**CONSULTATION ON MONEYLENDERS BILL 2008**
**- RESPONSE TO FEEDBACK RECEIVED**

## Introduction

1 The Ministry of Law ("MinLaw") and the Registry of Moneylenders ("ROM") conducted a public consultation from 20 Aug 2008 to 12 Sep 2008 on the Moneylenders Bill 2008 ("MLB"). Feedback was received from various sources, including licensed and exempt moneylenders, the Moneylender's Association of Singapore, the Association of Banks and members of the public.

2 We would like to thank respondents for taking the time to review and send us their feedback on the MLB, as well as providing us with their considered and constructive comments.

3 Respondents were in general supportive of the MLB and were pleased that the Moneylenders Act ("MLA") was being reviewed against the backdrop of rapid changes in the financial landscape. Those who commented on the proposed introduction of additional categories of "excluded moneylenders" were positive about the proposal, particularly the exclusion of persons who grant loans to corporations or accredited investors. Feedback was also received regarding specific clauses which govern the operational and regulatory aspects of the moneylending business.

4 MinLaw and ROM have carefully considered the feedback received. Our responses to the feedback that are of wider interest are set out at Annex A. The suggestions which we have accepted have been incorporated into the final legislation.

MINISTRY OF LAW
REGISTRY OF MONEYLENDERS
20 OCT 2008

**Annex A**

**Response to feedback from public consultation on draft Moneylenders Bill 2008**

| S/N | Feedback | Response |
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| 1 | **Clause 2 – Interpretation** | |
| 1.1<br>1.1.1 | **Definition of "excluded moneylender"**<br>A respondent felt that one of the definitions of "excluded moneylender", i.e. "any person granting one or more loans solely to one or more corporations" appeared to be very wide.<br><br>A related query was raised on whether a moneylender would qualify as an "excluded moneylender" if its current loan portfolio had outstanding individual loans but it only intends to grant corporate loans in future. | The intent is that so long as a person grants loans solely to corporations, he would not be subject to the MLB. The exclusion will apply to all loans granted to corporations on or after the MLB comes into force.<br><br>Moneylenders who have outstanding loans to individuals will need to retire or dispose of these loans before they can qualify as an "excluded moneylender". |
| 1.1.2 | Several respondents suggested that the class of "excluded moneylenders" be broadened to include:<br>a) Borrowers that are entities other than corporations, e.g. sole proprietors, partnerships;<br>b) Borrowers that are trustees;<br>c) Foreign borrowers;<br>d) Foreign financial institutions whose Singapore branch is licensed by the Monetary Authority of Singapore ("MAS") and whose head office or other foreign branch lends to Singapore borrowers; and | The MLB will continue to apply to persons who grant loans to individuals (other than accredited investors and employees), including individuals who are sole-proprietors and in partnerships. The MLB will also continue to apply regardless of whether the individual borrower is in or outside Singapore, where the person granting the loan carries on a moneylending business in Singapore, as these borrowers are personally liable for the debt and should therefore borrow under a regulated regime.<br><br>The scope of "excluded moneylender" will be expanded to |

| S/N | Feedback | Response |
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| | e) Persons exempted from licensing under the Securities and Futures Act (Cap. 289) and Financial Advisors Act (Cap. 110). | include any person who lends money solely to limited liability partnerships, trustee-managers/trustees of business trusts (as the case may be) or trustees of REITs.<br><br>Where a foreign financial institution is licensed to carry on regulated activities by MAS, the head office or other foreign branches of the foreign financial institution will not be an "excluded moneylender" under the MLB if they grant loans to individual borrowers in Singapore. The foreign financial institution will be "excluded" only to the extent that the Singapore branch is permitted to lend money.<br><br>Note: Persons who are exempted from licensing under section 99 of the Securities and Futures Act (Cap. 289) and section 23 of Financial Advisors Act (Cap. 110) are regarded as regulated by MAS. They are not permitted to lend money under those Acts. |
| 1.1.3 | A respondent asked whether being an "excluded moneylender" means that the MLB and all its Rules are not applicable to such a moneylender. | Excluded moneylenders are not subject to and will not have to comply with the Moneylenders Act and Rules. |
| 1.1.4 | A respondent asked if they need to apply for "excluded moneylender" status and the procedures for obtaining such a status. | It is not necessary for an application to be made to obtain the status of "excluded moneylender". Persons who wish to grant loans should seek independent legal advice as to whether they qualify as an "excluded moneylender." |

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| 1.2 | **Definition of "persons"**<br>Several respondents commented that "persons" is not defined or interpreted in the MLB and asked if "persons" cover body corporates, firms and individuals as well. | "Person" is as defined in section 2 of the Interpretation Act (Cap. 1). It covers a body corporate, a firm or an individual. |
| 1.3 | **Distinction between lending and other forms of credit extension**<br>A respondent commented that it would be useful to add a definition of either "moneylending" or "lending". Otherwise, the old case law which draws a distinction between lending and other forms of credit extension will remain relevant. | As a wide range of activities can constitute "moneylending", it would not be possible to list them exhaustively in the MLB. There is also no intention to depart from principles laid down in existing case law. |
| 2 | **Clause 5 – No moneylending except under licence, etc.** | |
| 2.1 | **Security deposit**<br>A respondent noted the requirement of a $20,000 security deposit. As this figure appeared throughout the MLB as either the maximum or minimum fine, and that there was no specific provision for the forfeiture of the said deposit, it would appear that the intention of imposing that deposit was to ensure that payment of any fines would be secured by the said deposit. The respondent was of the view that the requirement of a security deposit was a cost to the moneylending business and expansion would be difficult for existing | The requirement for a security deposit is to ensure the proper conduct of the moneylending business.<br><br>The MLB will be revised to specifically provide for the Registrar to have the power to forfeit the security deposit where a licensee has failed to properly conduct his moneylending business. The security deposit may be given in cash or by way of an irrevocable banker's guarantee. |

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| | players and would certainly cool the development and growth of the moneylending industry. | |
| 3 | **Clause 10 – Approval of place of business** | |
| 3.1 | A respondent sought clarification on the definition of a "place of business". The respondent presumed that there was no upper cap on the number of places of business that moneylenders would be permitted to operate from. It was suggested that the definition of a place of business should not include a place where a loan application is received or offered, but only where the decision to disburse monies or approve the loan is made. | There is currently no plan to restrict the number of locations from which a licensee can operate. However, all places of business which licensees can operate from will need to be approved by the Registrar, who must be satisfied that any place is suitable and not contrary to public interest for the business to be conducted there.<br><br>In considering whether a location constitutes a place of business, the Registrar will require that it be a place that serves as a front office of the business, i.e. it is a physical location where prospective borrowers may attend to apply for a loan from the licensee. |
| 3.2 | Another respondent was of the view that the changes should take into consideration a level playing field for other lending institutions such as banks. Similar restrictions on places of business and stringent checks and controls as those which banks are subject to, should be considered if rules on moneylenders' operations in terms of location are to be liberalised. Similar restrictions such as those imposed by MAS on banks pertaining to receipt of application forms for credit card and unsecured credit facilities at temporary locations | Under the MLB, licensed moneylenders will be allowed to set up branches, but their moneylending business must be conducted only from licensed premises, failing which, they risk having their licence revoked or suspended. They would also be committing an offence under Clause 10(12) if they were to carry on business at premises that have not been approved. Any place of business from which a licensee or would-be licensee proposes to carry on its moneylending business will need to be approved by the Registrar, who will grant the approval only if he is |

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| | should be imposed on moneylenders as well. | satisfied that the proposed place is suitable for a moneylending business and it is not against public policy. Licensees will therefore be subject to stringent requirements on place-of-business. |
| 4 | **Clause 15 - Regulation of advertising and marketing** | |
| 4.1 | A respondent appreciated the lifting of the existing restrictions on advertising and marketing, and providing the necessary framework for such activities.<br>Clarification was sought on whether the clauses in the MLB were sufficiently wide to cover television or radio advertisements. | The clause in the MLB covers television and radio advertising. A drafting refinement has been made to clarify this. |
| 4.2 | In addition to defining what is false or misleading information, the respondent felt moneylenders should be required to disclose effective interest rates in their advertisements. This will assist potential customers to compare and make informed decisions. For transparency and consistency, moneylenders should be required to disclose their basis for interest computation.<br>To allow customers a common basis to compare product offerings by banks and moneylenders, it was proposed that moneylenders be required to comply with a set of advertising guidelines that are broadly similar to the ABS' Code of Advertising Practice. | Directions on advertisements and marketing will be issued as and when it is considered necessary. In drawing up the directions on advertising and marketing, the Registrar will be guided by ABS' Code of Advertising Practice. It should be noted that the regulation of advertising and marketing materials and activities is primarily to ensure that the public is not misled or deceived by false or misleading advertisements. Issues of transparency and consistency of business practice of licensed moneylenders are addressed in other parts of the MLB. |

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| 5 | **Clause 18 – Licensees to inform borrowers of terms of loan** | |
| 5.1 | A respondent commented that the clause which required licensees to inform borrowers of the terms of loan is not in line with commercial practice. They noted that a breach of this clause results in the voiding of the loan and prohibition against any enforcement on the repayment of the loan. They were uncertain whether this is extended to any action taken to recover only the principal amount which has been extended. They requested that this clause should not be extended to prohibit recovery of the principal sum. | The clause will be revised to clarify that licensees who fail to comply with the clause will not be able to recover only all interest amounts and permitted fees. |
| 6 | **Clause 19 – Note of moneylender's contract to be given to borrower** | |
| 6.1 | Clause 19(2) requires the note of the contract be attested if the borrower or his agent does not understand English. The respondent stated that moneylenders may turn down loan request by such borrowers in view of the inconvenience in having to make appointments for the note to be attested. It was proposed that the note of contract be translated into the other 3 official languages for the borrowers to read, understand and to certify the note. Attestation would only be required if borrowers do not read and/or understand any of the official languages. | The requirement for attestation where the borrower or his agent does not understand or read English before the borrower signs the Note of Contract will be removed. Licensees will be required to explain the Note to the borrower or his agent in the language the borrower or his agent understands. |

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| 6.2 | A respondent commented that it was impractical for moneylenders to guarantee delivery of the note of contract prior to the delivery of the funds, as delivery of the note is usually done by post and the delivery is uncertain. | To ensure that a loan is properly made, it is necessary for the Note of Contract to be delivered to the borrower at the same time or prior to the delivery of the loan. |
| 7 | **Clause 20 – Provision of statement of account, loan documents and receipts** | |
| 7.1<br>7.1.1 | **Statement of account**<br>Some respondents were of the view that issuing a statement of account to borrowers twice yearly will cause operational and cost issues. They proposed that the statement be issued once a year for all outstanding loans. For loans that have been paid off, it is not necessary to issue the statement. Another respondent proposed that this requirement be removed. | The requirement for licensees to issue a statement of account twice yearly is to keep the borrower informed of the status of his/her outstanding loan. As the term of a loan could be as short as 1 to 10 months, issuing of statements on a yearly basis would mean that borrowers of such a loan would not be kept informed of the status of their loan. Licensees should also issue a final statement to borrowers who have fully repaid their loan to confirm this. |
| 7.1.2 | A respondent asked if the requirement to provide a statement of account on a half-year basis will be met by delivering statements on a monthly basis. | Yes, the requirement specifies the minimum standard for compliance. |
| 7.1.3 | A respondent did not foresee the necessity for a customer to be able to request a statement of a specific period of account, as such request would dictate significant costs of compliance. The respondent felt that a $10 fee might not cover the cost of fulfilling the request. It was suggested that there be a saving | We are of the view that a $10 fee is reasonable. We agree to including a saving provision that no request need to be met if the account has been closed for more than 5 years, in line with general record-keeping requirements. |

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| | provision that no request need to be met if the account had been closed for more than 5 years.<br>Another respondent, however, felt that the fee of $10 could be reduced. | |
| 7.2<br>7.2.1 | **<u>Issuance of receipt</u>**<br>It was suggested that the MLB specify that acknowledgement of receipt by the payer be restricted to actual and physical cash received by the licensee within its office premise or outside the office, but excluding the cash deposits made personally and directly by the borrower into the licensee's bank account. | A receipt will only be required to be issued for "physical" cash repayments by or on behalf of borrowers. For repayments which are made to moneylenders electronically, a receipt is not required as such transactions are tracked by the bank. |
| 8 | **Clause 21 – Charges other than permitted fee unenforceable** | |
| 8.1 | One respondent suggested disallowing the charging of interest on outstanding interest. They also requested that the type of permitted fees and the respective amount chargeable to be stipulated and reviewed every year. | It is not in keeping with market practice to disallow the charging of interest on outstanding interest payments. However, Clause 21 allows the Minister to prescribe the types or limits of costs, charges and expenses that a licensee may impose in respect of loans granted, including the fees or charges for or on account of legal costs. These will be subject to review from time to time. |
| 8.2 | A respondent felt that only allowing prescribed fees to be charged was inflexible and would cripple the growth of new lending products. On the other hand, banks were not under such constraint and were free to impose any | It is necessary to empower the Minister to prescribe permitted fees to protect borrowers and to prevent unscrupulous licensees from exploiting borrowers by imposing excessive charges. The permitted fees to be |

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| | and all fees, as determined by market principles. The respondent was also concerned that the list of prescribed fees for moneylenders would remain stagnant in comparison. It was suggested that the type of permitted fees and charges should not be prescribed. | prescribed will include an administrative fee for account opening, a late payment fee and fees for recovery of legal costs and disbursements. |
| 9 | **Clause 22 – Re-opening moneylending transactions by Court** | |
| 9.1 | Some respondents have the following comments:<br>a) The concept of "excessive interest" was subjective and potentially ambiguous. There would be no commercial certainty, coupled with the fact that the court's ruling could be effectively retrospective and require the lender to regurgitate all monies received. Such a position would entail untenable risk for any large lending institution.<br>b) The draft MLB carried over some of the existing provisions under the MLA which was a departure from market-based principles and transparency.<br>c) This clause retained the same powers for the Official Assignee which should not be provided.<br><br>A respondent suggested that Clause 22 be deleted. Another respondent suggested that Clause 22(3)(a) be removed where a maximum cap on interest rate was not applicable. | Clause 22 will be retained. The greater flexibility given by the MLB to licensees to determine interest rates needs to be balanced against ensuring that licensees do not exploit borrowers with excessive rates in unconscionable or substantially unfair transactions. Clause 22 preserves and codifies the right of the court, and the Official Assignee, to grant relief where the justice of the case requires it. In assessing whether any interest rate charged is fair and reasonable, the clause guides the court to have regard to the risk and all the facts and circumstances, including those arising and coming to the knowledge of the parties after the transaction date. |