

June 2022

Client Update: Singapore High Court Clarifies the Scope of “Bankers’ Books” Subject to Disclosure in an Application for 3rd party Discovery Against a Bank

1. Where a party is seeking discovery against a bank, the bank is only under a duty to disclose documents that fall within the categories of exceptions to banking secrecy protection. One such category is provided for under Part 4 of the Singapore Evidence Act 1893 (“**Evidence Act**”) – “*entries in a banker’s book*” (the “**Bankers’ Books Category**”).
2. In written grounds issued in *La Dolce Vita Fine Dining Company Ltd v Zhang Lan and others* [2022] SGHC 89 (“**LDV**”), the Singapore High Court (per Justice Philip Jeyaretnam) clarified the scope of documents that fall within the Bankers’ Books Category. Specifically, the Court held that information such as the names of the account holder and/or beneficial owner of the bank account fell within the Bankers’ Books Category since they were transactional facts with an element of permanence, and hence formed part of the “*permanent record maintained by a bank in relation to the transactions of a customer.*”

Brief Facts

3. In *LDV*, the applicants sought third-party discovery against Credit Suisse and Deutsche Bank, in the course of enforcement proceedings commenced by the applicants against its judgment debtors.
4. The documents sought included account opening forms, as well as other documents maintained by the banks which identifies the beneficial owner of certain bank accounts held by the two banks.
5. The applicants succeeded at first instance before an Assistant Registrar, and one of the defendants (“**SETL**”) appealed the decision to the Singapore High Court.
6. On appeal, SETL argued that bankers’ books refer strictly only to records relating to financial transactions and that allowing the disclosure of documents relating to the identity of the beneficial owner would be contrary to the Banking Act 1970 (“**Banking Act**”) and the Evidence Act.

Bankers’ Books are limited to transactional records concerning a customer

7. As mentioned above, one of the established exceptions to the banking secrecy protection under the Banking Act is the Bankers’ Books Category, *i.e.*, a Court may order a bank to give discovery of “*entries in a banker’s book*”.
8. The notion of what constitutes “*entries in a banker’s book*” has evolved since the Evidence Act was first enacted; in recent times, there has been a manifold increase in the amount and types of information being retained by banks under “Know Your Client” regulations. The Court therefore had to interpret the term in light of present-day banking practices.
9. The Court held that the term “*entries in a banker’s books*” ought to be limited to *transactional records* concerning customers for the following reasons.
10. The Court observed that banking secrecy is a principle enshrined in section 47(1) of the Banking Act, the purpose of which is to enforce the duty of confidentiality between

banker and customer. However, as an exception to this general rule, section 175(1) of the Evidence Act provides that “*on the application of any party to a legal proceeding, the court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a “banker’s book” for any of the purposes of such proceedings.*” Section 170 of the Evidence Act also defines “*bankers’ books*” to include “*...ledgers, day books, cash books, account books and all other books used in the ordinary business of the bank*”.

11. The central issue before the Court was this: in today’s age, given the presence of electronic and automated substitutes, how should the term “*all other books used in the ordinary business of the bank*” be construed?
12. In coming to its decision, the Singapore High Court examined the approaches of the Singapore Courts as well as that of other jurisdictions. They are briefly summarised as follows.
13. In Singapore, *Wee Soon Kim Anthony v UBS AG* [2003] 2 SLR(R) 91 (“**Wee Soon Kim Anthony**”) is the leading case on what documents fall within the Bankers’ Books Category. The Court of Appeal held in that case that “*any form of permanent record maintained by a bank in relation to the transactions of a customer*” would fall within the Bankers’ Books Category.
14. In Malaysian High Court, it was held that the scope of bankers’ books included documents that must either “*comprise any transaction record that is generated by the bank*”; or “*be a document which the bank maintains*”. This judgment was only partially affirmed by Philip Jeyaretnam J in *LDV* as far as the transactional focus was concerned, but cautioned that the overall approach undertaken by the Malaysian High Court would lead to an overinclusive definition.
15. In England, *Meng v HSBC Bank Plc and others* [2021] EWHC 342 (QB), Fordham J rejected the formulation of the Malaysian High Court, and held that records maintained for regulatory compliance did not fall within the Bankers’ Books Category. The English Court found that only transactional records could be disclosed.
16. After considering the approaches taken in the various jurisdictions, the Singapore High Court concluded that the Bankers’ Books Category is limited to *transactional records* concerning a customer.
17. Nevertheless, there was still an additional question to be answered: what constitutes *transactional records* concerning a customer?

The transactional record includes the name of the account holder and the identity of the beneficial owner

18. The Singapore High Court then relied on Fordham J’s remarks in that “*Whether a transaction has been undertaken – when, by whom for whom, involving what amount and what account, and so on – these transactional facts are readily evidenced by a banker’s record.*”
19. The implication of this would be that transactional records are not limited to simply the inflows and outflows from an account (e.g., bank statements, ledgers or cashbooks), but would include transactional facts as well – notably the names of the legal account holder and the beneficial owner of the account.
20. That being said, the Court also noted that these transactional facts would also need an element of permanence in order to qualify as being part of the bank’s record.

Conclusion

21. In light of *LDV*, it would appear that so long as a document sought evidences transactional facts and has an element of permanence (*i.e.*, filed as part of a permanent record of the bank), then that document would fall within the Bankers' Books Category and the Court may order that such a document be disclosed.
22. Philip Jeyaretnam J's decision is a welcome one that clarifies the law on bankers' books by expanding on the established principles set out in *Wee Soon Kim Anthony* to arrive at an interpretation that comports with present-day banking practices.
23. Keith Han and Angela Phoon of Oon & Bazul acted for the successful applicants in *LDV*.

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