Reporter

Issue 01 (2019)

# ASEAN CEO's Message

We start 2019 in the midst of uncertainty. No one knows whether there will be a resolution of the trade war between China and the United States. No one knows whether real progress on denuclearisation of North Korea will happen. No one knows how Brexit will really affect trade across the globe. These are only three of the major uncertainties.

Closer to home, S.E. Asia has seen winds of political change and these too have created new uncertainties over future directions.

We at Dentons Rodyk do not, of course, have definitive answers. But we do have unrivalled regional and global reach to help us help clients in an uncertain yet interconnected world. In addition, we adapt in three key ways:

- We think long and hard about the business fallout from events and offer clients insights and advice on how to manage that fallout. One example of this is our current highly successful series of webinars on Brexit.
- We work with clients to understand their businesses, and the technological and other challenges that they face.
- We equip our lawyers with perspectives that are not merely legal, giving them opportunities through secondments to financial centres like London or New York, emerging markets like Myanmar, or with industry leaders in technology or finance, as well as training that is broader than the purely legal.

In our own industry of legal services, change continues apace. Over the past 12 months we have invested a great deal in innovations to strengthen our delivery of legal services. We joined the Singapore Academy of Law's Future Law Innovation Program (FLIP) and many projects were concluded and many others are in progress. Client testimonies prove the value of these efforts.

Two examples:

- Our Developer's DRIVER tool allows real estate developers to keep up to date with the progress of unit sales through a secure site where they can instantly keep track of relevant information, such as upcoming deadlines for buyers, and outstanding or completed payments.
- Contract Companion leverages artificial intelligence to enable our lawyers to complete tasks such as reviewing and proofreading agreements more quickly.

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## IN THIS ISSUE



Most importantly, we have built on our traditional strengths to achieve truly market leading positions in at least five areas:

- Commercial disputes, where our disputes team achieved numerous wins for clients through 2018
- Real Estate, where we again led the market in relation to en-blocs, commercial real estate and developers' projects
- ICO and Blockchain, where we scaled up to meet burgeoning demand
- Energy, where we were involved in major projects from Bangladesh to China
- Personal Data Protection, where we put our experience and expertise in service of clients who were facing major data breaches

In 2019, we will continue to do our very best for clients, in good times and bad, helping them scale new heights, or when such help is needed, recover from the depths.

In the first half of the year we also have several useful client events lined up – on obtaining injunctions across multiple jurisdictions, on cybersecurity and in our annual Dentons Rodyk Dialogue (for which we partner with SMU) privacy and data breaches.

Before that on 15 and 16 February 2019, you can catch some of our lawyers and staff dancing as part of the Bicentennial Edition of Chingay, representing the legal profession as Singapore's oldest law firm!

Happy New Year – and an early Gong Xi Fa Cai!

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# Winding up a company in record time despite claim of a dispute subject to arbitration

## Introduction

In the recent High Court judgment in *VTB Bank (Public Joint Stock Company) v Anan Group (Singapore) Pte Ltd* [2018] SGHC 250, Dentons Rodyk, acting for the plaintiff, successfully obtained a winding up order on a debtor company just six weeks after the service of a statutory demand for an underlying debt of US$250 million.

This case concerns interesting and novel points of law, where there is a confluence of insolvency and arbitration. It is an important decision on what the standard of proof is for a debtor company to show that there is a dispute, and therefore stave off winding up proceedings by a creditor, where the underlying contract is subject to arbitration.

## Facts

The plaintiff, VTB Bank, is the second largest bank in Russia. The defendant is a Singapore-incorporated holding company which owns a significant number of shares in SGXlisted AnAn International (AAI). In November 2017, VTB Bank entered into a global master repurchase agreement (GMRA) with the defendant, which essentially provided for a loan of US$250 million by VTB Bank to the defendant to assist in a purchase of shares in LSElisted, EN plus. Under the GMRA, the defendant had an obligation to maintain sufficient collateral in respect of the transaction. However, in April 2018, the shares of EN plus plummeted starkly as a result of sanctions imposed by the United States against various individuals who had a controlling interest in EN plus. This triggered a default under the GMRA. The GMRA contained an arbitration clause where parties agree to refer any dispute to the Singapore International Arbitration Centre. VTB Bank issued the necessary notices under the GMRA and triggered the termination of the same; however, the defendant did not make any payment nor dispute the liability or quantum of the debt.

On 23 July 2018, the plaintiff served a statutory demand for the sum of US$170 million on the defendant. Three weeks lapsed without the defendant paying the sum owed, or securing or compounding the same to the reasonable satisfaction of the plaintiff. VTB Bank then commenced winding proceedings. The proceedings which followed were heavily contested by the defendant at each turn.

In summary the defendant commenced injunction proceedings to restrain VTB Bank from winding up the defendant, contested against the appointment of provisional liquidators and also the subsequent winding up proceedings.

## Court's Decision

The defendant contested the winding-up proceedings on the basis of three grounds, namely that the:

(1) Sanctions in the United States were an event of frustration;

(2) Sanctions were also a *force majeure* event; and

(3) The existence of the debt and its quantification was disputed and should both be resolved by arbitration pursuant to the GMRA.

The High Court accepted Dentons Rodyk's arguments that all three grounds of dispute were unsupported by the evidence. Therefore, the main issue was the applicable standard of proof required when there was an arbitration agreement contained in the contract from which the debt arose.

The defendant relied on *BDG v BDH* [2016] 5 SLR 977 (BDG), a Singapore Court case, and *Salford Estates (No 2) Ltd v Altomart Ltd (No 2)* [2015] Ch 589 (Salford), an English Court of Appeal case, to argue that a lower standard of proof ought to apply where a dispute between two parties was governed by an arbitration clause.

The plaintiff argued that the High Court was bound by, *inter alia*, *Metalform Asia Pte Ltd v Holland Leedon Pte Ltd* [2007] 2 SLR(R) 268 (Metalform), a Court of Appeal case to rule that the test was not any different because the underlying contract was subject to arbitration.

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With respect to this, the court observed that there were two distinct line of authorities submitted by the parties before it, noting particularly that the authorities relied upon by Dentons Rodyk all 'spoke with one voice' that the applicable standard of proof is consistent across the board, i.e. that of a genuine and substantial dispute, even where there is an arbitration agreement. On the other hand, the court observed that the defendant's cases were all fairly recent, with the common underlying thread of according greater primacy to arbitration.

## The Current Law

In his judgment, Dedar Singh Gill JC agreed with VTB Bank's position that the High Court was bound by the Court of Appeal decision in Metalform and that even if there is a dispute between the parties which is governed by an arbitration agreement, the standard of proof remains that of a genuine and substantial dispute.

Nonetheless, Gill JC accepted that there is force in the policy reasoning in the defendant's case and that he would have been amenable to applying the BDG approach if His Honour himself were not bound by the Court of Appeal's decision. That said, His Honour held that the defendant would have failed to establish its case even if the lower standard of proof in BDG was applied as the defendant had not raised a bona fide dispute in relation to the three grounds that were cited (i.e. frustration, *force majeure* and the dispute on the alleged quantum).

## Conclusion

This matter is highly relevant to financial institution and MNC clients in light of the prevalence of arbitration contracts in cross-border contracts.

This case shows that, even where there is an arbitration clause between the parties, if a debtor does not have any defence(s), a creditor should consider all options including proceeding by way of a statutory demand, and winding up the debtor. The present judgment also highlights the pragmatism and efficiency in the robust approach taken by the Singapore courts. It is a timely reminder that the courts, in its exercise of discretion in winding up proceedings, will always consider the entire facts and circumstances of the case. If the defence(s) raised lack merit, the court cannot and will not turn a blind eye, and allow its process to be abused by a recalcitrant debtor, simply because an arbitration clause is present in the underlying contract.

The defendant has appealed against this decision and the Court of Appeal hearing will take place in a few months' time.

Dentons Rodyk would like to thank and acknowledge Senior Associate Chia Ming Lee and Associates Ashwin Nair and Alexander Choo for their assistance through the proceedings of the case and for their contributions to this article.

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# Fundraising basics for start-ups: a legal perspective

## Introduction

Singapore is one of the most diverse start-up ecosystems globally and in the region. Private equity and venture capital investments in Southeast Asia reached US$23.5 billion in 2017, as reported in the Singapore Venture Capital & Private Equity Association Report on Southeast Asia PE & VC: Investment Activity (May 2018). With a conducive ecosystem for start-ups to grow and flourish, this article seeks to highlight certain legal pointers as a broad guide and framework for start-ups and founders to be aware of when approaching fundraising exercises.

## Manner of investments

Generally, the various rounds of fundraising in a start-up may include the following:

- Initial angel round, which may include investments from family, friends, or high net worth individuals.
- Seed financing involving a limited number of investors, typically to support initial working capital needs.
- Various subsequent rounds of financing (Series A, Series B, etc.), which are typically led by venture capital or institutional investors with a view to scaling the business of the start-up.
- Pre-IPO financing prior to the start-up's imminent initial public offering (IPO).

Some common forms of investment instruments are as follows:

### Equity

- Ordinary shares.
- Preference shares: Shares with separate terms and conditions, some of which are preferential to those of the ordinary shares, allowing parties to vary the voting rights, dividends, and liquidation preference of the shares, amongst others, as well as determine whether such shares may be redeemable or convertible at the investors' option, or upon the occurrence of certain prescribed events, such as an IPO or the sale of the start-up.

### Debt

- Simple debt: Simple debt with interest.
- Convertible debt: Debt that may be convertible into equity in the start-up (ordinary or preference shares) upon the occurrence of certain specified events.
- Venture debt: Equity-linked debt instruments, such as a loan with an attached warrant or option, granting the investor a right to further subscribe for shares in the start-up.

The type of investment instruments adopted would depend on various factors, including:

- Commercial considerations and the bargaining power of the start-up vis-à-vis the investors.
- Specific requirements of investors, e.g. the scope of the investors' investment mandate, their ability to divest of the investment, the level of investor protection required, etc.
- The financial position of the start-up and the accounting / financial impact of the investment or type of investment instrument on the start-up's financial statements.
- Tax considerations.

## Key transaction documents

A typical round of fundraising would involve a suite of legal documents, the key ones being:

- Term sheet.
- Subscription / investment agreement.
- Shareholders' agreement.
- Service contracts for the start-up's founders.

Where new classes of shares are being created, the constitution of the start-up will also need to be amended. The amendments would typically also include certain terms of the shareholders' agreement to be entrenched in the constitution.

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## Due diligence

Investors would usually carry out a business, legal and financial due diligence before proceeding with an investment. This would enable investors to understand the financial, legal and business position of the start-up and the investment risk profile, and also flush out any legal irregularities that it may wish for the start-up to resolve pending or post investment. Depending on the complexity of the start-up's business and operations, this may take the form of a cursory desktop due diligence or an extensive review of the start-up's records.

## Founders' assurances

As an assurance, investors would typically require the start-up's founders to stand behind the start-up by providing personal guarantees and/or contractual warranties as to the condition and operations of the start-up. The warranties may be generic, and may also address specific issues noted from the due diligence.

## Investor protection

As investors usually hold a minority stake in the start-up, they would typically expect certain minority protection rights. Some examples are:

- Undertakings to be given by the founders of the start-up to achieve certain performance milestones;
- Board representation.
- Reserved matters at the board or shareholders' level that may require certain approval thresholds to be met or approved by the investors.
- Rights to certain information such as the start-up's financial statements or business plans, or observer rights to sit in on board meetings.
- Pre-emption rights over the issue and allotment of new shares or the transfers of shares, drag-along, and tag-along rights.
- Put option for the investors to sell their stake back to the founders.

## Exit strategies

In structuring the investment, both the founders and investors would usually consider what happens upon the occurrence of an exit event, usually an IPO or a trade sale. The investment documents would commonly include provisions to address and regulate such exit events.

## Other considerations

As a final point, some other factors that start-ups and founders should bear in mind when considering fundraising options are:

- Terms of the fundraising: These are commercially driven and depends on the bargaining power of the start-up vis-à-vis the investors, as elaborated above.
- Valuation: This would determine the amount investors are willing to pay for a share in the start-up, which would affect the amount raised per equity issued.
- Dilution: Founders should consider how much of their shareholding in the start-up is being diluted at each round of funding where equity is issued.
- Investor profile: This includes the investors' reputations, track records, and what they may be able to offer to the start-up apart from financing, including board guidance and business connections.
- Investment timeline: Certain investors may be investment funds with a limited fund life; in such case, their investment may require the start-up to meet certain milestones (such as an IPO or trade sale) within a limited time period, or a put option for the fund to exit prior to the expiration of the fund life.
- Other fundraising options: In addition to the fundraising options mentioned in this article, start-ups should also consider other avenues for funds, such as government grants and bank borrowings; each option would entail its own set of advantages and disadvantages that need to be considered and weighed, and would also depend on the start-up's need for the funds and its cash flow situation.

Dentons Rodyk acknowledges and thanks Senior Associate Kevin Chua for his contribution to this article.

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# Strides towards improved borrower protection and increased regulation in the moneylending industry

## Introduction

The Moneylenders Act was introduced in 2008 to provide protection to vulnerable borrowers who are susceptible to exploitation by moneylenders. The latest step in this effort is through the implementation of the Moneylenders (Amendment) Act 2018 (the Moneylenders Amendment Act) which introduces changes aimed at:

(a) giving better protection to borrowers;

(b) strengthening the regulation of moneylenders; and

(c) professionalising the moneylending industry.

The changes will be implemented in two phases with the first phase of the amendments becoming effective as of 30 November 2018 – these changes are mainly targeted at meeting the objectives in (a) and (b) above. The next phase of the changes (which is focussed on professionalising the moneylending industry) is scheduled to occur in the first quarter of 2019.

This article will discuss the main changes introduced by the Moneylenders Amendment Act.

## Better Protection for Borrowers

### Aggregate Loan Caps

To prevent individual borrowers from over-borrowing, the Moneylenders Act now prescribes aggregate loan caps to set an overall limit on the total amount of unsecured loans that an individual may obtain from all moneylenders combined. The newly introduced caps are as follows:

(a) no more than S$3,000 for a Singapore Citizen or Permanent Resident with an annual income of less than S$20,000;

(b) no more than S$1,500 for a foreigner residing in Singapore with an annual income of less than S$10,000;

(c) no more than S$3,000 for a foreigner residing in Singapore with an annual income of at least S$10,000 and less than S$20,000; and

(d) no more than six times of an individual's monthly income for all other Singapore Citizens, Permanent Residents and foreigners residing in Singapore.

This is in contrast to the loan caps prescribed under the old regime which only limited the amount of unsecured loans that an individual may borrow from a single moneylender and which did not prevent an individual from taking loans from multiple moneylenders and consequently becoming over-indebted despite the restrictions.

### Provision of Information relating to Borrowers

To facilitate the implementation of the new aggregate loan caps, a regulatory framework has been established which requires moneylenders to do the following:

(a) obtain a credit report on the borrower from the Moneylenders Credit Bureau (the MLCB) prior to granting any loan;

(b) submit accurate information relating to the Borrower to the MLCB; and

(c) provide timely updates to the MLCB as and when the borrower repays the loans.

The new framework also requires both the MLCB and licensed moneylenders to strengthen the confidentiality, security and integrity of data pertaining to borrowers.

In addition, a self-exclusion framework has also been introduced to help borrowers regulate their borrowing behaviour and participate in debt assistance schemes. Under this framework, licensed moneylenders are prohibited from making any loans to any individual who has applied for self-exclusion.

The foregoing measures will evidently enable moneylenders to make more informed and responsible lending decisions and consequentially, will afford better protection for borrowers.

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# Strengthening the Regulation of Moneylenders

## Expansion of Registrar's Powers to Exclude Undesirable Persons

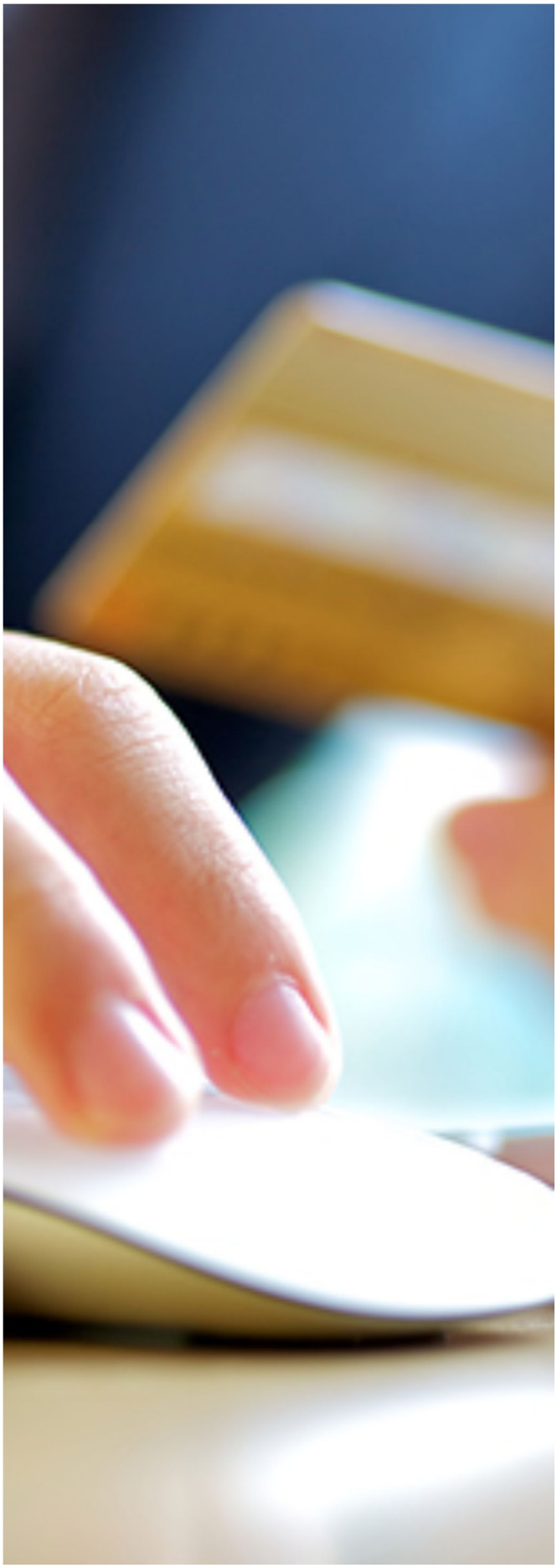
Under the old regime, the Registrar of Moneylenders (the Registrar) had the power to revoke, suspend or refuse to issue or renew a moneylender's licence if, amongst other grounds, he is not satisfied as regards the qualification, experience or character of an individual applicant or a director, partner or substantial shareholder of a corporate applicant or any person responsible for the management of the moneylending business. With the changes introduced by the Moneylenders Amendment Act, this power has now been expanded to include persons who are currently employed or engaged, or whom a moneylender proposes to employ or engage, to assist in the moneylending business.

Under the old Moneylenders Act, a moneylender had to obtain the Registrar's approval after a person becomes a substantial shareholder or changes his substantial shareholding. In contrast, pursuant to the Moneylenders Amendment Act, a moneylender is now required to obtain the approval of the Registrar before a person can become a substantial shareholder or change his substantial shareholding.

With the foregoing expansion of the Registrar's powers, the chances of having undesirable characters entering into the moneylending industry will be reduced.

## Prevention of 'spare licences'

Under the old Moneylenders Act, it was possible for a moneylender to circumvent the regulations by holding 'spare licences' which it can use if its original licence is revoked or suspended. Under the new regime, the Registrar can revoke or suspend a licence if a moneylender fails to commence its new business within 6 months upon the issuance of a licence. This will prevent a moneylender who is not actively operating a moneylending business from holding on to a spare licence.



### Tightening Requirements on Loan Contracts

The new Moneylenders Act prescribes more mandatory requirements for loan contracts. For example, a moneylender will now be in breach of the Moneylenders Act if the loan contract does not truly specify the late interest rate or fees payable or if the loan contract contravenes regulatory caps on interest, late interest or fees. The Moneylenders Act also provides that if a moneylender breaches the prescribed caps on fees, interest and late interest, the loan contract will not be enforceable and any guarantee or moneys paid out by the moneylender thereunder will not be recoverable in any court of law.

## Professionalising the Moneylending Industry

When the second phase of the changes under the Moneylenders Amendment Act comes into force, licensed moneylenders will, amongst other things, be required to:

(a) be incorporated as companies limited by shares with a minimum paid-up capital of S$100,000; and

(b) submit annual audited accounts to the Registrar to improve transparency and accountability.

## Conclusion

In essence, the changes implemented or to be implemented under the Moneylenders Amendment Act will provide safer access to unsecured credit by giving better protection to borrowers and regulating and professionalising the moneylending industry.

Dentons Rodyk would like to thank and acknowledge Associate Ying Bao Yip for her contribution to the article.

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# Property Note

## Building a Resilient and Vibrant Global City

Skyscrapers and dazzling skylines come to mind when one thinks of how to build a resilient and vibrant global city. However behind the swanky facade, we will be well poised to remember that in the race to enhance Singapore's position as an attractive and vibrant city known throughout the world, there is much that we need to do in order to bring about a greater environmental consciousness for sustainable living.

In pursuing ways to maximize lettable and liveable area in land-scarce Singapore, it is all too easy to forget or not prioritize the environmental sustainability of developments. The carbon emissions generated by our buildings in Singapore have been increasing steadily over the years, resulting in a degeneration of our ecosystem. While we may not see the impact this has on us now, based on projections by environmentalists, global warming and rising sea levels are some of the consequences that await us if we do not take immediate steps to prevent this.

It is thus reassuring to know that working together with the government, developers in Singapore are committed to building a resilient, vibrant and liveable city which is not only environmentally but also economically sustainable for the present and future generations. Instead of viewing sustainability as a roadblock and diversion from efficiency and profits, developers are realising that they are in a unique position to contribute to a city-state which has approximately 8,500 high-rise buildings (defined as 12 storeys and above) in this little red dot, with many more to come.

Take for instance the Asia Square towers, home to the largest solar panel installation in Singapore and the first commercial development to host a bio-diesel plant, right in the centre of prime business area. Aside from such distinct efforts, we should be reminded that every small decision counts, from increasing the number of rooftop gardens and green walls to using light-coloured paint to reduce the heat absorption of a building, resulting in less energy being required to cool the building.

The government has also greatly complemented the efforts of developers, with the Building Construction Authority aiming for 80% of buildings to be Green Mark-certified. The Housing Development Board even has its own HDB Greenprint program which endeavours to bring sustainable living into existing HDB estates and guide greener HDB town developments.

There is truly no better time for engineers, architects and interior designers to collaborate in both interior and exterior building design, and to leverage on technology, in order to maximise sustainability and minimise each building's environmental impact.

With all these innovative ideas in place, we are definitely on the right track to create our environmentally and economically sustainable Singapore not only for our enjoyment but for the future generations ahead.

This article first appeared in REDAS 59th Anniversary Dinner Book: "Building a Resilient & Vibrant Global City" on 15 November 2018, as a message from Melanie Lim, Honorary Legal Adviser of REDAS.

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# Impact of the new Developers (Anti-Money Laundering and Terrorism Financing) Bill

## Introduction

Just four months after the Government's introduction of increased stamp duties on the purchase of residential properties from 6 July 2018, Parliament has on 20 November 2018 passed the Developers (Anti-Money Laundering and Terrorism Financing) Bill (the AML Bill).

Real estate has been flagged out as one of the target non-financial sectors that may encounter money laundering and terrorism financing activities.

## Objectives of the AML Bill

The AML Bill amends both the Housing Developers (Control and Licensing) Act (HD(CL)A) and the Sale of Commercial Properties Act (SCPA) by putting in place new requirements on developers to firstly further enhance effective monitoring of money laundering and terrorism financing and secondly, to bar persons convicted for money laundering and terrorism financing offences from being involved in property development activities.

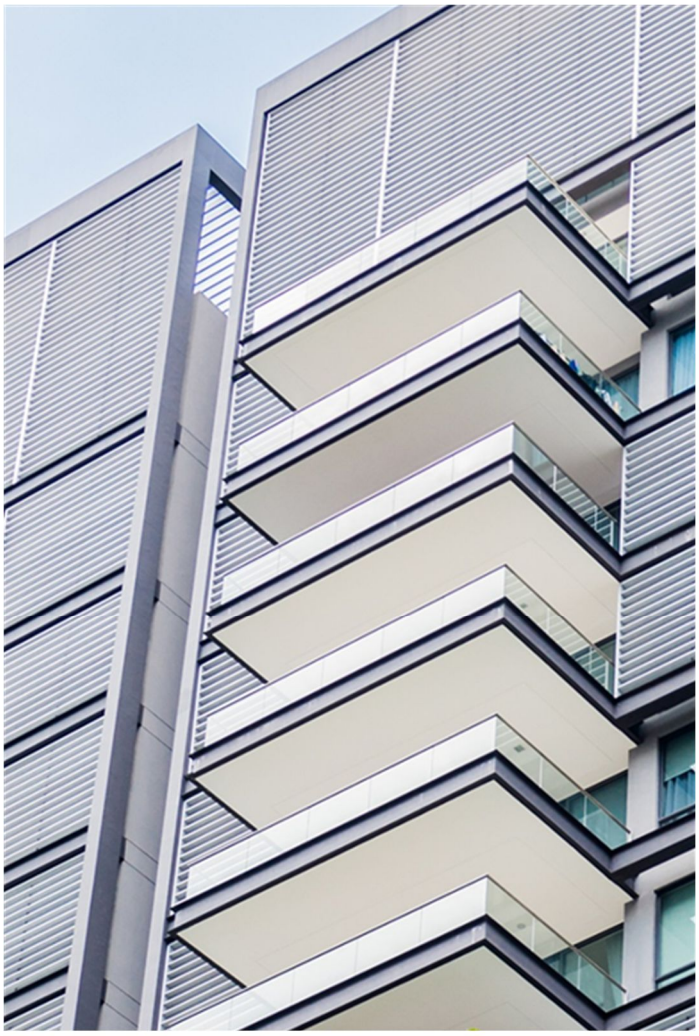
It is part of Singapore's efforts to maintain its strong legal and regulatory framework, to detect and deter money laundering and terrorism financing and to align its anti-money laundering and terrorism financing regime with the international standards set out by the Financial Action Task Force (FATF).

## Key responsibilities and duties of developers introduced by the AML Bill

Licensed housing developers under the HD(CL)A and developers under the SCPA are required to comply with the following, failing which they will be guilty of an offence and liable on conviction to fines or other punishment prescribed under the AML Bill to facilitate the detection of money laundering and terrorism financing activities.

### Prohibition against anonymous accounts

Developers must not open or maintain any account for, or hold and receive moneys from an anonymous source or a purchaser with an obviously fictitious name.



### Customer due diligence measures, additional measures and measures relating to targeted financial sanctions

Developers must perform prescribed customer due diligence measures including those as may be prescribed in subsidiary legislation to be issued under the HD(CL)A and SCPA, prescribed measures relating to targeted financial sanctions against terrorism and any prescribed additional measures which are necessary or expedient to give effect to any relevant FATF recommendation.

### Record keeping

A developer must keep all documents and information (including any analysis performed) obtained by the developer as a result of performing the abovementioned customer due diligence measures. Different period may be prescribed for different documents and information. A developer must keep the documents and information required in such form as may be prescribed and such records must be made available to the Controller of Housing (Controller) or an inspector and such other authorities.

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## Suspicious transaction reporting

Where a developer knows or has reasonable grounds to suspect any matter mentioned in Section 39(1) of the Corruption Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act (i.e. any property in whole, or in part, directly or indirectly, represents the proceeds of, was used in connection with, or is intended to be used in connection with any act which may constitute drug dealing or criminal conduct), the developer must file a suspicious transaction report with a Suspicious Transaction Reporting Officer.

## Programmes and Measures to Prevent Money Laundering and Terrorism Financing

A developer must also implement adequate programmes and measures to prevent money laundering and terrorism financing. This includes (but is not limited to) taking steps to identify, assess and understand the money laundering and terrorism financing risks in relation to:

(i) purchasers;

(ii) (where the purchasers are foreigners) the countries/jurisdictions which these purchasers are from;

(iii) (where the developer has operations outside Singapore) the countries/jurisdictions in which the developer operates; and

(iv) services, transactions and delivery channels,

and to document these risk assessments, keep these risk assessments up to date and put in place mechanisms to provide these risk assessments to Controller, as well as to take appropriate steps to mitigate risks where necessary. To this end, developers will need to develop and implement internal policies, procedures and controls to manage and effectively mitigate the money laundering and terrorism financing risks (e.g. compliance management arrangements, appointment of a compliance officer at the management level, screening procedures when hiring employees) and have an ongoing programme to train employees on these internal policies, procedures and controls.

## More stringent set of laws to apply

Where the developer has any branches or subsidiaries, the developer must implement a group-level programme to prevent money laundering and terrorism financing, and such programme must apply to all the developer's branches and subsidiaries, whether in Singapore or elsewhere. Where these branches or subsidiaries are located outside Singapore, the developer's management must apply the more stringent set of laws (Singapore or the relevant jurisdiction), and if it is not possible to apply the more stringent set of laws, the same must be reported to Controller and Controller's directions must be complied with.

## Expansion of definition of 'purchaser'

The AML Bill introduces a new definition of 'purchaser' which is very wide. It refers to a person to whom the developer grants an Option to Purchase or who agrees to purchase a unit from the developer, and includes a prospective purchaser.

## Prohibition of persons convicted of money laundering and terrorism financing offences from being developers

### HD(CL)A

In respect of licensed housing developers under the HD(CL)A,

(1) Controller may refuse a housing developer's licence where:

(a) (where the applicant is an individual) the applicant is a person who has been convicted of a money laundering or terrorism financing offence (hereafter referred to an a AML/CTF Offender);

(b) (where the applicant is a company):

(i) the applicant-company is an AML/CTF Offender; or

(ii) an individual who is an AML/CTF Offender holds/is intended to hold the position of a director, manager, secretary, partner or other analogous position in the applicant; or

(iii) the applicant-company has, as a substantial shareholder, a person described in 1(a), 1(b)(i) or 1(b)(ii) above.

(2) Controller may revoke or suspend a housing developer's licence where:

(a) the licensed housing developer is a AML/CTF Offender; or

(b) the licensed housing developer has, as a substantial shareholder, a person described in 1(a), 1(b)(i) or 1(b)(ii) above.

(3) Any persons who are AML/CTF Offenders must not hold or continue to hold the positions of a director, manager, secretary, partner or other analogous position, and such persons (or companies where such persons hold the positions of a director, manager, secretary, partner or other analogous position) are also disqualified from being/becoming a substantial shareholder of a licensed housing developer.

### SCPA

In respect of developers under the SCPA, an AML/CTF Offender is similarly disqualified for being a substantial shareholder or to hold a responsible position for a developer (i.e. director, manager, secretary, partner or other analogous position).

### Impact on developers

While the real estate industry recognises the reputational risks of non-compliance with international standards on anti-money laundering and terrorism financing, there are also concerns pertaining to the onerous compliance burden being imposed on developers, particularly amongst the smaller players and in the light of an already challenging market faced by developers.

Government has taken what it believes to be a 'calibrated, risk-based approach'. During the round-up speech by Minister of National Development, Mr Lawrence Wong on the AML Bill on 20 November 2018, Mr Wong stated that "we would like to strike a balance between complying with the requirements recommended by the FATF, and ensuring that the burden on developers is not excessive." The language in the AML Bill has been deliberately kept broad 'so that businesses then have flexibility to develop procedures according to their business size, customer profile and nationality, and different levels of money laundering and terrorism financing risks which they identify using their own AML/CTF programmes'. Whilst the intention behind such an approach is understandable at this stage, this may by itself create uncertainty and result in driving up costs of compliance which, or at least some of which, would inevitably be filtered to purchasers.

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# Accolades


## Chambers Asia-Pacific 2019 and Chambers FinTech 2019

Dentons Rodyk has marked its first Band 1 ranking for Real Estate, in the 2019 edition of Chambers Asia-Pacific. Clients singled out our Real Estate team's expertise and responsiveness, remarking that we are 'very strong in all departments', and emphasised our 'strong reputation in the local and foreign real estate market'.

Our Projects & Energy team maintained its Band 1 ranking this year (having been ranked since 2018), and Senior Partner Edmund Leow, SC is ranked for the first time since joining Dentons Rodyk in 2017. In the newly launched Chambers FinTech 2019 guide, Senior Partner Kenneth Oh is ranked as a Band 1 lawyer – being described by one source as “the smartest guy in Singapore dealing in crypto.” The firm's FinTech practice was ranked Band 2. Read more here.

## Who’s Who Legal 2019 – Arbitration

10 partners from Dentons' International Arbitration Group were listed amongst the world’s leading arbitration practitioners in Who's Who Legal’s 2019 Arbitration ranking. This includes Global Vice-Chair and ASEAN CEO Philip Jeyaretnam SC and Senior Partner Lawrence Teh, who have been recognised as Leading Arbitration Lawyers. Read more here.

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# About Dentons Rodyk

Situated at the southern most tip of Southeast Asia, Singapore is a massive regional hub for global commerce, finance, transportation and legal services. This important island city-state is a vital focal point for doing business throughout the Asia Pacific region.

As one of Singapore's oldest legal practices, trusted since 1861 by clients near and far, rely on our full service capabilities to help you achieve your business goals in Singapore and throughout Asia. Consistently ranked in leading publications, our legal teams regularly represent a diverse clientele in a broad spectrum of industries and businesses.

Our team of around 200 lawyers can help you complete a deal, resolve a dispute or solve your business challenge. Key service areas include:

- Arbitration
- Banking and Finance
- Capital Markets
- Competition and Antitrust
- Construction
- Corporate
- Employment
- Energy
- Franchising and Distribution
- Infrastructure and PPP
- Insurance
- Intellectual Property and Technology
- Islamic Finance
- Life Sciences
- Litigation and Dispute Resolution
- Mergers and Acquisitions
- Privacy and Cybersecurity
- Private Equity
- Real Estate
- Restructuring, Insolvency and Bankruptcy
- Tax
- Trusts, Estates and Wealth Preservation
- Trade, WTO and Customs
- Transportation
- White Collar and Government Investigations

Providing high quality legal and business counsel by connecting clients to top tier talent, our focus is on your business, your needs and your business goals, providing specific advice that gets a deal done or a dispute resolved anywhere you need us. Rely on our team in Singapore to help you wherever your business takes you.

# About Dentons Rodyk Academy

Dentons Rodyk Academy is the professional development, corporate training and publishing arm of Dentons Rodyk & Davidson LLP. The Dentons Rodyk Reporter is published by the academy. For more information, please contact us at sg.academy@dentons.com.

# About Dentons

Dentons is the world's largest law firm, delivering quality and value to clients around the globe. Dentons is a leader on the Acritas Global Elite Brand Index, a BTI Client Service 30 Award winner and recognized by prominent business and legal publications for its innovations in client service, including founding Nextlaw Labs and the Nextlaw Global Referral Network. Dentons' polycentric approach and world-class talent challenge the status quo to advance client interests in the communities in which we live and work. www.dentons.com.

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# Our locations