



Andrew Chiew Ean Vooi
Partner
**Corporate and Commercial
Disputes**
T: +603 6208 5852
E: ac@lh-ag.com



Nicola Tang Zhan Ying
Associate
**Corporate and Commercial
Disputes**
T: +603 6208 5842
E: tzy@lh-ag.com

11 AUGUST 2020

No Presumption as to the Business of Moneylending for Civil Matters

Dato' John Lee Siew Neng v Anuar bin Abdul Aziz (HC)

Section 100A of the Moneylenders Act 1951 (**the Act**) statutorily presumes a person who makes a single loan at interest carries on the business of moneylending, until the contrary is proved. Section 100A is a rebuttable presumption.

In *Dato' John Lee Siew Neng v Anuar bin Abdul Aziz*, the High Court decided for the first time that s 100A does not apply in a civil matter. Earlier reported decisions, including the Court of Appeal's decision in *Dr Mansur Hussain v Barisan Tenang Perancang (M) Sdn Bhd & Ors*,¹ did not consider this issue.

Azizul Azmi Adnan, J, in coming to his decision, noted that s 100A comes under Part III of the Act. Part III deals with matters relating to enforcement of the Act — investigation, search, seizure and arrest. His Lordship, at paras [78] and [79], held that:

[78] In my view, the placement of section 100A is not insignificant, if the Act is to be read in its context. Previously section 3 was placed at the beginning of the Ordinance, suggesting that it was a provision of general application. By contrast, when section 100A was introduced, it was placed in a part of the Act that addresses matters of evidence where criminal proceedings have been commenced against a person accused of an offence under the Act.

[79] In my judgment, when section 100A is read in context, it would be clear that that section applies only to enforcement proceedings against an accused. Thus, the prosecution would only need to prove one transaction that had been undertaken, whereupon the person standing accused of conducting a business of moneylending without the requisite licence must show that there was no system, continuity or repetition in his conduct as would justify a finding that he had been carrying on a business of moneylending."

His Lordship also observed that “... s 10OA provides for the application of a rebuttable presumption only where the proceedings have been instituted **against a person**”. Section 10OA, read in context, “... applies only where proceedings have been commenced against an accused under the Act for contravention of the requirements of the Act.”

His Lordship said it “*would not make sense*” that s 10OA applies to civil proceedings. At para [84], his Lordship said:

“The alternative construction — that section 10OA applies to both civil and criminal proceedings — would not make sense. Why would the presumption apply in civil cases against a defendant in an action? The defence of illegality would only arise when the lender has commenced an action against the borrower, and the borrower then seeks to absolve himself of the need to repay the loan on account that the lender is an unlicensed moneylender. In that event, the person who is alleged to be an unlicensed moneylender would be the plaintiff, and not the defendant.”

Another argument raised in this case was whether the loans, which were not documented in writing, contravened s 15 of the Act. Section 15 states, “No moneylending agreement in respect of the money lent after the coming into force of this Act by an unlicensed moneylender shall be enforceable.” Under s 2, “moneylending agreement” means “an agreement made in writing between a moneylender and a borrower for the repayment, in lump sum or instalments, of money borrowed by the borrower from the moneylender”.

Although his Lordship noted there were “*obvious attractions*” to the argument, he did not decide on the issue since the defendant had failed to prove the plaintiff carried on a business of moneylending.

The plaintiff was represented by partner Andrew Chiew Ean Vooi and associate Nicola Tang Zhan Ying of [Lee Hishammuddin Allen & Gledhill](#).

The grounds of judgment may be viewed [here](#).

Nicola Tang Zhan Ying (tzv@lh-ag.com)

If you have any queries, please contact the author or her team partner [Andrew Chiew Ean Vooi](#) (ac@lh-ag.com).

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

Published by the Dispute Resolution Practice

© Lee Hishammuddin Allen & Gledhill. All rights reserved. The views and opinions attributable to the authors or editor of this publication are not to be imputed to the firm, Lee Hishammuddin Allen & Gledhill. The contents of this publication are intended for purposes of general information and academic discussion only. It should not be construed as legal advice or legal opinion on any fact or circumstance.

[Feedback](#)

[Unsubscribe](#)