
HM Legal – Your Outsourced, In-House Counsel Solution

26 NOVEMBER 2018 – HOLLAND & MARIE

Holland & Marie intends to introduce its in-house counsel solution in January 2019. We believe this business will address a pain point for our clients and is permitted under applicable law. In this article, we will discuss how we reached the decision to launch this business and why we think our clients will value it.

BACKGROUND

“It is a criminal offence if an unauthorised person carries out any act that may be performed only by a qualified lawyer or if he/she pretends to be a qualified lawyer. The relevant provision is section 33 of the Legal Profession Act. The acts that may be performed only by a qualified lawyer are set out in section 33 of the Legal Profession Act and case law.” – The Law Society of Singapore.¹

“The in-house profession in Singapore is not regulated. It is not necessary to be admitted to the Bar (whether in Singapore or elsewhere) or to hold a practising certificate before you can be employed as in-house counsel. The position is the same for both local and foreign lawyers practising in-house in Singapore.” – Singapore Corporate Counsel Association.²

“I’m not taking tennis as a profession, I’m going to be a lawyer or work on Wall Street.” – 10-year old Chris Holland, 1983.³

I (Chris Holland) was surprised when I learned that someone with no legal training could work as an in-house counsel in Singapore. For comparison purposes, in New York (where I am admitted as an attorney) to act as an in-house counsel you either need to be admitted to the Bar and in good standing in a United States jurisdiction or a member in good standing of a recognized legal profession outside the United States (among other criteria).⁴ I think the New York requirements make sense. To advise on legal matters you should be a qualified lawyer, at least somewhere. I do not know the background to Singapore’s more permissive rules.

THE THEORY BEHIND OUTSOURCED IN-HOUSE COUNSEL SERVICES

The reason I researched the question about the requirements to be an in-house counsel is that, as a former General Counsel, I liked the idea of providing outsourced General Counsel services to small and medium enterprises, including start-ups. Such businesses often don’t have the budget or need to hire a full-time General Counsel, but do need assistance on an ad hoc basis.

Obviously, businesses that need legal assistance could go to a law firm for outsourced General Counsel support. I could have explored joining a law firm or setting up my own law firm. For a variety of reasons, I chose not to go down that path.

HOLLAND & MARIE’S BUSINESS MODEL

Holland & Marie Pte. Ltd. is a compliance and C-Suite advisory firm. Our primary business is to provide regulatory compliance advice and assistance similar to many other compliance firms in Singapore, including Compliance Asia, Duff & Phelps, and Allen & Gledhill Regulatory & Compliance Pte. Ltd. Like those firms, we are not a law firm and may not act as an advocate or solicitor for purposes of the Singapore Legal Profession Act.⁵

As part of ensuring that our business did not encroach into the unauthorized practice of law, I began to research how that concept was understood in Singapore, which led me to the discovery that the in-house counsel profession in Singapore is unregulated.

THE MILLION DOLLAR QUESTION

Based on that realization, I wanted to explore whether Holland & Marie could provide in-house counsel services without (1) being a law firm or (2) acting as an employment agency.⁶

I have not found any official guidance on what services/service provider constructs are considered in-house counsel services. The Ministry of Law has stated that persons not admitted to the Singapore bar may be able to work as in-house counsel and refers readers to the Singapore Corporate Counsel Association's website.⁷

I think it is obvious that a Singapore corporation hiring a person full-time is permitted. Meanwhile, I have not found any guidance that an in-house counsel role could not be (1) part-time, (2) provided by an employee of an affiliated company on a secondment basis or (3) provided by an employee of an unaffiliated company on a secondment basis. Holland & Marie intends to structure its in-house counsel solution as secondments of Holland & Marie directors⁸ to our clients (for an agreed duration). These secondments will be non-exclusive and the Holland & Marie directors will be permitted to (a) continue their work at Holland & Marie and (b) perform more than one secondment within a period of time (although never assist more than one party at any given time), subject to client consent which shall be obtained in writing prior to the commencement of any engagement.

CONSTRUCT FOR THE PROVISION OF IN-HOUSE COUNSEL SERVICES

We expect our secondments will often be provided on a project or block of time basis. Law firm mandates are often structured similarly. This similarity is not a problem because there are certain types of work that we will never take on: projects that would require Holland & Marie or its directors to act as an advocate or solicitor.

WHAT IN-HOUSE COUNSEL CANNOT DO

According to the Singapore Corporate Counsel Association, "in-house counsel cannot:

appear or plead in any Singapore court unless otherwise permitted by law; appear in any hearing before a quasi-judicial or regulatory body, authority or tribunal in Singapore unless otherwise permitted by law; or attest any document which is required to be attested by an advocate and solicitor (i.e. someone who has been admitted to the Bar in Singapore and who holds a practising certificate)."⁹

Holland & Marie will not engage in such activities.

THE LEGAL PROFESSION ACT

Under the Legal Profession Act, advocates and solicitors are defined as "an advocate and solicitor of the Supreme Court."¹⁰ Advocates and solicitors have the exclusive right to appear and plead in all courts of justice in Singapore. We will not perform such services. Section 33 of the Legal Profession Act details particular actions which unauthorised persons cannot perform.¹¹

Holland & Marie will not engage in such activities.

IN PRACTICE, WHAT WILL HM LEGAL DO?

I expect clients will ask for our assistance with the drafting and negotiation of agreements, including confidentiality agreements, terms of service, and other customer, vendor or counterparty documentation. We may also provide the ad hoc advisory assistance customarily provided by in-house counsel.

LEGAL PRIVILEGE

Communications with in-house counsel are generally protected by legal privilege under Singapore law.¹²

MARKET PRACTICE

We are not the first business to provide in-house counsel services without being a law firm. Various Singapore businesses provide document drafting, reviews, analysis, and access to legal counsel. While we believe HM Legal is an innovative business, we are certainly not the only or first business of this type in Singapore.

OUR THOUGHTS ON LAW FIRMS

There are many excellent law firms and lawyers in Singapore.

Certain matters that have been historically done by law firms are not required to be done by law firms. This truth is what has driven the growth of compliance advisory firms. In practice, there is considerable overlap between the services provided by a compliance advisory firm and a law firm. Similarly, there will be overlap between the services that law firms offer versus what HM Legal offers.

Still, there will always be matters which only law firms can handle, and which Holland & Marie will not do.

HM LEGAL – THE FUTURE

Over the past few months, we have explored with our clients whether an in-house counsel solution would interest them. The reception for this business has exceeded our expectations, particularly from SMEs and start-ups that need efficient in-house counsel assistance on ad hoc basis. As a result of this positive feedback, we are thrilled to be launching HM Legal in January 2019 and look forward to deepening our relationships with our existing clients as well as adding new ones.

About the Author

Holland & Marie is a compliance, C-Suite and legal solutions firm based in Singapore. We have extensive experience resolving typical compliance issues including regulatory inspections, satisfying regulatory requirements and maintaining best practices in corporate governance to navigate the rapidly changing regulatory landscape.

References

1. <https://www.lawsociety.org.sg/Lawyer-Regulation/Unauthorised-Practice>
2. <https://www.scca.org.sg/faq>
3. <https://www.nytimes.com/1983/09/10/nyregion/tennis-championship-lures-subway-crowd.html>
4. <https://www.nycourts.gov/ctapps/522rules11.htm>
5. This statement is included in the terms and conditions to our engagement letter and is required to be accepted and agreed by clients.
6. For example, Axion has an employment agency license in Singapore.
7. <https://www.mlaw.gov.sg/content/minlaw/en/practising-as-a-lawyer/alternatives-for-working-in-the-legal-field-in-singapore.html>
8. This construct means that Holland & Marie will not need to be licenced as an employment agency in Singapore, as per the Ministry of Manpower's website. The Ministry of Manpower has stated that a license is not required when outsourcing your own staff to your customers' premises or offices. See <https://www.mom.gov.sg/employment-agencies/eligibility-and-requirements/who-needs-to-get-a-licence>
9. <https://www.scca.org.sg/faq>
10. Section 2(1) of the Legal Profession Act
11. Section 33 of the Legal Profession Act
12. <https://www.scca.org.sg/faq>

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