

**Welcoming Remarks by Datin Paduka Hajah Hayati POKSDSP Hj Salleh,
Attorney General of Brunei Darussalam
Opening Ceremony of the 6th ASEAN Law Forum on the
Progressive Liberalisation of Trade in Legal Services in ASEAN
Empire Hotel and Country Club
Brunei Darussalam
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Assalamualaikum Warahmatullahi Wabarakatuh

Bismillar Hir Rahman Nir Rahim

Excellencies,

Distinguished Guests,

Ladies and Gentlemen,

Good morning. Let me begin on behalf of the Government of His Majesty the Sultan and Yang Di-Pertuan, to warmly welcome to Brunei Darussalam our distinguished heads and members of delegations that are present to attend this 6th ASEAN Law Forum on the Progressive Liberalisation of Trade in Legal Services in ASEAN. I wish you a pleasant stay in your brief time here and sincerely hope you will find the opportunity to explore our beautiful country before you return home. The Organising Committee headed by Puan Naimah Mohd Ali, the Assistant Solicitor-General and Dayang Hajah Nor Hashimah Hj Mohd Taib, Head of International Affairs Division had worked very hard to make your stay as smooth as possible.

Ladies and Gentlemen,

The theme of this 6th ASEAN Law Forum emanates from a proposal paper presented by Brunei Darussalam at the 12th ASEAN Senior Law Officials Meeting that was also held here on the 17th – 18th October 2008. The 7th ASEAN Law Ministers Meeting that followed, held on 20th – 21st October 2008, mandated that Brunei Darussalam host an ASEAN Law Forum for members to further deliberate the proposal. At this point, we would like to reiterate that presenting the paper and hosting this event does not necessarily mean that Brunei Darussalam is aggressively advocating the liberalisation of the legal services sector. Rather, it was an invitation for members of ASEAN's legal fraternity to seriously start considering the development of this issue in a more coordinated and structured manner, bearing in mind our

collective obligations that have been agreed upon by our leaders under the ASEAN Charter and more specifically the ASEAN Economic Community (AEC) Blueprint.

On that note, may I recall paragraph 5 of Article 1 of the Charter which significantly stated one of the purposes of ASEAN is to “create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labour and freer flow of capital.” Further to that, paragraph 4 of the AEC Blueprint recalled our leaders at the 12th ASEAN Summit affirming their strong commitment to accelerate the establishment of an ASEAN Community by 2015, which in turn prescribed for us a timeline to accomplish our set goals and objectives in less than four years from now.

Ladies and gentlemen,

To start exploring ways to move this issue forward for the legal services sector, I would like to provoke you with four main factors to deliberate;

Firstly, we need to acquire a thorough understanding of the term “liberalisation” that has to be completed by 2015, in particular what is expected from it in the context of legal services. Is there a single objective definition or criteria that apply to all services sectors? Are certain limitations or flexibilities afforded to some services sectors taking into account their individual circumstances that may make it not as accessible compared to other services sectors that are? The legal services sector strikingly qualifies itself as an exceptional sector as the services delivered under it are not easily transferable from one territory to another and its provision depends on legal systems, legal qualifications and practising language. I am pleased to note that a speaker from the ASEAN Secretariat will be presenting on the general framework of trade in services in ASEAN. I hope the participants will gain a better understanding of how member states are expected to list their commitments under the ASEAN Framework Agreement in Services (AFAS) and the modalities involved in opening up their services sector through a gradual process, from now and until 2015. A better understanding of the mechanisms of AFAS and the AEC Blueprint will hopefully provide member states with more assurance and confidence in their considerations of liberalising or further liberalising their legal services sector.

Secondly, it is necessary for us to familiarise ourselves with each other's legal systems, legal practices, legal standards, legal qualifications recognised and licensing requirements within each other's jurisdictions. I look forward to this transparency exercise that I understand will be held during the information sharing sessions where all member states will give a brief presentation on their respective experiences and overall views on this issue. Once again, it is my hope that through learning about each other's positions and also factors such as eligibility to practice and to what extent reciprocity is possible, member states are able to make a more informed decision in their considerations of liberalising or further liberalising their legal services sector.

Thirdly, we need to decide on the possible parameters of the liberalisation of the legal services sector and whether it would be for the practice of third country law or international law only or if it would also include the practice of host country law. From the commitments that have been made so far, it is inferred that host country law is generally excluded and commitments are only pertaining to the third country law or international law. But will this be sufficient to satisfy the objectives of the Charter and the Blueprint? Singapore's incremental process of liberalising their legal services sector from only including the practice of international law to joint ventures to now also allowing foreigners to practise Singapore law is a fascinating turn of events and we look forward to hearing more about it from the representatives of Singapore in their presentation. Other member states who may be contemplating following the same pattern can certainly benefit from learning about the administrative framework used and the regulatory reform undertaken by Singapore.

Lastly, we need to consider if we are going to proceed with this issue by maintaining the status quo of member states making unilateral commitments or if we should go forward collectively as a group. To date, the five member states that have made commitments on their legal services sector have done so without necessarily considering issues of reciprocity from other member states and the possibility of harmonising any rules or regulations on the supply of legal services within the region. The legal services sector also has never met officially under the AFAS framework unlike other services sectors that have regular meetings under the ASEAN Coordinating Committee on Services. Devising modalities, utilising any flexibilities afforded and reaching consensual decisions collectively may be very useful to help the legal

services sector satisfy what is expected of it by 2015 but more importantly, it will show that our sector **has** taken the effort to engage with each other. On that note, the presentation on the European Union's experience in its regional liberalisation of trade in legal services will provide a valuable insight as to how an international organisation worked **together** to produce a number of Directives to regulate the practise of legal services in the whole region as opposed to selected countries only.

In conclusion, I sincerely hope that this law forum will enlighten us all on this important issues, not only from hearing the presentations made but also through the interaction amongst ourselves with so many different sections of the legal field represented. We should take full advantage of this opportunity as this would be the first time a diverse range of relevant stakeholders have come together to deliberate on this issue, and hopefully it will not be the last. For the members of the ASEAN Law Officials Meeting or ASLOM, I also hope you together with your respective country's stakeholders will be able to form a more concrete position to bring forward to this year's ASLOM meeting which will be held back to back with the ASEAN Law Ministers Meeting where a specific mandate on this issue can be sought.

Till then, I wish you all a riveting law forum and a pleasant stay and let us together aspire to bring forward the issues in this forum issue to a successful and fruitful conclusion.

Thank you.