramps Up Modest Asia Strategy*, ALB LEGAL NEWS, July 22nd, 2004, <http://asia.legalbusinessonline.com/law-firms/weil-gotshal-ramps-up-modest-asia-strategy/1188/21021>. *See* Lee & Lee, Brief History, <http://www.leenlee.com.sg/en/about-us/brief-history.html>.

⁶⁴ *See* Colin Ng, Our History, <http://www.cnplaw.com/en/index.asp>.

fifteen years.⁶⁵) One additional point to remember is that while the first JLVs came about in 2000 foreign firms were present within the country for decades before – although their practices were limited to non-Singaporean law.⁶⁶

As one foreign lawyer told me, however, “the big elephant in the room is how lawyers, who are trained in the [Western] rule-of-law tradition, function in this environment.”⁶⁷ On the one hand, according to this individual and several others with whom I met, given Singapore’s long-standing commitment to open markets, foreign capital, and multinational investment, lawyers working in these areas have been allowed to go about their business with little interference by the government.⁶⁸ (The establishment of the JLV was in part an attempt by the government to promote greater international legal transactions whereby Singapore would be viewed by lucrative clients as the hub where such legal work could be done.)

On the other hand, as Gordon Silverstein has suggested, while there may be continued “international investor confidence”⁶⁹ and an argument that Singapore has a “judicial system that is efficient, effective, consistent, and reliable,”⁷⁰ there are constraints imposed by the state that are pervasive and which are simply irreconcilable with how many Westerners view freedom and democracy.⁷¹ Silverstein discusses how the state has restricted judicial review and used the courts to clamp down on political opposition and criticism of public policy decisions.⁷² But because these actions are justified as necessary for keeping international capital flowing into the country and preserving order and prosperity for Singaporean citizens, Silverstein explains that the state is generally able to retain its control over, and acceptance by, local and foreign players.⁷³

This last point is especially worth noting. Lawyers engaged in sophisticated transactions and relationships, like JLVs, are among those that acquiesce to the Singaporean system – staying fully aware of what is tolerated and what is not. For them, so long as foreign investment remains privileged and they are able to continue benefitting, financially, their “confidence,” to use

⁶⁵ We will be discussing Wong & Leow, TSMP, and Central Chambers below, shortly.

⁶⁶ There is some dispute as to exactly when foreign firms first came into Singapore. One report states that this occurred beginning in 1992. (See Conrad Raj, *Colin Ng’s Pact with White & Case Likely to Break-Up*, SINGAPRE PRESS HOLDINGS, 2002, <http://www.lawonline.com.sg/News/Law%20JV.htm>. But from the foreign firms themselves, this date is disputed. For example, Baker & McKenzie, on its site, says that “[s]ince 1981, . . . [it] ‘has had a presence in Singapore’” (<http://www.bakernet.com/BakerNet/Locations/Asia+Pacific/Offices/Singapore/default.htm>). And Linklaters notes that it has been in Singapore for two decades, <http://www.linklaters.com/Locations/Pages/Singapore.aspx>.

⁶⁷ Author interview, June 10, 2009 (anonymity requested by interviewee.)

⁶⁸ *Id.*; also author interviews with lawyers on June 9, 2009, June 11, 2009, and phone interview on July 12, 2009 (anonymity for all requested.)

⁶⁹ See Silverstein, *supra* note 52 at 74-75.

⁷⁰ *Id.* at 75.

⁷¹ *Id.* at 74.

⁷² *Id.* at 74-75; 86-92.

⁷³ *Id.* at 86-101.

Silverstein's word, will stay high. As one foreign lawyer commented to me, "we know there are definite restrictions here – this isn't the U.K. or the U.S. But we find ways to work around them in order to keep making . . . [the money] we're making."⁷⁴

The next section will look more closely at the financial and business interactions between foreign and local Singaporean lawyers. There will be an evaluation how the JLV model, in particular, has fared over the past decade, with the conclusion that the hopes for it that were present in 2000 have simply not come to fruition.

III. An Empirical Analysis of the JLV

A. Background

As Table 1 above highlights, in Singapore there are five pairs of JLVs that exist today: Linklaters (U.K) and Allen & Gledhill, Lovells (U.K.) and Lee and Lee, Baker & McKenzie (U.S.) and Wong & Leow, Allens Arthur Robinson (Australia) and TSMP Law Corporation, and Dacheng (China) and Central Chambers. Before the advent of the JLV, while foreign firms could be in Singapore and perform legal services for clients on an international level, they were barred from providing advice or services to clients who needed assistance on local Singaporean matters. To a certain extent this preclusion was understandable; after all, the Singaporean bar, government, and Law Society had an interest in ensuring that only those with accredited legal credentials be able to practice Singaporean law.⁷⁵ But at the same time this prohibition curiously extended to properly-licensed Singaporean lawyers who were employed by foreign firms.⁷⁶

Therefore, as a means of trying to gain more complete access to the wealthy Singaporean market foreign lawyers began talks with the government, the Law Society, as well as with various Singaporean law firms during the late 1990s.⁷⁷ Eventually the different sides arrived at an agreement that in theory would: continue to promote the government's goal of remaining open to foreign

⁷⁴ Author interview, June 11, 2009 (anonymity requested.)

⁷⁵ This point was explained to me during interviews conducted with Singaporeans on June 9, 2009 (anonymity requested.)

⁷⁶ This complaint was mentioned during the author's interviews with lawyers on June 9, 2009, June 11, 2009, and July 12, 2009 (anonymity requested.)

⁷⁷ For background on this information, see: Report of the Committee to Develop the Singapore Legal Sector, September 2007 at 1-2. Note we will be discussing this report in detail later in this paper. See [http://notesapp.internet.gov.sg/48256DF200173A1F.nsf/LookupMediaByKey/GOVI-79LDSM/\\$file/Justice%20V%20K%20Rajah%20report.pdf](http://notesapp.internet.gov.sg/48256DF200173A1F.nsf/LookupMediaByKey/GOVI-79LDSM/$file/Justice%20V%20K%20Rajah%20report.pdf). Also see, Government Accepts Key Recommendations of Justice V.K. Rajah's Committee on the Comprehensive Review of the Legal Services Sector (December 7, 2007), <http://notesapp.internet.gov.sg/48256DF20015A167.nsf/LookupContentDocsByKey/GOVI-79LDRE?OpenDocument>.

investment; protect the interests of Singaporean law firms; and allow foreign law firms a greater possibility of developing domestic client relationships.⁷⁸ What emerged was the JLV model, where the idea was that a new separate legal entity would be created comprised of lawyers and staff from one foreign law firm who would work in conjunction with lawyers and staff from one domestic law firm.⁷⁹

In terms of the benefits for the foreign law firm that participated in the JLV, on paper they were quite significant. For example, while the ratio of foreign and Singaporean partners in the JLV had to be comparable,⁸⁰ the foreign firm was under no obligation to bring onto its payroll any of the Singaporean JLV lawyers.⁸¹ (In fact, to a certain extent the JLV simply served as an umbrella under which the foreign and domestic firms worked. Each kept its own ‘books,’ including payroll, but as will be seen, this lack of full integration did lead to many Singaporean JLV-lawyers feeling like second-class citizens, resentful that the pay they received – albeit determined by their own firm’s compensation system - was much less than their foreign counterparts.) In addition, by being part of the JLV, the foreign firm now could practice “banking law, finance law, corporate law, and any other area of legal or regional work as may be approved by the Attorney-General.”⁸² And perhaps most importantly, the JLV effectively gave the foreign firm access to the domestic market, since now the JLV would have a licensed Singaporean firm in it that could solicit and offer services to those highly-sought after Singaporean clients.⁸³

Still, the interests of the Singaporean firms were accounted for as well. First, once a foreign firm entered into a JLV, it was barred from operating a separate ‘foreign firm-only’ practice within the country.⁸⁴ But the converse was not true; the Singaporean firm was allowed to maintain a separate practice of its own. Second and related, written into the government’s plan was a stipulation that the foreign law firm in a JLV was not allowed “to share in the profits of the constituent [i.e. partnering] Singapore law firm . . . [and that] the foreign law

⁷⁸ *Id* at both cites.

⁷⁹ For information on this point, see cites at *supra* note 77.

⁸⁰ See Report of the Committee, Enclosure 2, *supra* note 77 at 3 (noting that “[I]f JLV is constituted as a partnership, the number of equity partners in the foreign law firm and resident in Singapore shall not at any time be greater than the number of equity partners in the Singapore law firm. [http://notesapp.internet.gov.sg/_48256DF200173A1F.nsf/LookupMediaByKey/GOVI-79M7QP/\\$file/Press%20release%20enclosures.pdf](http://notesapp.internet.gov.sg/_48256DF200173A1F.nsf/LookupMediaByKey/GOVI-79M7QP/$file/Press%20release%20enclosures.pdf). It is important to keep in mind that there was no ratio requirement in terms of the number of lawyers (associates) who were part of the JLV.

⁸¹ *Id* at 4 (noting explicitly that “[a] Singapore law firm lawyer in the JLV may not become an equity or profit sharing partner in the foreign law firm. If he does so, he will be regarded as a foreign law firm lawyer in the JLV.”)

⁸² *Id* at 2.

⁸³ *Id* at 4 (noting that the “JLV may practise in areas of legal practice mutually agreed between the constituent Singapore law firm and the foreign law firm, who may also agree among themselves the parameters of the practice areas; and JLV shall not practise Singapore law except through a Singapore lawyer who has in force a practising certificate and is practising in the constituent Singapore law firm of the JLV, or a foreign lawyer registered to practise Singapore law in the JLV under section 130I of the Legal Profession Act or in the constituent Singapore law firm of the JLV under section 130J of the same Act.”)

⁸⁴ *Id*.

firm's share of the JLV's profits"⁸⁵ was restricted to only money that came from "those areas of legal practice permitted to the JLV."⁸⁶ Third, litigating in court and practicing real estate law – two profitable and respected sectors of the Singaporean legal profession – were specifically kept within the exclusive domain of locally-licensed counsel,⁸⁷ thereby increasing these lawyers' importance within the JLV.

Fourth, as I was told by Singaporean lawyers, another incentive to joining a JLV was the opportunity to gain exposure to the "best practices" of elite international law firm lawyers, many of whom had been trained at the top schools and came from legal hubs like London, New York, and Washington D.C.⁸⁸ Fifth, although they were barred from being a part of the foreign firm's equity partnership structure, Singaporean lawyers who were in a JLV were allowed to play an integral role "in the foreign law firm's regional management team."⁸⁹ This option provided Singaporean lawyers with the ability to make contacts and develop relationships with international clients who otherwise may have been out of reach. Finally, there was a belief that entering into a JLV with a prestigious foreign firm would only enhance the reputation of the Singaporean firm, which concomitantly with the above points would lead to greater profit-margins for the latter as well.⁹⁰

Therefore, there has been a list of benefits for parties to the JLV. Did the hopes pan-out as expected – for some, yes, while for others, no. The positive results are examined next.

B. *The Upside - And Why Relationships Matter*

For most of the joint ventures that exist today, the manner in which they formed is similar in nature. Typically, there is a foreign firm that arrives or already has a presence in Singapore that then creates a JLV with a well-established, well-reputed local firm. So, for instance, Linklaters, the elite magic circle London-based firm, which had been in Singapore for nearly twenty years, in 2001 entered into a JLV with the highly-regarded, century-old Singaporean firm of Allen & Gledhill.⁹¹ Similarly, Lovells, another prestigious U.K. firm that same year formed a JLV with Lee & Lee, a relatively large full-service

⁸⁵ *Id.* at 2.

⁸⁶ *Id.* So, in other words, if the JLV made money from other sources, that were not part of what the foreign law firm could be involved in, then the foreign law firm could not claim access to that money.

⁸⁷ *Id.*

⁸⁸ This statement came during interviews with such lawyers conducted on June 9, 2009 (two separate phone interviews conducted), June 15, 2009, and July 5, 2009 (anonymity requested.)

⁸⁹ See Report of the Committee, Enclosure 2, *supra* note 77 at 4.

⁹⁰ See interviews cited in *supra* note 88.

⁹¹ The Linklaters website discusses this process, see <http://www.linklaters.com/Locations/Pages/Singapore.aspx>.

Singaporean firm that was started in 1955 by three local lawyers, one of them former prime minister, Lee Kuan Yew.⁹²

And although there are two other existing JLVs that have more recently been created, these mergers have had like characteristics. In 2007, the Australian legal powerhouse, Allens Arthur Robinson, joined forces with the “boutique corporate and commercial”⁹³ Singaporean firm, TSMP. While TSMP itself only emerged in 1998, it was founded by a lawyer who was a former partner at the elite Singaporean firm of Drew & Napier and who was also once the Dean of the Law Faculty at the National University of Singapore.⁹⁴ And in 2009, the large Chinese law firm of Dacheng established a JLV with Central Chambers,⁹⁵ a Singaporean outfit that while only seven years old brings together lawyers from diverse settings, some of whom have been in practice for nearly three decades.⁹⁶

The only present-day JLV that stands apart, in terms of how it was created, is the one started by Baker & McKenzie. About a decade back, Jon Bauman published the history of this global American mega-law firm.⁹⁷ And there have been other reports documenting the growth of this mammoth enterprise.⁹⁸ Relevant for this study, though, is that Baker’s JLV in Singapore was not a combination of it and an already existing local firm. Operating under the *Swiss Verein* model, whereby its offices around the world comprise a confederation of sorts that function in an independent manner and in accordance with the laws of the jurisdiction under which each respective branch is residing,⁹⁹ Baker launched the domestic Singaporean firm of Wong and Leow in 1996.¹⁰⁰ Wong and Leow today has some 80 lawyers within it and is a separate legal entity, with its own clients, profits, management structure, and partnership-track for associates.¹⁰¹ It has, however, worked closely with Baker in a joint venture since 2001 and this relationship – highlighted in legal periodicals, news reports,

⁹² For a brief history of Lee & Lee, see <http://www.leenlee.com.sg/en/about-us/brief-history.html>. Also for a discussion of Lovells partnership with Lee & Lee, see <http://www.lovells.com/Lovells/Worldwide/Singapore/Singapore.htm>.

⁹³ For a discussion of this announcement and where this quotation can be found, see TSMP’s website at <http://www.tsmplaw.com/docsandarticles/AARTSMPLJV.pdf>.

⁹⁴ *Id.*

⁹⁵ See Rashida Yosufazi, *Firms Form First China-Singapore JV to Target India*, ALB LEGAL NEWS, July 24, 2009, <http://asia.legalbusinessonline.com/news/breaking-news/firms-form-first-china-singapore-jv-to-target-india/36103>.

⁹⁶ See Central Chambers Law Corporation Website, About Our People, <http://www.centralchambers.com.sg/CentralChambersLawCorporation456/Page/5114/OurPeople.aspx>.

⁹⁷ See JON BAUMAN, PIONEERING A GLOBAL VISION: THE STORY OF BAKER & MCKENZIE (1999).

⁹⁸ See e.g., *Baker & McKenzie Lures 7 Energy Lawyers from T & K*, LAW 360, June 12, 2009; *Legal Advice*, THE ECONOMIST, August 21, 2008. Also for a host of articles on the Baker business model, see the San Francisco Business Times, which has tracked these pieces over the course of the last several years, http://www.bizjournals.com/sanfrancisco/related_content.html?topic=Baker%20%26%20McKenzie.

⁹⁹ See BAUMANN, *supra* note 97; and see Baker & McKenzie Profile, LEGAL 500, <http://www.legal500.com/firms/50079-baker-mckenzie/offices/10313-zurich/profile>.

¹⁰⁰ For information on this set-up, see Baker’s website at: <http://www.bakernet.com/BakerNet/Locations/Asia+Pacific/Offices/Singapore/default.htm>.

¹⁰¹ For background on Wong & Leow and its operations, see <http://www.legal500.com/firms/33424-wong-leow-llc/offices/31590-singapore>.

and in conversations with various lawyers in the country – seems ultimately to define who Wong and Leow is.¹⁰²

In spite of the distinct way the Baker-Wong JLV emerged, it and the other above-mentioned JLVs remain standing, and the questions that arise are both why and how? Perhaps most obviously, they have done so because they are profitable. As one lawyer mentioned, “we’re making money – plain and simple. But *why* we’re making money; that’s what interesting.”¹⁰³ As this individual commented, and as the data gathered from the empirical interviews suggest, there are several common contributing factors at play here. A key reason relates to the fact that there are strong relationships and significant professional trust that exist between the foreign and domestic players involved.¹⁰⁴ As another Singaporean lawyer stated, “remember, it’s *always* about relationships. We succeed because we can work with them and vice versa.”¹⁰⁵

Not surprisingly, these ties have developed and are nurtured in different ways depending on the JLV. For some, the relationships began with the local firm’s Singaporean lawyers already having friends within the foreign firm well-before entering into the joint venture. In other instances, lawyers currently in the respective Singaporean firm actually worked in the partnering foreign firm at some earlier point and became familiar with the latter’s culture, norms, and ways of doing business; in these cases the foreign firm’s lawyers naturally came to learn of these Singaporeans – “as professionals and as people”¹⁰⁶ – before deciding whether to pursue the JLV route with the local firm. And of course that “personalities have simply meshed”¹⁰⁷ following the creation of the joint venture has helped preserve the cohesiveness of these mergers too.

In addition to working well with, respecting, and liking one another, the foreign and local lawyers of these JLVs also noted that their relationships are strong because of the realistic expectations that each side has. Consider, for a moment, two separate but related issues. First, in terms of leadership and management, every lawyer in these partnerships with whom I spoke emphasized that their respective joint operation currently continues because there is not, as one respondent remarked, a “colonialist mindset”¹⁰⁸ in how the JLV is run. Otherwise put, there is a mutual understanding that while the foreign lawyers have important skills to convey, they also have as much to learn from the Singaporeans. There is a real sense among the Western and domestic lawyers that given the history of British imperialism in the region, together with the strong

¹⁰² Beyond hearing this during my various interviews with Singaporean and foreign lawyers, the close interaction between Baker and Wong & Leow has been discussed at *id.*, at Baker’s website, *supra* note 100, and at Legal 500’s site, <http://www.legal500.com/firms/50079-baker-mckenzie/offices/30159-singapore>.

¹⁰³ Author phone interview with lawyer on June 30, 2009 (anonymity requested.)

¹⁰⁴ *Id.* Also author phone interview with lawyers on June 15, 2009 and July 12, 2009 (anonymity requested.)

¹⁰⁵ Author phone interview with lawyer on June 15, 2009 (anonymity requested.)

¹⁰⁶ This comment was made by the lawyer at *id.*

¹⁰⁷ This comment was made during author’s phone interview with lawyer on July 12, 2009 (anonymity requested.)

¹⁰⁸ Author phone interview with lawyer on June 30, 2009 (anonymity requested.)

values placed on Singaporean culture, identity, and independence, that cooperation is necessary in order to administer a successful joint venture of this type. As such, decisions on matters ranging from hiring to promotion to marketing to soliciting client business tend to be made in a joint fashion between the foreign and Singaporean leaders of the JLV.¹⁰⁹

Second, and particularly relating to this last point involving client-contacts, there appears to be a solid understanding as to how business will be apportioned and files allocated between the JLVs' foreign and domestic lawyers, although once again there is variation as to how this takes place.¹¹⁰ Recall, none of the joint venture foreign lawyers with whom I met shied away from stating that their main motivation for being in Singapore was to 'make money.' Yet how they have sought to do this has varied depending on the context. For some, where a local client is satisfied with the already existing relationship she has with her Singaporean firm – a firm that also happens to be in a JLV – I was told by these partnering foreign firms' lawyers that they would be loathed to attempt to rope this business into the joint venture.¹¹¹ "The client would have to pay more and may not even need us; and we'll end-up pissing off [our Singaporean JLV partner]," one foreign lawyer said.¹¹² Now, this same lawyer did say that in situations where the JLV brought value-added services to such a client, like helping on an international deal with which the Singaporean firm had little experience, he then "certainly will make a play – after all that's the whole purpose of the JLV."¹¹³ But such outreach is accepted and well-understood under these circumstances, this lawyer remarked.

There can also be a different type of client-contact understanding, when there is an implicit acknowledgment that the JLV serves as a base for the foreign law firm to expand its business more regionally, while the Singaporean JLV lawyers are deemed the point-persons for work within the country.¹¹⁴ Where each side needs the assistance of the other, then the two will certainly come together; but otherwise the expectation in this case, which describes the relationship of one of the observed JLVs, is that each side has its respective jurisdictional terrain.¹¹⁵ And another successful arrangement can occur when the foreign and domestic lawyers view the JLV, rather than their own respective practices, as the primary setting where client-demands are met.¹¹⁶ In this situation, there is a seamlessness in the everyday operations of the joint venture and smooth interactions between the foreign and domestic lawyers – namely because both sides have an

¹⁰⁹ Information gathered during phone interviews conducted on June 15, 2009, June 30, 2009, and July 12, 2009 (anonymity requested.)

¹¹⁰ *Id.*

¹¹¹ Information gathered during phone interviews conducted on June 15, 2009 and July 12, 2009 (anonymity for both requested.)

¹¹² Author phone interview with lawyer on July 12, 2009 (anonymity requested.)

¹¹³ *Id.*

¹¹⁴ Author phone interview with lawyer, June 15, 2009 (anonymity requested.)

¹¹⁵ *Id.*

¹¹⁶ Author phone interview with lawyer, June 30, 2009 (anonymity requested.)

understanding that the JLV is the main face representing who they are within the country.¹¹⁷

It is important to note that even with these understandings and trusting relationships there are still issues of conflict that arise within the above JLVs. Pay differentials between the foreign and domestic JLV lawyers, inadvertent (and sometimes purposeful) slights, frustrations over practice-procedures, and the everyday pressures of staying financially strong are just some of the tensions that can exist. One participant even compared the JLV-model to a stressful marriage – noting that, yes, there are good times, but there are also times when one or the other side simply feels like walking away.¹¹⁸ However, as this person noted, upon reflection and the routine ‘couple’s counseling’¹¹⁹ of sorts that occurs – mainly consisting of reevaluating the positive financial returns of the merger – the decision to remain together rather than divorcing carries the day.

With all this said, though, as Table 1 illustrates, the opposite conclusion has been reached by a majority of JLVs in Singapore. And the question here is why? Once again, relationships are the key, but in these cases it is the lack of them that has accounted for the dissolution of these marriages.

C. The Downside – And Why Relationships Matter

In looking at the data on disbanded JLVs since 2000, of the six, the three that lasted the shortest periods of time were with American firms, White & Case with Colin Ng and Shearman & Sterling with Stamford Partnership (each from 2001-2002) and Orrick with Helen Yeo (that then was absorbed into the Singaporean firm of Rodyk & Davidson) from 2000-2003. The other three involved British firms – Freshfields, Clifford Chance, and Allen & Overy – that had joined, respectively, with the Singaporean firms of Drew & Napier, Wong Partnership, and Shook Lin & Bok. Similar to those JLVs that continue to exist today, these six that dissolved each started with the primary hope of reaping increased profit margins and expanding client bases.¹²⁰ Yet the troubles that ensued placed too great a burden on these mergers, with the result being that each ultimately disbanded.

As the interview data reveal, the main issue dividing these two groups of lawyers was that neither side had the same set of expectations regarding the JLV. And each side felt as though it was being taken advantage of – leading to a

¹¹⁷ *Id.*

¹¹⁸ Author interview with lawyer, July 12, 2009 (anonymity requested.)

¹¹⁹ This was my term that I used during my interview with the lawyer, but the lawyer at id eagerly embraced this phrase saying it captured the exact sentiment he was trying to convey.

¹²⁰ Author interview with Singaporean lawyer, June 9, 2009 (anonymity requested). Author interview with separate Singaporean lawyer, June 9, 2009 (anonymity requested). Author interview with a foreign lawyer, June 9, 2009 (anonymity requested). Author interview with a foreign lawyer, June 10, 2009 (anonymity requested).

situation where there was simply too little trust for these relationships to have any long-term sustainability. First, take the sentiments of and complaints from the foreign lawyers with whom I spoke. One frequent refrain was that the Singaporean firms conveniently forgot how fortunate they were to be linked to a prestigious Western law firm.¹²¹ Two different foreign lawyers from two different firms used the exact same language in noting how significant the “branding benefits”¹²² were to the Singaporeans participating in the JLV. Each described how in a society where prestige is of the highest import, being able to affiliate with the most well-reputed of Western firms brought enormous international status to these Singaporean lawyers, the likes of which they had never seen before.¹²³ And with this new reputational position, the Singaporean firms gained access to various client-networks around the globe as well as the opportunity to work with some of the most talented and experienced transactional lawyers anywhere.¹²⁴ But in the eyes of these foreign lawyers, rarely was there any sense of gratitude or recognition from their domestic affiliates for what they were receiving.¹²⁵

Moreover, from the foreign lawyers’ vantage point, the return on their investment in the JLV was relatively small. For one thing, the goal of making serious inroads into the local market via their Singaporean partners never materialized to the extent that they had hoped.¹²⁶ Sure there were some cases where it made little sense to enlist clients into the JLV who were already represented before-hand by the Singaporean firm, especially if the expertise of the foreign firm was not needed. The foreign lawyers stated they accepted and understood this reality.¹²⁷ But in other cases, particularly with yet-unsigned clients, the foreign lawyers believed that their respective Singaporean JLV partners would at times undermine the joint-relationship by seeking to divert potential business into their (the Singaporeans) own individual firms.¹²⁸ (Recall that under the JLV rules, while foreign law firms that entered into these mergers had to give-up their separate practices, the Singaporean firms did not.)

Then on those deals where clients did require the Singaporean and foreign lawyers to work together, I was told by the latter that the work performed by the domestic counterparts was frequently “sub-par.”¹²⁹ One such foreign lawyer relayed how he sometimes felt like he was educating two clients – the paying one and his Singaporean JLV colleagues who were scrambling to stay atop of the

¹²¹ Author interview with lawyer, June 9, 2009 (anonymity requested). Author interview with lawyer, June 10, 2009 (anonymity requested).

¹²² *Id.* at both cites.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*; also author interview with another pertinent foreign lawyer, June 11, 2009 (anonymity requested).

¹²⁷ *Id.* at all cites.

¹²⁸ *Id.* at all cites.

¹²⁹ This was the word used by lawyer interviewed on June 9, 2009 (anonymity requested), but this sentiment was present in the other interviews conducted at *id.*

deal.¹³⁰ Another foreign lawyer stated that from a client-services point of view, he often became upset at how his international clients who needed domestic work done by the Singaporean lawyers complained of local counsel being unresponsive or unprepared to provide the necessary information.¹³¹ Partly for these reasons, certain foreign lawyers even remarked that the Singaporean lawyers, who were being paid lower than their foreign colleagues but in accordance with their own Singaporean firm's salary structure, simply did not deserve to be compensated at any higher of a rate.¹³²

That the Singaporean lawyers held a different perspective on why their JLV-arrangements failed would be a woeful understatement. Although some variation existed in the responses from this group, a set of common themes emerged highlighting the hurt and resentful feelings of not being appreciated in a number of ways. For example, I was informed that it was only because of the JLV-arrangement that some of the foreign firms were able to receive prime office-space in the heart of the city at such an affordable rate.¹³³ This situation occurred because many of the Singaporean firms had resided in these locations well-before 2000 and either had extra room to house their foreign colleagues or negotiated favorable rental agreements for additional space in these office-towers on the foreign firms' behalf.¹³⁴

Furthermore, as even some foreign lawyers conceded – and as vociferously emphasized by the Singaporeans – had it not been for the domestic JLV-lawyers, the firms from abroad could never have started their regional private investment funds practices, which proved extremely rewarding during their time in the merger. There were other issues as well. Perhaps most significantly, the Singaporeans interviewed uniformly noted that the lack of economic integration,¹³⁵ particularly as it related to compensation within the JLV, served as a point of contention that simply could not be overcome.¹³⁶ While understanding that salaries within the JLV were determined by the respective firm

¹³⁰ Author interview with lawyer, June 11, 2009 (anonymity requested.)

¹³¹ Author interview with lawyer, June 9, 2009 (anonymity requested.)

¹³² Author interview with lawyer, June 9, 2009 (anonymity requested). Author interview with lawyer, June 10, 2009 (anonymity requested); Author interview with lawyer, June 11, 2009 (anonymity requested). The foreign law firms in Singapore generally use the standard 'lockstep formula' in allocating salaries. By practice, law firms following a lockstep method compensate their employees on the basis of years of service; so in theory a third-year associate in the London home office would earn the same as a third-year associate in New York satellite branch. For a discussion of this point, see James D. Cotterman, *Lockstep Compensation. Does it Still Merit Consideration?* LAW PRACTICE TODAY, Aug. 2007, <http://www.abanet.org/lpm/lpt/articles/fin08071.shtml>.

¹³³ Author interview with Singaporean lawyer, June 9, 2009 (anonymity requested). Author interview with second, separate Singaporean lawyer, June 9, 2009 (anonymity requested). Author interview with third Singaporean lawyer, June 9, 2009 (anonymity requested).

¹³⁴ *Id.*

¹³⁵ Author interview with foreign lawyer, June 9, 2009 (anonymity requested). Author interview with Singaporean lawyer, June 9, 2009 (anonymity requested). Author interview with second, separate Singaporean lawyer, June 9, 2009 (anonymity requested). Author interview with third Singaporean lawyer, June 9, 2009 (anonymity requested).

¹³⁶ *Id.*

(i.e. the foreign firm paid its own lawyers while the domestic firm did the same), the Singaporeans nevertheless expressed frustration that no agreement was ever reached equalizing the pay-scale. As one Singaporean lawyer commented, “we were working the same horrible hours, on the same tedious projects, and making so much less!”¹³⁷

Many of the Singaporeans also disputed the claim that the foreign side willingly mentored and transmitted best practice techniques to them. It was quite the opposite according to the domestic lawyers, especially when it came to sharing standard form documents, or ‘precedent’ materials, as they referred to them.¹³⁸ As I was told by the Singaporeans, and again later confirmed by the foreign counterparts, the latter would zealously guard these papers, perplexing and infuriating the former.¹³⁹ From the foreign lawyers’ viewpoint, these were extremely sensitive work-products, and given that the Singaporeans had their own separate firms and separate clients, it would be irresponsible not to monitor closely these files.¹⁴⁰ For the local lawyers, such rationale was mind-boggling. As one Singaporean exclaimed, “We were supposed to be partners! It’s true, I needed to learn a lot, and I wanted to. But instead, we kept having to reinvent the wheel!”¹⁴¹ This person went-on to note that the lack of cooperation by the foreign firm cost valuable time, but as importantly, it contributed to a shattering of trust that severely undermined the joint-relationship almost from the start.¹⁴²

This absence of trust had domino-like implications. For example, the Singaporean side in several of these JLVs admitted retaining tight control over previously-acquired local clients within their own individual firms, refusing even to explore the possibility that the JLV might be involved. The Singaporeans emphatically justified their actions on the grounds that client-preferences for such sole representation always governed, that the JLV-rates for these particular clients were too costly and unnecessary, and that, yes, if the foreign firms could ‘turf-guard’, then so could the Singaporeans as well.¹⁴³

¹³⁷ Author interview with Singaporean lawyer, June 9, 2009 (anonymity requested.) This particular lawyer stated that the Singaporean salaries were often one-third less than foreign salaries.

¹³⁸ Author interview with Singaporean lawyer, June 9, 2009 (anonymity requested). Author interview with second, separate Singaporean lawyer, June 9, 2009 (anonymity requested). Author interview with third Singaporean lawyer, June 9, 2009 (anonymity requested).

¹³⁹ Author interview with Singaporean lawyer, June 9, 2009 (anonymity requested). Author interview with second, separate Singaporean lawyer, June 9, 2009 (anonymity requested). Author interview with third Singaporean lawyer, June 9, 2009 (anonymity requested). Author interview with two different foreign lawyers, one on June 9, 2009 and the other on June 10, 2009.

¹⁴⁰ Author interview with two different foreign lawyers, one on June 9, 2009 and the other on June 10, 2009 (anonymity requested.)

¹⁴¹ Author interview with a Singaporean lawyer, June 9, 2009 (anonymity requested.)

¹⁴² *Id.*

¹⁴³ Stoking the ire of the foreign side further was that their Singaporean partners in some instances had clients in other parts of Asia, but because there was no JLV-relationship in these settings, the Singaporeans were even that much more protective of their client-relationships. Author interview with Singaporean lawyer, June 9, 2009 (anonymity requested). Author interview with second, separate Singaporean lawyer, June 9, 2009 (anonymity requested). Author interview with third Singaporean lawyer, June 9, 2009 (anonymity requested).

With unhappiness at a peak between these different JLV-partners, several of the foreign firms began looking outside of their unstable arrangements to other local Singaporean lawyers with whom they could engage.¹⁴⁴ (Although, they did maintain their formal JLV-ties with their original, respective Singaporean partners and continued to work with them as needed.) In addition, as the tensions mounted, a provocative refrain gained momentum among the agitated Singaporeans – namely, that the foreign lawyers were acting similarly to how the colonial rulers of years past behaved. Charges that the foreign firms were exploiting the inexpensive Singaporean legal labor market for self-serving purposes, and that the personal treatment by these Westerners towards the domestic practitioners was shoddy and condescending, ran rampant among the disaffected.¹⁴⁵ While the foreign lawyers dismissed these accusations as baseless and as a convenient excuse for the Singaporeans’ own failure to keep pace with the complex needs of internationally sophisticated clients, the colonialist label had traction and together with the other above-mentioned events, prompted interested observers to start seriously reevaluating this entire business-model arrangement.

Witnessing this discontent and feeling pressure from both the foreign and domestic law firms, in August of 2006 the government decided that something needed to be done. It called on the eminent lawyer and a sitting justice of the Singaporean Court of Appeal, V.K. Rajah, to conduct a thorough assessment of the JLV.¹⁴⁶ The Justice brought together an array of interested parties, under what came to be called the ‘Rajah Committee,’ to study the history, pluses, and shortcomings that had accompanied this law firm merger experiment.¹⁴⁷ In December 2007, after surveying the diversity of opinions, the Committee issued its final report on the JLV, which ultimately caused an important policy shift on the part of the government. These findings are examined next.

IV. The Rajah Committee Report – And Where To Go From Here

A. *Enhancing the JLV*

It is important to keep in mind that while the Rajah Committee reevaluated the functioning of the JLV, neither it, nor the Singaporean government, ever sought to scale back the country’s general policy of intense economic

¹⁴⁴ I was told this by different foreign lawyers engaged in this practice, during, for example, interviews conducted on June 9, 2009, June 10, 2009 (anonymity requested.)

¹⁴⁵ For example, one Singaporean lawyer, during my interview on June 9, 2009, referred to the foreign law firm lawyers as “colonial bastards.” Another, that same day, discussed how culturally insensitive foreign lawyers were.

¹⁴⁶ For background on the government’s decision to call-on Justice Rajah to conduct a formal inquiry of the JLV-situation, see the Singapore Ministry of Law Website, Government Accepts Key Recommendations of Justice V.K. Rajah’s Committee on the Comprehensive Review of the Legal Services Sector, http://notesapp.internet.gov.sg/_48256DF20015A167.nsf/LookupContentDocsByKey/GOVI-79LDRE?OpenDocument.

¹⁴⁷ *Id.*

liberalization in the legal services sector.¹⁴⁸ Perhaps for that reason, the JLV model, which in principle continued to resonate among various government leaders, remained one to which both the Committee and the state stayed wedded; thus, those who hoped that Justice Rajah's reforms would serve as a formal rebuke of the JLV structure were disappointed.

To start, the Committee did not even move away from the language of the "joint law venture" in its reforms, issuing a statement saying while there had been difficulties with the original JLV program, having a new, better, "enhanced JLV" would ameliorate many of the problems that beset the initial model.¹⁴⁹ One way would be by allowing foreign law firms within a JLV directly "to hire Singapore-qualified lawyers to advise on Singapore law."¹⁵⁰ This was important because recall that before this change, if a Singaporean-licensed lawyer joined a foreign law firm, regardless of whether that firm was part of a JLV, the lawyer lost her privilege to practice Singaporean law. Now, however, such revocation would not occur if the foreign firm was part of an enhanced JLV, and in making this amendment the Committee's hope was that more organic, enjoyable, and productive relationships might develop among the different lawyers within the venture.¹⁵¹

The Committee also recommended expanding the JLV's jurisdiction in one important, lucrative area – international commercial arbitration. Prior to 2007, foreign law lawyers were restricted in what they could do, arbitration-wise. However, the Committee argued for enhancing the scope of foreign law firms within the JLV by allowing them to "participate wherever arbitration is contemplated: [namely] in the vetting and drafting of Singapore law agreements incorporating arbitration clauses, and [by] advising parties on their legal rights and liabilities in such agreements both before and after the dispute is referred to arbitration."¹⁵² For the Committee, equalizing what foreign and domestic lawyers

¹⁴⁸ In fact, from the Ministry of Law's website, see its discussion of the Rajah Committee report, where it takes from the document itself, noting: "Liberalisation of the Legal Services Sector. The most significant set of proposals made by the Committee concerns the liberalisation of the legal services sector. The Government agrees with the Committee that the legal services sector is a key pillar of the economy. Liberalising the sector will support Singapore's aim to be a vibrant global city and an attractive venue for talent. Liberalising the legal market will result in three key benefits. First, it will bolster the growth of our banking, financial and other key economic sectors through a full range of competitive cutting edge legal services. Secondly, the legal sector, itself an important component of our economy, will grow and Singapore will establish itself as a premier regional legal centre. Thirdly, we will attract and retain high quality international and local legal talent, which is critical to sustain the legal sector and economy in the long term." See <http://notesapp.internet.gov.sg/48256DF20015A167.nsf/LookupContentDocsByKey/GOVI-79LDRE?OpenDocument>.

¹⁴⁹ See Ministry of Law Website, Government Accepts Key recommendations, *supra* note 146, Enhanced Joint Law Venture Scheme, <http://notesapp.internet.gov.sg/48256DF20015A167.nsf/LookupContentDocsByKey/GOVI-79LDRE?OpenDocument>.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* ("FLFs [foreign law firms] may hire up to one Singapore lawyer for every foreign lawyer, and the Singapore lawyers should have more than three years' experience.")

¹⁵² *Id.*

could do in arbitration would eliminate the privileged position that the latter till now had been able to hold within the JLV. The hope again was that with greater seamlessness would come stronger bonds of trust that would help make the JLV run in a more cohesive manner.

To punctuate these points further, the Committee concluded by suggesting that not only should JLV- profits be shared more generously between the two sets of lawyers,¹⁵³ but that there be increased integration in the management and administration of the joint venture.¹⁵⁴ Thus, for the Rajah Committee the recommendations for addressing the problems accompanying the original JLV- model centered around promoting greater – not lesser – access to the Singaporean market by foreign law firms. As will be observed next, the Committee went one step further in its stated goal of liberalizing the legal services sector by recommending an entirely separate program in which foreign law firms could participate.

B. *The QFLF*

Along with the section on ways to enhance the JLV, the Rajah Committee introduced the Qualified Foreign Law Firm (QFLF) license in its report as well. This QFLF program involved allowing foreign law firms the option of foregoing entering into a JLV and instead providing them with an opportunity to “practi[c]e Singapore law in commercial areas through [the direct hiring of] Singapore-qualified lawyers.”¹⁵⁵ While remaining firmly committed to the notion that this “new [initiative] would add greater diversity, competitiveness, and vibrancy to the legal market,”¹⁵⁶ the government did continue to prohibit foreign firms from engaging in “criminal law, retail conveyancing, family law, administrative law and all aspects of . . . litigation.”¹⁵⁷ It also restricted the number of foreign law firms who would be able to receive the QFLF license. (The original number was set at five,¹⁵⁸ but it later was expanded to six.¹⁵⁹)

¹⁵³ *Id.* (noting that “[t]he foreign law firm will be allowed to share up to 49% of the profits of the constituent Singapore law firm in the permitted areas. Apart from this, the EJV constituents will be allowed to decide whether, and to what extent, to share profits.”)

¹⁵⁴ *Id.* (noting that “[t]he partners from the Singapore law firms will be allowed to concurrently hold partnership and administrative positions in the foreign law firms. . . . In addition, parties which are interested in a joint venture or which are currently in a joint venture agreement, may suggest any other arrangement beneficial to their particular circumstances. The Minister for Law and the Attorney-General will have the discretion to approve joint venture structures that go beyond the proposed conditions set out above.”)

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at section (i) (Noting “[u]p to five FLFs will be given a QFLF license to practise Singapore law through Singapore-qualified lawyers employed by the firm.”)

¹⁵⁹ See Ministry of Law Singapore website, Award of Qualifying Foreign Law Practice (QFLP) Licenses, December 5, 2008, http://www.news.gov.sg/public/sgpc/en/media_releases/agencies/minlaw/press_release/P-20081205-1.

In order to win one of these licenses the foreign firms had to enter a competition by submitting proposals to the government that addressed why they were applying and the type of work they planned on doing.¹⁶⁰ Importantly, as part of the process, they also were required to provide “revenue projections.”¹⁶¹ This meant they had to forecast – and agree – that if designated as a QFLF, 50% of their revenue would come from outside of the Singapore market after two years, and 80% would be from ‘offshore’ sources after five years – else their license was subject to revocation by the government.¹⁶²

In early 2009, the government named four British firms – Norton Rose, Clifford Chance, Allen & Overy, and Herbert Simon – and two American firms – Latham & Watkins and White & Case – as recipients of five-year QFLF licenses. Lawyers from the firms that failed in their bids reacted with both anger and disappointment.¹⁶³ Two sentiments that were consistent among this group were:

- a). the belief that the government’s assurance to them that they could reapply within twelve to eighteen months offered little comfort, given the fact, as one lawyer stated, “a lot of financial damage will have already been done to us [by those with QFLF privileges] in this time.”¹⁶⁴ And
- b). a frustration that no detailed, individualized explanations were given to those firms as to why they lost out. This same lawyer intimated that he thought it was because his firm did not inflate its revenue projections as much as he believed the others who were awarded the licenses had.¹⁶⁵

¹⁶⁰ See Ministry of Law Website, Government Accepts Key recommendations, *supra* note 146, Enhanced Joint Law Venture Scheme, http://notesapp.internet.gov.sg/_48256DF20015A167.nsf/LookupContentDocsByKey/GOVL-79LDRE?OpenDocument. (Noting at section (ii), “FLFs will have to compete for the licences by demonstrating a commitment to Singapore. They would be asked for proposals regarding the size and constituency of their local office, the areas of work in which they will engage, and the countries which they will service from Singapore.”) Also see *id.*

¹⁶¹ This point was stated to me by a lawyer on June 10, 2009, as well as a lawyer (whose firm did not receive a QFLF-license) on June 11, 2009 (anonymity for both requested.)

¹⁶² According to observers, the idea behind this move was simple: it was a way of pacifying the domestic bar that worried that the QFLF-license would enable the foreign law firms to overtake completely the local market. And the way it would be done, according to those concerned, is as follows. The foreign firms, with all of their resources would come in and cut rates for Singaporean clients to the point where domestic firms simply could not compete. Even though the foreign firms would absorb some initial loss, because of their strength, size, and resources, they could withstand this pressure – at least until the domestic firms folded. At that point, as this argument goes, the foreign firms would then jack-up their rates, essentially creating a monopoly on such legal services within the country. This ‘percentage/off-shore QFLF provision,’ thus, served as a check on having such an outcome.

¹⁶³ See Ministry of Law Singapore website, Award of Qualifying Foreign Law Practice (QFLP) Licenses, December 5, 2008, http://www.news.gov.sg/public/sgpc/en/media_releases/agencies/minlaw/press_release/P-20081205-1.

¹⁶⁴ Author interview with lawyer on June 11, 2009 (anonymity requested.)

¹⁶⁵ *Id.*

Ultimately, because of its recent implementation, it is difficult to know at this point the effects that the QFLF program will have on the Singaporean legal labor market. On the one hand, that foreign law firms can now compete on their own against their domestic counterparts does signal the government's continued desire to make Singapore an inviting place for international investors. On the other hand, the government's attention to the demands of its domestic constituency also sends a cue to the foreign firms that the QFLF license has limitations. As a foreign lawyer who is currently involved in one of the few on-going JLVs stated to me, he saw no real benefit for his firm to become a QFLF.¹⁶⁶ Especially with the new enhanced-JLV in place, he noted, why "mess with something that is working just fine for us."¹⁶⁷

V. Conclusion

As has been learned, positive sentiments towards JLVs (enhanced or otherwise), like those felt by the previous lawyer above, are clearly not the norm, and whether the enhanced-JLV or QFLF license will serve as a better model than the original JLV remains to be seen. Placed in a larger context, the findings of this pilot study offer a start on what will hopefully be further research on two fronts: 1.) the efforts by other governments that are seeking to attract international law firms; and 2.) the entrepreneurial initiatives that are being undertaken by international law firms to enter into emerging, thriving, but still for foreign lawyers, restrictive countries. Simply put, so much is unknown, which for the curious scholar serves as ripe terrain for future study. For example, while there are reports, like those cited in the Introduction, that document the presence of JLVs in places like the Middle East and Japan, to what extent empirically is this model regularly-used by foreign law firms as a means of gaining access to other potentially profitable, untapped domestic markets? In these other settings, what types of foreign firms use JLVs – traditional, big, elite firms, midsize ones, and/or smaller practices? Once created, how successful have these JLVs been in these other places? Have there been tensions, economic or cultural, like seen in Singapore, within these other JLVs? How, if at all, have JLVs complemented, competed with, or fared against other existing foreign/domestic law firm relationships, such as 'best-friend' alliances, international referral-networks, and the like? All of these questions arise out of this pilot project, and the preliminary findings regarding Singapore hopefully provide a beginning point for which subsequent scholars can refer.

Interestingly, two countries that I am in the process of examining next and that are presently using variations of law firm joint-ventures are Indonesia and

¹⁶⁶ Author phone interview with lawyer on July 12, 2009 (anonymity requested.)

¹⁶⁷ *Id.*

Vietnam.¹⁶⁸ Both have long looked to Singapore for how to increase foreign investment and expand the growth in their respective economies. As one foreign lawyer working in Singapore said, he and his firm have been eyeing the Indonesian and Vietnamese markets for some time.¹⁶⁹ According to this person, leaders in both these countries are convinced that greater foreign investment – including greater investment from foreign law firms – will significantly improve the standards of living in these two societies.¹⁷⁰ Working with government policymakers in Jakarta and Ho Chi Minh City, this individual further noted that if the two countries continue liberalizing their economic policies accordingly, which he expects, there will be an opportunity for international firms to prosper immensely in these places as well.¹⁷¹

Another country where the findings of this pilot study will be important is in India. Elsewhere, detailed work has been done on how there is presently a fierce debate over whether and to what extent foreign law firms should be allowed admission into that country.¹⁷² Today the situation is that foreign law firms are barred from entry into India, although their presence is felt in a number of different ways.¹⁷³ The evidence adduced from that India project also suggests varied and nuanced positions on the part of multiple constituencies, including international and domestic law firm lawyers, solo practitioners working in the local Indian courts, government officials, judges, and grassroots activists.¹⁷⁴ There is a sense from those who support liberalizing the legal services sector – and even from some opponents – that if the Indian market eventually opens formally to foreign law firms, the process will have to be gradual, with the joint-venture framework pointed to as a model possibly worth adopting.¹⁷⁵ Given the difficulties encountered in neighboring Singapore, where the domestic opposition has been nowhere near the strength seen in India, the findings here should be of interest (and possibly even concern) for those who believe that the joint venture might be the appropriate vehicle used to settle the legal services conflict within that country.

Finally, returning to the discussion that began this study, for those American and British law firms that are looking to enter as-of-yet untapped

¹⁶⁸ See Directorate General of Tax, Special Regional Office Jakarta, Information for Foreign Investment in Indonesia, <http://www.kanwilpajakhusus.depkeu.go.id/infoInvestment.asp>. For Vietnam, see GLOBAL INVESTMENT & BUSINESS CENTER, VIETNAM: BUSINESS LAW HANDBOOK 126-127 (2007), at http://books.google.com/books?id=btswcYNEl_MC&pg=PA126&lpg=PA126&dq=vietnam+%22Foreign+law+firms%22&source=bl&ots=2_IT_siQUH&sig=yuC9k7OzaSWMQY0Tp69XRg5p9UE&hl=en&ei=36eBSq_KBJDIMN2g-JoL&sa=X&oi=book_result&ct=result&resnum=7#v=onepage&q=vietnam%20%22Foreign%20law%20firms%22&f=false.

¹⁶⁹ Author interview with lawyer on June 9, 2009 (anonymity requested.)

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Krishnan, *supra* note 28.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

foreign markets as a means of offsetting the downturn in business in their own home economies, there are useful lessons to glean from the Singapore case. Since certain JLVs have indeed functioned adequately in Singapore it is not impossible that future ones may do so here as well. The key determinants are how economically well-integrated the arrangement is, whether there is sufficient cultural sensitivity, and how willing both sides are to work in good-faith with one another while maintaining realistic business expectations. Where these variables are absent or lacking in salience, the evidence from above suggests that more often than not JLVs will face daunting challenges. In sum, there needs to be the opportunity for positive, nurturing relationships to develop and thrive, because the bottom line is that the success or failure of these law firm joint ventures is ultimately and directly related to how much trust exists among the different working parties.