

# Update

April 2018

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## PRESIDENT'S MESSAGE



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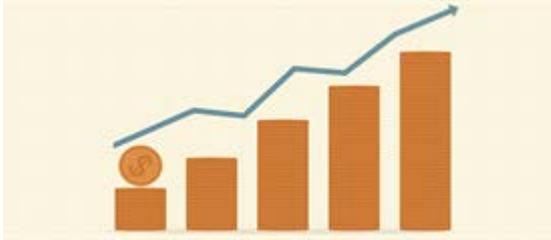
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## PRESIDENT'S MESSAGE



Dear members,

2018 is proving to be an eventful year and I am grateful for this chance to pause and reflect on what LAWASIA has accomplished over the past few months, while also introducing some of the projects lined up for the year ahead.

LAWASIA is in the process of implementing several new initiatives that are designed to refresh and enhance both our collaboration with existing members and our connections with lawyers across the Asia Pacific. In particular, we hope to engage our region's young lawyers by introducing a permanent LAWASIA Young Lawyers Committee. Watch this space for further updates about this project.

Following the success of last year's conferences and seminars, LAWASIA's 2018 professional events program will offer a range of opportunities for our members to exchange ideas, share legal knowledge and expand their regional networks. Members with a specialised interest in Family Law are sure to enjoy the **7th LAWASIA Family Law and Children's Rights Conference** taking place in Vientiane, Laos this June, while the **31st LAWASIA Conference** is set to gather legal professionals from all fields in Siem Reap, Cambodia in early November. Registrations for both events are now open and I encourage all members to take part in the high-level discussions offered at these fora.

I am delighted to note that our regular digital publications have garnered great praise from the LAWASIA readership, which continues to grow across all online channels. In response to the increasingly mobile and tech-based lifestyles of our members, we plan to enhance our online presence by revitalising the LAWASIA website and making high-level content available to our members in digital format, including future editions of the leading *Asian*

*Jurist* magazine.

In the meantime, I hope that you find the material covered in this issue of *Update* to be informative and engaging. Perhaps it will inspire you to pause and reflect on not only the challenges that face our profession, but also our collective achievements.

Yours sincerely,

**Christopher Leong**  
President, LAWASIA

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## PRESS RELEASE



### **LAWASIA responds to reports concerning Fact-Finding Team's denied entry to Maldives**

27 February 2018

LAWASIA is the law association for Asia and the Pacific, and its Council comprises of the peak national bar associations and law societies in the United Nations ESCAP Region. Due to the reported situation in the Republic of Maldives, the Council of LAWASIA had decided to establish a fact-finding team for the purpose of ascertaining the situation with regard to:

- i. The independence of the judiciary in the Maldives
- ii. The independence of the Judicial Services Commission, and the transparency of the process for appointment of judges and investigations of complaints regarding judicial conduct
- iii. The independence of the legal profession, and whether members of the legal profession are able to perform their professional duties unhindered and free of harassment or intimidation
- iv. Due process in the administration of justice in the Republic of Maldives
- v. The Rule of Law and rights-related issues.

The LAWASIA fact-finding team, led by Christopher Leong, President of LAWASIA, is an independent team with an objective mission which is not to be sponsored by any parties, organisations or individuals from the Maldives.

In the course of the fact finding team organising and planning the mission, the Government

of Maldives issued a statement on 7.2.2018 via the Ministry of Foreign Affairs that “the Maldives would like to invite its development partners and representatives from international organisations and associations to visit the Maldives to assess the situation in the Maldives and witness the safety and security of Male, for their own citizens as well as to engage with the Government and key stakeholders in the country.”

The LAWASIA fact-finding team had written to various persons, parties and stakeholders seeking meetings relevant for the purpose of the fact-finding mission. These persons, parties and stakeholders included lawyers, present and former members of the People’s Majlis (Parliament) from the opposition and government benches, Human Rights Commission of the Republic of Maldives, members of the judiciary, representatives of Government (former and present) including the Attorney-General, and members of civil society organisations. Meetings were to take place between the 24.2.2018 to the 28.2.2018. We had received confirmation from several of these persons, parties and stakeholders for the meetings requested.

On the 11.2.2018 we wrote to the Immigration Department of the Maldives informing them of the fact-finding mission, its objectives and its planned visit and purpose to the Maldives and inquiring as to the relevant requirements for visa for the fact-finding mission. The provisions in this regard found in the Foreign

Ministry website were unclear since parts of it were in Dhivehi (the official language of the Republic of Maldives). A reminder email was sent on 13.2.2018.

Not having received any reply, we then wrote to the Foreign Ministry on 15.2.2018 providing them with the same information and seeking their guidance and advice as to the visa requirements. On the same day we received a reply from the Foreign Ministry thanking us for the email and informing us that their Asia Division would provide us with guidance in relation to the visas for the Maldives. The said email was copied to the Asia Division of the Foreign Ministry. Having not heard further from the Foreign Ministry and the Asia Division, we had followed up with a reminder on 19.2.2018. There was no response.

On 23.2.2018, we had duly informed by email the Immigration Department and the Foreign Ministry, as well as its Asia Division, that “given the impending arrival dates of the delegation and the indeterminateness of response to our requests, we are writing to inform the department that the arriving delegation will be proceeding with its plans on the understanding that the thirty day visa issued on arrival is applicable for the purpose of the visit, namely to attend several meetings to ascertain the situation in Male’, unless we receive direct advice to the contrary.” We received no response to the contrary.

Four members of the fact-finding team arrived at the Velana International Airport, Maldives in the evening of 25.2.2018. Each had declared the purpose of the visit upon arrival. Instead of providing guidance and facilitating the mission with a visa as would have been consistent with the open invitation issued by the Government of Maldives to international organisations, the Maldivian authorities had instead refused entry to the members of the team, detained and kept them at a closed detention facility under guard and surveillance, and subsequently deported them. Although the actions taken by the authorities were inconsistent with their public statements of invitation, and unnecessary, the immediate officials who attended to us were courteous.

By such action, the Government of Maldives deprived itself of the benefit of an independent and impartial assessment by a fact-finding team not sponsored by any individuals, parties or organisations in the Maldives. Although disappointed, the LAWASIA fact-finding team will nevertheless continue with its mission and carry out its mandate. In this regard, it remains the hope of LAWASIA that the Government of the Maldives and key stakeholders in the country would take meaningful steps to assist and participate with this task.

**Christopher Leong**  
President, LAWASIA

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### LEGAL SERVICES SECTOR



#### India's legal profession split over ruling that bars foreign firms

By Saurav Datta

Proponents of the economic liberalisation of India's legal services sector had been waiting since 2012 for a Supreme Court ruling on whether to allow offshore law firms and lawyers to practice in the country.

Last week, a bench headed by Justices Adarsh Goel and U.U. Lalit interpreted the law, as it stands, as prohibiting foreign lawyers from carrying out either litigation or non-litigation work in India on any permanent basis. Rather, they can only take up tasks in the country on an advisory basis, whereby they “fly in and fly out.” The court handed the Bar Council of India (BCI) regulatory control over such assignments. However, it also said it was not opposed to liberalisation of legal services and that the government could enact legislation to open the sector up to offshore lawyers and firms if it desired.

The ruling was on the BCI's appeal against a [2012 Madras High Court judgment](#) that said foreign lawyers and law firms could practice law in India if they met BCI rules and requirements, as set out in the Advocates Act. The 2012 judgment did not stipulate regulatory oversight.

The BCI has firmly opposed any entry of foreign lawyers and law firms – primarily to protect the Indian legal services sector. It is also concerned that it might not have the wherewithal to effectively regulate foreign legal practitioners.

Speaking to Asia Times, Dushyant Dave, a senior Indian Supreme Court lawyer who

represented the London Council of International Arbitration, said that the Supreme Court's ruling was "not pragmatic, and a setback for India."

"The world may need India or not, but India certainly needs the world, with 1.2 billion poor people," he said. "There is a crying need for new technology to come in to improve agriculture and irrigation to create hundreds of millions of jobs, we need sophisticated technology and foreign capital investment. Foreigners [investors] would be much more comfortable if they could use their own legal counsel. It is not something the Supreme Court should have stalled. To fly in and fly out [to give advice] is ridiculous."

Union Minister for Law and Justice Ravi Shankar Prasad, whose government has been actively pushing for the globalisation of the legal sector to boost economic activity, told Asia Times he would be able to give a concrete response only when he is back from his tour of Patna, and after speaking to all stakeholders.

### **Not a major setback**

Senior Advocate Indira Jaising, founder of Lawyers' Collective, which first took the matter to court, told Asia Times the Supreme Court's ruling had vindicated her organisation's stand.

"Economic development requires a level playing field," she said. "Right now there is none. Foreign lawyers would be free to advertise, Indian lawyers are not; foreign lawyers work on contingency fees, Indian lawyers are not allowed to do so. Moreover, there is no reciprocity; we cannot practice in their jurisdictions."

Jaising added that there was nothing to stop foreign lawyers from providing pro bono services in major cases involving human rights, where their expertise in international law and comparative jurisprudence could be useful.

Kian Ganz, the editor of the legal news and analysis website LegallyIndia told Asia Times that "not allowing foreign lawyers and law firms to set up offices and carry on full-fledged practice in India [will] not make a major dent in opportunities for Indian lawyers and graduates; after all, the number of hirings they would do in India would be only a minute drop in the ocean."

He pointed to **research** indicating that it would be presumptuous and premature to assume that the entry of foreign law firms would translate into a deluge of jobs for Indian law graduates. As for arbitration, he said that a major chunk of international commercial arbitration, as it relates to India, is conducted in London and Singapore.

A study by the consultancy firm RSG Consulting **found that in 2017**, foreign lawyers and law firms were not overly keen to set up business in India.

Suhail Nathani, managing partner at Economic Laws Practice, a top-tier law firm in India, argued that calling the apex court's judgment detrimental to India's legal services sector was inaccurate. "The obvious result is that the government is now unimpeded to legislate on this sector," he said. "The arbitration scene is already being revamped. Every year India produces a large body of common law-educated lawyers who are well qualified and comparable to the best. The judgment does not bar foreign lawyers from participating in international commercial arbitrations and I hope that they will draw upon the local pool of talent to serve their clients in Indian arbitration matters. They will certainly be pleased with the local talent."

He disagreed with the view that the judgment would be to the detriment of Indian law graduates. "To expect that the entry of foreign law firms will change their future, I believe is misleading. The profession is changing from within. That is what will give them a bright future. Central decisions for the firm they are a part of are best made from their own jurisdiction, not by some distant foreign committee. In a global scenario, Indian revenues will be insignificant for a multinational law firm, so India will never drive the firm."

Nathani added: "I cannot accept that foreign capital is the panacea for the Indian legal profession. Capital always has strings attached. The focus of reform must be the clients and the stakeholders in the profession. This does not require foreign capital."

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This article was first published by [Asia Times](#) (19 March 2018).

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## ONLINE PRIVACY



Photo: Chesnot/Getty Images

### Under fire in US, Cambridge Analytica looks to Asia

By Alan Boyd

Asian political leaders have been quick to distance themselves from scandal-hit voter profiling firm Cambridge Analytica, but many countries will remain plum targets for unethical data mining activities due to high social media growth, regulatory gaps and a tradition of electoral abuses.

British-based Cambridge Analytica has been accused of improperly using information obtained from Facebook users to influence the outcome of elections in scores of countries. American authorities are now investigating what role it played in Donald Trump's 2016 US presidential campaign.

The company says it has been active in **Malaysia** and **Australia**, as well as Brazil, Kenya and Mexico, and plans to expand into **China**. Cambridge Analytica had and has closed offices in Malaysia and Australia, but its parent, SCL group, maintains websites that offer services in other Asian countries.

Former Cambridge Analytica executives have said the company exaggerates its influence and has not made the market inroads that it claims. Most disclosures on its activities are based on an undercover report by Channel 4 television in the United Kingdom, which have not been independently verified.

Chief executive officer Alexander Nix told the Channel 4 reporter — who posed as a “fixer

for a wealthy client hoping to get candidates elected in Sri Lanka” — that the company had “a web of shadowy front companies”, including charities and activist groups, that it used to influence elections.

Proxy organizations were set up to feed untraceable messages into social media sites that were negative to particular candidates, while information favoring their own client was fed “into the bloodstream to the internet.”

Cambridge boasted that it was able to swing the 2016 election for Trump by securing the “40,000 votes” he needed in three states, despite having more than three million fewer votes overall than rival Hillary Clinton.

“We did all the research, all the data, all the analytics, all the targeting, we ran all the digital campaign, the television campaign and our data informed all the strategy,” Nix said in the series of Channel 4 interviews.

Executives at the firm also said they used “a web of shell companies to disguise their activities in elections in Mexico, Malaysia and Brazil, among various countries where they have worked to sway election outcomes.”

There is no evidence that Cambridge or SCL have directly meddled in elections in Asia, but local subsidiaries have certainly been busy in Malaysia and India while its lobbyists have courted Australian politicians.

CA Political, an offshoot of Cambridge Analytica, supported Malaysia’s ruling Barisan Nasional (National Front) coalition in Kedah state during the 2013 general election, with “a targeted messaging campaign highlighting their improvements since 2008”, according to a statement on CA Politica’s website.

**Malaysian** Prime Minister Najib Razak, who chairs BN, has denied his government ever worked with Cambridge Analytica or SCL, but suggested they may have been used by Mukhriz Mahathir, son of former prime minister and current opposition leader Mahathir Mohamad, who ran under BN’s banner in Kedah at the time.

Mukhriz became the state’s chief minister in 2013 but was later sacked from the party and helped set up a new faction, Parti Pribumi Bersatu Malaysia (PPBM), which will oppose BN as part of an opposition coalition in the election due later this year.

Najib’s office said in a statement released on Tuesday: “The SCL Group country representative today confirmed to the government that Cambridge Analytica’s advice on the 2013 general election was provided personally to Mukhriz Mahathir, PPBM Deputy President.”

SCL’s country representative at the time was Azrin Zikal, the director of CL’s Southeast Asian division, who was also formerly Mukhriz’s media officer. Mukhriz, who says he had never heard of Cambridge Analytica, claims Zikal had ceased being his media officer by the time he was Kedah’s chief minister.

**India’s** two biggest political movements, the ruling Bharatiya Janata Party (BJP) and opposition Indian National Congress, are both reported to have been in talks with Cambridge Analytica and its local partner ahead of national elections scheduled for next year.

SCL India, a joint venture between SCL group and India’s Ovleno Business Intelligence, insists they are clients. SCL India claims to be active in 10 Indian states and says it employs 300 permanent staff and 1,400 consultants for “political campaign management” activities, which include social media strategies, election campaign management and mobile media management.

Himanshu Sharma, the vice president of SCL India, states on his LinkedIn profile that the company has “successfully managed four general election campaigns for the BJP”, including the 2014 poll that the party won. BJP and Congress have both denied using SCL

or any of its affiliates.

Meanwhile, **Australian** politicians have said they met with Cambridge executives but decided not to use its services. They included the then-minister for cyber-security, Dan Tehan, whose office confirmed that he attended a private dinner with company representatives last year.

Cambridge opened an Australian office in 2015 but it was never used and was finally shut this week. The office was at the home of a former car salesman, Allan Lorraine, who said it was for show.

“Leading up to the Trump campaign, they wanted to appear bigger than they were,” he said.

The company’s activities in Asia may be unethical but it unlikely it has broken any laws. There are no restrictions on the use of data by politicians and victims of data mining would have difficulty securing compensation unless it could be proved that sensitive details had been poorly protected.

Even in Australia, which has the most advanced data laws in the region, politicians, political parties and their contractors and subcontractors are exempt from the Privacy Act and rules on the use of personal information.

Social media growth in Asia has been so rapid that regulators have had little chance of keeping up. As of January, eight of the 10 countries with the highest social media penetration rates were in the wider region, namely South Korea, Singapore, Hong Kong, Saudi Arabia, Malaysia, Thailand, Australia and United Arab Emirates, according to Statistics portal Statista.

India had the largest number of Facebook users worldwide (250 million), and Indonesia (230 million) was equal third with Brazil. The Philippines, Vietnam and Thailand were also in the top 10 markets for users.

Data mining companies would find a fertile market in much of Asia if they did want to influence elections: only six of 34 countries surveyed for the 2018 Freedom in the World rankings by Freedom House were rated as having total political rights; 12 countries were ranked as having none at all.

The countries ranked at the bottom were China, Laos, North Korea, Saudi Arabia, Syria, Azerbaijan, Kazakhstan, Bahrain, Tajikistan, United Arab Emirates, Turkmenistan and Tibet – all prime targets for mining social media and other online user information without fear of legal repercussions.

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*This article was first published by [Asia Times](#) (22 March 2018).*

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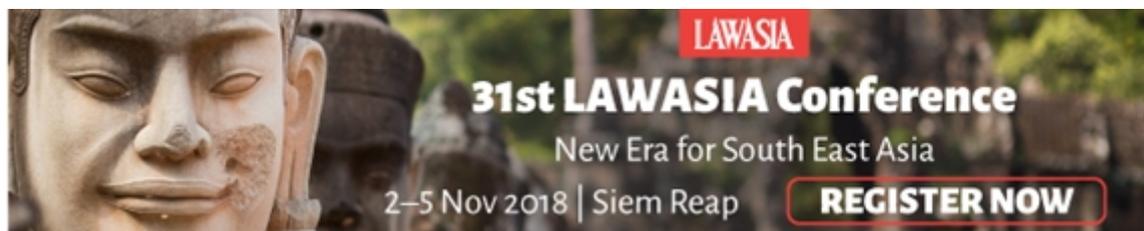
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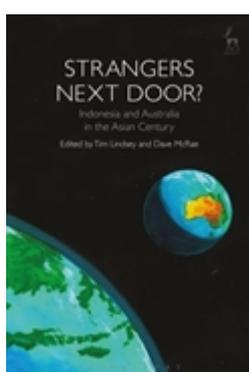


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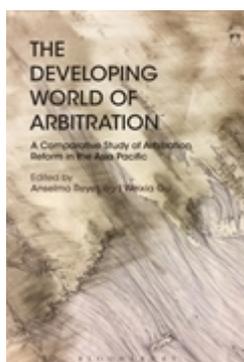


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## PRESS FREEDOM



AP Photo/Thein Zaw

### Myanmar journalists in court 100 days after their arrest

Two Myanmar reporters have appeared in a court 100 days after they were arrested on charges of possessing secret government documents.

The court in Yangon is holding preliminary hearings to decide whether the two journalists, who work for the Reuters news agency, will face charges under the Official Secrets Act - a British Colonial era law that carries a maximum penalty of 14 years in prison.

Wednesday's hearing marked the 11th time Wa Lone, 31, and Kyaw Soe Oo, 28, appeared in court.

The pair have been held since December 12, "simply for doing their jobs as journalists", said Stephen J Adler, president and editor-in-chief of Reuters.

"Wa Lone and Kyaw Soe Oo are exemplary individuals and outstanding reporters who are dedicated to their families and their craft. They should be in the newsroom, not in prison," he said in a statement.

The pair were arrested over a Reuters investigation into the killing of 10 Rohingya men by Myanmar troops and ethnic Rakhine villagers in the country's Rakhine State, the news agency said.

The incident occurred during a military crackdown that forced nearly 700,000 Rohingya

fleeing into Bangladesh, Reuters said.

Following the reporters' arrest, Myanmar's military later admitted its soldiers took part in the killing.

Wa Lone and Kyaw Soe Oo were taken into custody after being invited to dine with police officers on the outskirts of Myanmar's largest city, Yangon.

The reporters told their families they were arrested almost immediately after being handed some rolled up papers by two officers they had not met before, Reuters said.

Their arrest has sparked global alarm over press freedom in Myanmar.

Diplomats from countries including the US, Canada and the European Union, attended Wednesday's court hearing.

The Embassy of Denmark, which has sent representatives to each hearing, said the pair had spent "100 days behind bars for ensuring the public's right to information", and urged Myanmar to drop charges and release them immediately.

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*This article was first published by [Al Jazeera News](#) (21 March 2018).*

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## MEMBER NEWS



### **New partnership for legal education**

By Sol Dolor

The College of Law has inked a partnership with the Law Society of Singapore.

The two organisations will collaborate on education and training programs for legal professionals in Singapore. The first in a wide array of courses the partnership will work on is a series of subjects about ASEAN law.

Gregory Vijayendran, president of the law society, and Neville Carter, group CEO of the College of Law, signed the memorandum of understanding in Singapore in late March.

“This collaboration will drive thought leadership in legal education policy. It is the first time the Law Society has partnered with a legal education provider, as we normally only collaborate with other bar associations,” said Vijayendran. “The Law Society could not have asked for a better partner to build expertise among Singaporean lawyers, given the College’s track record, pedigree and brand.”

Carter said that the college, which was founded by the Law Society of New South Wales, is pleased to be associated with both Singapore and its law society.

“Singapore law is increasingly the governing law in commercial transactions in this region, and there is a growing interest to know more about Singapore law,” Carter said.

This article was first published by *Australasian Lawyer* (4 April 2018).

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