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Developers (Anti-Money Laundering and Terrorism Financing) Bill

Bill No. 45/2018.

Read the first time on 1 October 2018.

A BILL

intituled

An Act to amend the Housing Developers (Control and Licensing) Act (Chapter 130 of the 1985 Revised Edition) and the Sale of Commercial Properties Act (Chapter 281 of the 1985 Revised Edition) to give effect to certain recommendations of the Financial Action Task Force.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Developers (Anti-Money Laundering and Terrorism Financing) Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

PART 1

AMENDMENTS TO HOUSING DEVELOPERS (CONTROL AND LICENSING) ACT

Amendment of section 2

2. Section 2(1) of the Housing Developers (Control and Licensing) Act (Cap. 130) is amended —

(a) by inserting, immediately after the definition of “develop”, the following definitions:

““FATF” means the intergovernmental body known as the Financial Action Task Force;

“FATF Recommendations” means the recommendations issued by the FATF from time to time relating to the prevention of money laundering and the financing of terrorism;”;

(b) by inserting, immediately after the definition of “manager”, the following definition:

““money laundering or terrorism financing offence” means an offence under —

(a) sections 43 to 48 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A);

(b) the Terrorism (Suppression of Financing) Act (Cap. 325);

(c) any regulations made under the United Nations Act (Cap. 339);

- (d) section 12A(2), 12B(3), 12C(5), 12D(2), 12E(6) or 12F(2) or any rules made under this Act for the prevention of money laundering and terrorism financing, or for the reporting of transactions which may involve money laundering or terrorism financing, necessary or expedient to give effect to any relevant FATF Recommendation; or
- (e) section 5A(5), 5B(5), 5C(6), 5D(2) or 5E(4) of the Sale of Commercial Properties Act (Cap. 281) or any rules made under that Act for the prevention of money laundering and terrorism financing, or for the reporting of transactions which may involve money laundering or terrorism financing, necessary or expedient to give effect to any relevant FATF Recommendation;”;

(c) by inserting, immediately after the definition of “public authority”, the following definition:

““purchaser”, in relation to a licensed housing developer, means a person —

- (a) to whom the licensed housing developer grants an option to purchase from the licensed housing developer a unit of any housing accommodation in a building project undertaken by that licensed housing developer; or
- (b) who agrees to purchase from the licensed housing developer a unit of any housing accommodation in a

building project undertaken by that licensed housing developer,

and includes a prospective purchaser;” and

(d) by inserting, immediately after the definition of “show unit”, the following definition:

““substantial shareholder”, in relation to a company, has the meaning given by section 81 of the Companies Act;”.

Amendment of section 5

3. Section 5(1) of the Housing Developers (Control and Licensing) Act is amended —

(a) by deleting the word “or” at the end of paragraph (c); and

(b) by deleting the full-stop at the end of paragraph (d) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

(e) is an individual who has been convicted (whether before, on or after the date of commencement of section 3 of the Developers (Anti-Money Laundering and Terrorism Financing) Act 2018) of any money laundering or terrorism financing offence;

(f) is a company, partnership, society or limited liability partnership which —

(i) has been convicted (whether before, on or after the date of commencement of section 3 of the Developers (Anti-Money Laundering and Terrorism Financing) Act 2018) of any money laundering or terrorism financing offence; or

(ii) has an individual mentioned in paragraph (e) who holds or is to hold a responsible position in that company, partnership, society or limited liability partnership, as the case may be; or

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(g) is a company which has as a substantial shareholder a person mentioned in paragraph (e) or (f).”.

Amendment of section 7

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4. Section 7(1) of the Housing Developers (Control and Licensing) Act is amended by inserting, immediately after paragraph (d), the following paragraphs:

“(da) has been convicted (whether before, on or after the date of commencement of section 4 of the Developers (Anti-Money Laundering and Terrorism Financing) Act 2018) of any money laundering or terrorism financing offence;

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(db) in the case of a company, has as a substantial shareholder a person mentioned in section 5(1)(e) or (f);”.

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New Part IIIA and new Part IIIB heading

5. The Housing Developers (Control and Licensing) Act is amended by inserting, immediately after section 12, the following Part and Part heading:

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“PART IIIA

PREVENTION OF MONEY LAUNDERING
AND FINANCING OF TERRORISM

Prohibition against anonymous accounts

12A.—(1) A licensed housing developer must not, in connection with any housing development carried out or undertaken by the licensed housing developer, open or

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maintain any account (whether or not in a Project Account) for, or hold and receive moneys from —

(a) an anonymous source; or

(b) a purchaser with an obviously fictitious name.

5 (2) A licensed housing developer that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

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

10 **12B.**—(1) A licensed housing developer must perform such customer due diligence measures as may be prescribed at such times as may be prescribed.

(2) A licensed housing developer must perform —

15 (a) the prescribed measures relating to targeted financial sanctions against terrorism; and

(b) any prescribed additional measures which are necessary or expedient to give effect to any relevant FATF Recommendation.

20 (3) A licensed housing developer that contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

Record keeping

25 **12C.**—(1) A licensed housing developer must keep, for such period as may be prescribed, all documents and information (including any analysis performed) relating to a person that the licensed housing developer obtains as a result of performing the customer due diligence measures required by section 12B.

(2) For the purposes of subsection (1), different periods may be prescribed for different documents and information.

30 (3) A licensed housing developer must keep the documents and information required to be kept under subsection (1) in such form as may be prescribed.

(4) A licensed housing developer must make the documents and information required to be kept under subsection (1) available upon request to the Controller or an inspector and such other authorities as may be prescribed.

(5) A licensed housing developer that contravenes subsection (1), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

Suspicious transaction reporting

12D.—(1) Where a licensed housing 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, the licensed housing developer must, in accordance with section 39 of that Act, disclose the matter to a Suspicious Transaction Reporting Officer under that Act by way of a suspicious transaction report.

(2) A licensed housing developer that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

Programmes and measures to prevent money laundering and terrorism financing

12E.—(1) Without limiting sections 12A to 12D, a licensed housing developer must, in relation to its business of carrying out or undertaking housing development in Singapore, implement adequate programmes and measures to prevent money laundering and terrorism financing.

(2) A licensed housing developer must, in particular —

(a) take appropriate steps to identify, assess and understand the money laundering and terrorism financing risks in relation to —

(i) its purchasers;

(ii) the countries or jurisdictions which its purchasers are from or in;

(iii) the countries or jurisdictions in which the licensed housing developer has operations; and

(iv) its services, transactions and delivery channels;

(b) for the purpose of paragraph (a) —

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(i) document its risk assessments;

(ii) consider all relevant risk factors before determining the overall level of risk and the appropriate type and extent of mitigation to be applied;

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(iii) keep its risk assessments up to date; and

(iv) have appropriate mechanisms to provide its risk assessments to the Controller;

(c) develop and implement internal policies, procedures and controls, which must be approved by its senior management, to manage and effectively mitigate the money laundering and terrorism financing risks identified by it or notified to it by the Controller, including —

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(i) making appropriate compliance management arrangements, including the appointment of a compliance officer at the management level; and

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(ii) applying adequate screening procedures when hiring employees;

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(d) have an ongoing programme to train employees on the internal policies, procedures and controls mentioned in paragraph (c);

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(e) have an independent audit function to test the internal policies, procedures and controls mentioned in paragraph (c); and

(f) monitor the implementation of the internal policies, procedures and controls mentioned in paragraph (c), and enhance them if necessary.

(3) The type and extent of the measures to be taken under subsections (1) and (2) must be appropriate having regard to the risk of money laundering and terrorism financing and the size of the licensed housing developer's business.

(4) Where a licensed housing developer is a company incorporated in Singapore and has a branch or subsidiary, whether in Singapore or elsewhere, the licensed housing developer must develop and implement a group-level programme to prevent money laundering and terrorism financing, which programme —

(a) must be applicable to the licensed housing developer's branches and subsidiaries, whether in Singapore or elsewhere;

(b) must include the measures specified under subsection (2);

(c) must be appropriate to the business of the licensed housing developer's branches and subsidiaries;

(d) must be implemented effectively at the level of the licensed housing developer's branches and subsidiaries;

(e) must include policies and procedures for providing and sharing information required for the purposes of customer due diligence measures prescribed for the purposes of section 12B and generally for the management of risks relating to money laundering and terrorism financing; and

(f) must include adequate safeguards on the confidentiality and use of information exchanged between the licensed housing developer and its branches and subsidiaries.

(5) Where a licensed housing developer mentioned in subsection (4) has a branch or subsidiary in a country or territory outside Singapore that has laws for the prevention of money laundering or the financing of terrorism that differ from those in Singapore —

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(a) the licensed housing developer must require the management of that branch or subsidiary to apply the more stringent set of laws, to the extent that the law of the host country or territory permits; and

5 (b) where that branch or subsidiary is unable to fully apply the more stringent set of laws, the licensed housing developer must report this to the Controller and must, in lieu of paragraph (a), comply with such directions as may be given by the Controller.

10 (6) A licensed housing developer that contravenes subsection (1), (2), (4) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

Person disqualified to be substantial shareholder

12F.—(1) A person —

15 (a) who has been convicted (whether before, on or after the date of commencement of section 5 of the Developers (Anti-Money Laundering and Terrorism Financing) Act 2018) of any money laundering or terrorism financing offence; or

20 (b) if a company, partnership, society or limited liability partnership, which has an individual mentioned in paragraph (a) holding a responsible position in that company, partnership, society or limited liability partnership, as the case may be,

25 must not be or become a substantial shareholder of a licensed housing developer, whether by increasing the person's shareholding in the licensed housing developer or otherwise.

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

PART IIIB

MONITORING AND ENFORCEMENT POWERS”.

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Amendment of section 14

6. The Housing Developers (Control and Licensing) Act is amended by renumbering section 14 as subsection (1) of that section, and by inserting immediately thereafter the following subsections:

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“(2) In particular, in order to ascertain whether Part IIIA, or any rules made under section 22 for the prevention of money laundering and terrorism financing, or for the reporting of transactions which may involve money laundering or terrorism financing, necessary or expedient to give effect to any relevant FATF Recommendation, is being complied with, the Controller may, on the Controller’s own motion or upon receiving any written complaint, require a licensed housing developer, or a partner or director of or other person holding a responsible position in a licensed housing developer which is not an individual or a sole proprietorship —

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(a) to produce any document; or

(b) to provide any information,

to the Controller, an inspector or any person appointed by the Controller.

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(3) The Controller, an inspector or the person appointed by the Controller under subsection (2) may —

(a) retain the document provided and make and retain copies of the document; and

(b) record the information provided.

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(4) The Controller may use the document or information obtained as a basis, or disclose the document, information or explanation, for all or any of the following purposes:

(a) an investigation of any criminal offence, and any subsequent criminal proceedings, under this Act or any other written law;

(b) any regulatory action under section 7 against a licensed housing developer.

(5) A person —

(a) who intentionally alters, suppresses or destroys any document or information which the person has been required under this section to produce or provide; or

(b) who, in producing any document or providing any information required under this section, makes any statement which the person knows or ought reasonably to know that, or is reckless as to whether, it is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(6) Any power under this section to require a person to produce any document or to provide information includes the power —

(a) to take reasonable steps to require the person to produce the document or provide the information immediately or at a place and time specified in writing;

(b) to require the person to provide an explanation of the document or information;

(c) if the document or information is not produced or provided, to require the person to state, to the best of the person's knowledge and belief, where the document or information is; and

(d) if the information is recorded in electronic form or otherwise than in legible form, to require the information to be made available in the form or format specified by the Controller, inspector or the

person appointed by the Controller under subsection (2), or in a legible form.”.

Amendment of section 22

7. Section 22 of the Housing Developers (Control and Licensing) Act is amended —

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(a) by inserting, immediately after paragraph (a) of subsection (2), the following paragraph:

“(b) the prevention of money laundering and terrorism financing, or the reporting of transactions which may involve money laundering or terrorism financing, necessary or expedient to give effect to any relevant FATF Recommendation, including describing —

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(i) the measures which a licensed housing developer must take when preparing for or carrying out any transaction concerning a housing development;

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(ii) the customer due diligence measures which must be conducted by a licensed housing developer to prevent money laundering and the financing of terrorism; and

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(iii) the additional measures relating to targeted financial sanctions against terrorism which a licensed housing developer must take when preparing for or carrying out any transaction concerning a housing development;”;

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and

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(b) by inserting, immediately after paragraph (a) of subsection (3), the following paragraph:

“(aa) may prescribe such saving and transitional provisions as may be necessary or expedient;”.

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Amendment of section 25

8. Section 25 of the Housing Developers (Control and Licensing) Act is amended —

(a) by deleting the word “and” at the end of paragraph (b) of subsection (1), and by inserting immediately thereafter the following paragraph:

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“(ba) any person who has been convicted (whether before, on or after the date of commencement of section 8 of the Developers (Anti-Money Laundering and Terrorism Financing) Act 2018) of any money laundering or terrorism financing offence must not hold or continue to hold a responsible position in a licensed housing developer; and”;

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(b) by deleting the words “subsection (1)” in subsection (3) and substituting the words “subsection (1)(a), (b) or (c)”; and

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(c) by inserting, immediately after subsection (3), the following subsection:

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“(4) Any person who contravenes subsection (1)(ba) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.”.

PART 2

AMENDMENTS TO SALE OF COMMERCIAL
PROPERTIES ACT**Amendment of section 2**

9. Section 2 of the Sale of Commercial Properties Act (Cap. 281) is amended — 5

(a) by inserting, immediately after the definition of “Building Authority”, the following definition:

““building project” means a building project consisting of any commercial property;” 10

(b) by inserting, immediately after the definition of “Controller”, the following definitions:

““developer” means any person who, in the course of business, undertakes —

(a) the construction of commercial property for the purpose of sale by the person; and 15

(b) the sale by the person of land which would be appurtenant to such commercial property; 20

“FATF” means the intergovernmental body known as the Financial Action Task Force;

“FATF Recommendations” means the recommendations issued by the FATF from time to time relating to the prevention of money laundering and the financing of terrorism;” 25

(c) by inserting, immediately after the definition of “lot”, the following definitions:

““money laundering or terrorism financing offence” means an offence under —

- 5 (a) sections 43 to 48 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A);
- (b) the Terrorism (Suppression of Financing) Act (Cap. 325);
- 10 (c) any regulations made under the United Nations Act (Cap. 339);
- (d) section 5A(5), 5B(5), 5C(6), 5D(2) or 5E(4) or any rules made under this Act for the prevention of money laundering and terrorism financing, or for the reporting of transactions which may involve money laundering or terrorism financing, necessary or expedient to give effect to any relevant FATF Recommendation; or
- 15 (e) section 12A(2), 12B(3), 12C(5), 12D(2), 12E(6) or 12F(2) of the Housing Developers (Control and Licensing) Act (Cap. 130) or any rules made under that Act for the prevention of money laundering and terrorism financing, or for the reporting of transactions which may involve money laundering or terrorism financing, necessary or expedient to give effect to any relevant FATF Recommendation;
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“purchaser”, in relation to a developer, means a person —

(a) to whom the developer grants an option to purchase from the developer any commercial property in a building project undertaken by that developer; or

(b) who agrees to purchase from the developer any commercial property in a building project undertaken by that developer,

and includes a prospective purchaser;” and

(d) by deleting the full-stop at the end of the definition of “stratum” and substituting a semi-colon, and by inserting immediately thereafter the following definition:

““substantial shareholder”, in relation to a company, has the meaning given by section 81 of the Companies Act.”.

New sections 5A to 5E

10. The Sale of Commercial Properties Act is amended by inserting, immediately after section 5, the following sections:

“Prevention of money laundering and financing of terrorism

5A.—(1) A developer must not, in connection with any building project developed by the developer, open or maintain any account for, or hold and receive moneys from —

(a) an anonymous source; or

(b) a purchaser with an obviously fictitious name.

(2) A developer must perform such customer due diligence measures as may be prescribed at such times as may be prescribed.

(3) A developer must perform —

(a) the prescribed measures relating to targeted financial sanctions against terrorism; and

5 (b) any prescribed additional measures which are necessary or expedient to give effect to any relevant FATF Recommendation.

10 (4) 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, the developer must, in accordance with section 39 of that Act, disclose the matter to a Suspicious Transaction Reporting Officer under that Act by way of a suspicious transaction report.

15 (5) A developer that contravenes subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

Record keeping

20 **5B.**—(1) A developer must keep, for such period as may be prescribed, all documents and information (including any analysis performed) relating to a person that the developer obtains as a result of performing the customer due diligence measures required by section 5A(2).

(2) For the purposes of subsection (1), different periods may be prescribed for different documents and information.

25 (3) A developer must keep the documents and information required to be kept under subsection (1) in such form as may be prescribed.

30 (4) A developer must make the documents and information required to be kept under subsection (1) available upon request to the Controller or an inspector and such other authorities as may be prescribed.

(5) A developer that contravenes subsection (1), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

Programmes and measures to prevent money laundering and terrorism financing

5C.—(1) Without limiting sections 5A and 5B, a developer must, in relation to its business of carrying on or undertaking a building project in Singapore, implement adequate programmes and measures to prevent money laundering and terrorism financing. 5

(2) A developer must, in particular —

(a) take appropriate steps to identify, assess and understand the money laundering and terrorism financing risks in relation to — 10

(i) its purchasers;

(ii) the countries or jurisdictions which its purchasers are from or in;

(iii) the countries or jurisdictions in which the developer has operations; and 15

(iv) its services, transactions and delivery channels;

(b) for the purpose of paragraph (a) —

(i) document its risk assessments;

(ii) consider all relevant risk factors before determining the overall level of risk and the appropriate type and extent of mitigation to be applied; 20

(iii) keep its risk assessments up to date; and

(iv) have appropriate mechanisms to provide its risk assessments to the Controller; 25

(c) develop and implement internal policies, procedures and controls, which must be approved by its senior management, to manage and effectively mitigate the money laundering and terrorism financing risks identified by it or notified to it by the Controller, including — 30

(i) making appropriate compliance management arrangements, including the appointment of a compliance officer at the management level; and

5 (ii) applying adequate screening procedures when hiring employees;

(d) have an ongoing programme to train employees on the internal policies, procedures and controls mentioned in paragraph (c);

10 (e) have an independent audit function to test the internal policies, procedures and controls mentioned in paragraph (c); and

(f) monitor the implementation of the internal policies, procedures and controls mentioned in paragraph (c), and enhance them if necessary.

(3) The type and extent of the measures to be taken under subsections (1) and (2) must be appropriate having regard to the risk of money laundering and terrorism financing and the size of the developer's business.

20 (4) Where a developer is a company incorporated in Singapore and has a branch or subsidiary, whether in Singapore or elsewhere, the developer must develop and implement a group-level programme to prevent money laundering and terrorism financing, which programme —

25 (a) must be applicable to the developer's branches and subsidiaries, whether in Singapore or elsewhere;

(b) must include the measures specified under subsection (2);

30 (c) must be appropriate to the business of the developer's branches and subsidiaries;

(d) must be implemented effectively at the level of the developer's branches and subsidiaries;

- (e) must include policies and procedures for providing and sharing information required for the purposes of customer due diligence measures prescribed for the purposes of section 5A(2) and generally for the management of risks relating to money laundering and terrorism financing; and 5
- (f) must include adequate safeguards on the confidentiality and use of information exchanged between the developer and its branches and subsidiaries. 10

(5) Where a developer mentioned in subsection (4) has a branch or subsidiary in a country or territory outside Singapore that has laws for the prevention of money laundering or the financing of terrorism that differ from those in Singapore —

- (a) the developer must require the management of that branch or subsidiary to apply the more stringent set of laws, to the extent that the law of the host country or territory permits; and 15
- (b) where that branch or subsidiary is unable to fully apply the more stringent set of laws, the developer must report this to the Controller and must, in lieu of paragraph (a), comply with such directions as may be given by the Controller. 20

(6) A developer that contravenes subsection (1), (2), (4) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000. 25

Persons disqualified from being substantial shareholder of developer

5D.—(1) A person —

- (a) who has been convicted (whether before, on or after the date of commencement of section 10 of the Developers (Anti-Money Laundering and Terrorism Financing) Act 2018) of any money laundering or terrorism financing offence; or 30

(b) if a company, partnership, society or limited liability partnership, which has an individual mentioned in paragraph (a) holding a responsible position in that company, partnership, society or limited liability partnership, as the case may be,

must not be or become a substantial shareholder of a developer, whether by increasing the person's shareholding in the developer or otherwise.

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

Persons disqualified from being in responsible position

5E.—(1) Subject to subsection (2), each of the following persons must not hold or continue to hold a responsible position in a developer:

(a) a person who has been convicted (whether before, on or after the date of commencement of section 10 of the Developers (Anti-Money Laundering and Terrorism Financing) Act 2018) of any money laundering or terrorism financing offence;

(b) a person who is convicted of an offence (whether in Singapore or elsewhere and whether before, on or after the date of commencement of section 10 of the Developers (Anti-Money Laundering and Terrorism Financing) Act 2018) involving fraud or dishonesty;

(c) a person who is an undischarged bankrupt (whether in Singapore or elsewhere) or who suspends payment to or compounds with the person's creditors.

(2) The disqualification in subsection (1)(b) ceases for a person at the end of 5 years beginning from —

(a) the date of the person's conviction; or

(b) if the person is imprisoned, the date on which the person convicted is released from custody,

whichever date is later.

(3) In this section, “responsible position”, for a developer, means —

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(a) in the case of a developer that is a company — a director, manager or secretary or a person in a position analogous to that of a director, manager or secretary;

(b) in the case of a developer that is a society — a president, secretary or treasurer or a person in a position analogous to that of a president, secretary or treasurer;

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(c) in the case of a developer that is a partnership — a partner;

(d) in the case of a developer that is a limited liability partnership — a partner or manager or a person in a position analogous to that of a manager; or

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(e) in the case of a developer that is a group of persons — any person in that group.

(4) A person who contravenes subsection (1)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

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(5) A person who contravenes subsection (1)(b) or (c) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.

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(6) To avoid doubt, this section applies without limiting any other restriction or prohibition in any other written law relating to companies, co-operative societies, societies, limited liability partnerships or partnerships.”

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New section 7A

11. The Sale of Commercial Properties Act is amended by inserting, immediately after section 7, the following section:

“Power to require production of documents, etc.

5 **7A.**—(1) In order to ascertain whether sections 5A to 5E, or any rules made under this Act for the prevention of money laundering and terrorism financing, or for the reporting of transactions which may involve money laundering or terrorism financing, necessary or expedient to give effect to any relevant
10 FATF Recommendation, are being complied with, the Controller may, on the Controller’s own motion or upon receiving any written complaint, require a developer, or a partner or director of or other person holding a responsible position in a developer which is not an individual or a sole proprietorship —

15 (a) to produce any document; or

 (b) to provide any information,

to the Controller or any person appointed by the Controller.

(2) The Controller or the person appointed by the Controller under subsection (1) may —

20 (a) retain the document provided and make and retain copies of the document; and

 (b) record the information provided.

(3) The Controller may use the document or information obtained as a basis, or disclose the document, information or
25 explanation, for all or any of the following purposes:

 (a) an investigation of any criminal offence, and any subsequent criminal proceedings, under this Act or any other written law;

30 (b) any regulatory action under section 7 of the Housing Developers (Control and Licensing) Act against a licensed housing developer.

(4) A person —

- (a) who intentionally alters, suppresses or destroys any document or information which the person has been required under this section to produce or provide;
- (b) who, in producing any document or providing any information required under this section, makes any statement which the person knows or ought reasonably to know that, or is reckless as to whether, it is false or misleading in a material particular; or
- (c) who, without reasonable excuse, fails to do anything required of the person under subsection (1),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(5) Any power under this section to require a person to produce any document or to provide information includes the power —

- (a) to take reasonable steps to require the person to produce the document or provide the information immediately or at a place and time specified in writing;
- (b) to require the person to provide an explanation of the document or information;
- (c) if the document or information is not produced or provided, to require the person to state, to the best of the person's knowledge and belief, where the document or information is; and
- (d) if the information is recorded in electronic form or otherwise than in legible form, to require the information to be made available in the form or format specified by the Controller, inspector or the person appointed by the Controller under subsection (2), or in a legible form.”.

Amendment of section 10

12. Section 10(2) of the Sale of Commercial Properties Act is amended —

(a) by deleting the word “and” at the end of paragraph (d); and

5 (b) by deleting the full-stop at the end of paragraph (e) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

10 “(f) provide for the prevention of money laundering and terrorism financing, or for the reporting of transactions which may involve money laundering or terrorism financing, necessary or expedient to give effect to any relevant FATF Recommendation, including describing —

15 (i) the measures which a developer must take when preparing for or carrying out any transaction concerning a building project;

20 (ii) the customer due diligence measures which must be conducted by a developer to prevent money laundering and the financing of terrorism; and

25 (iii) the additional measures relating to targeted financial sanctions against terrorism which a developer must take when preparing for or carrying out any transaction concerning a building project; and

30 (g) prescribe such saving and transitional provisions as may be necessary or expedient.”.

Saving and transitional provision

13. For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.

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EXPLANATORY STATEMENT

This Bill seeks to amend 2 Acts and is to that end divided into 2 Parts.

Part 1 consists of amendments to the Housing Developers (Control and Licensing) Act (Cap. 130) (called the HDCL Act) to give effect to certain recommendations of the intergovernmental body known as the Financial Action Task Force (called the FATF) regarding anti-money laundering and countering the financing of terrorism insofar as they apply to developers.

Part 2 consists of amendments to the Sale of Commercial Properties Act (Cap. 281) (called the SCP Act) for the same purpose.

Clause 1 relates to the short title and commencement.

PART 1

AMENDMENTS TO HOUSING DEVELOPERS (CONTROL AND LICENSING) ACT

Part 1 consists of clauses 2 to 8.

Clause 2 amends section 2(1) of the HDCL Act by inserting new definitions of “FATF”, “FATF Recommendations”, “money laundering or terrorism financing offence”, “purchaser” and “substantial shareholder”, which are terms used in the new Part IIIA inserted by clause 5.

Clause 3 amends section 5(1) of the HDCL Act to enable the Controller of Housing (the Controller) to refuse a housing developer’s licence to —

- (a) an applicant previously convicted of a money laundering or terrorism financing offence; or
- (b) an applicant with an individual previously convicted of a money laundering or terrorism financing offence holding, or who is to hold, a responsible position in the applicant.

In addition, for an applicant which is a company, the Controller may refuse a housing developer's licence if the company has a substantial shareholder who is previously convicted of a money laundering or terrorism financing offence, or with an individual previously convicted of such an offence holding a responsible position in the substantial shareholder.

A money laundering or terrorism financing offence is defined as an offence under sections 43 to 48 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A), the Terrorism (Suppression of Financing) Act (Cap. 325) or any regulations made under the United Nations Act (Cap. 339), or under the new section 12A(2), 12B(3), 12C(5), 12D(2), 12E(6) or 12F(2) of the HDCL Act (inserted by clause 5), the new section 5A(5), 5B(5), 5C(6), 5D(2) or 5E(4) of the SCP Act (inserted by clause 10) or any rules made under the HDCL Act or the SCP Act for the prevention of money laundering and terrorism financing, or for the reporting of transactions which may involve money laundering or terrorism financing, necessary or expedient to give effect to any relevant FATF Recommendation.

A responsible position is defined by section 2 of the HDCL Act to mean a partner in a partnership, a director, manager or secretary of a company or a person in a position analogous to that of a director, manager or secretary, and a president, secretary or treasurer of a society or a person in a position analogous to that of a president, secretary or treasurer.

The Controller must also refuse a licence to an applicant which, as a company, has a substantial shareholder who would be disqualified from being granted a licence because of a money laundering or terrorism financing offence.

The conviction of the offence may be one before, on or after the date of commencement of clause 3.

Clause 4 amends section 7(1) of the HDCL Act to empower the Controller to suspend or revoke a licence of a licensed housing developer if the developer has been convicted of any money laundering or terrorism financing offence.

If the licensed housing developer is a company, the licence may also be revoked or suspended if the company has as a substantial shareholder a person who would be disqualified from being granted a licence because of a money laundering or terrorism financing offence.

The conviction of the offence may be one before, on or after the date of commencement of clause 4.

Clause 5 inserts a new Part IIIA consisting of new sections 12A to 12F, relating to measures for the prevention of money laundering and financing of terrorism.

The new section 12A prohibits a licensed housing developer, in connection with any housing development undertaken by the developer, from opening or maintaining any account (whether or not in a Project Account) for, or holding and

receiving moneys from an anonymous source or from a purchaser with an obviously fictitious name. Non-compliance is an offence. The offence carries a maximum fine of \$100,000.

The new section 12B requires a licensed housing developer to perform the customer due diligence measures, additional measures and measures relating to targeted financial sanctions to be specified in rules made under section 22 (as amended by clause 7). Non-compliance is an offence. The offence carries a maximum fine of \$100,000.

The new section 12C requires a licensed housing developer to keep records in respect of the measures it is required to perform under the new section 12B, and to make such records available to the Controller, inspector and persons appointed by the Controller upon request. Non-compliance is an offence. The offence carries a maximum fine of \$100,000.

The new section 12D requires a licensed housing developer who 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, to disclose the matter to a Suspicious Transaction Reporting Officer under that Act by way of a suspicious transaction report. Non-compliance is an offence. The offence carries a maximum fine of \$100,000.

The new section 12E requires a licensed housing developer to implement adequate programmes and measures to prevent money laundering and terrorism financing. Non-compliance is an offence. The offence carries a maximum fine of \$100,000.

The new section 12F makes it an offence for a person to be or become a substantial shareholder of a licensed housing developer if the person has been convicted of any money laundering or terrorism financing offence. Also prohibited from being or becoming a substantial shareholder of a licensed housing developer is a company, partnership, society or limited liability partnership, which has an individual who has such a previous conviction holding a responsible position in that company, partnership, society or limited liability partnership, as the case may be. The conviction of the offence may be one before, on or after the date of commencement of clause 5. Non-compliance is an offence. The offence carries a maximum fine of \$100,000.

Clause 6 amends section 14 of the HDCL Act by conferring powers on the Controller, an inspector or a person appointed by the Controller, in order to ascertain whether the provisions of the new Part IIIA, or the rules made under the HDCL Act for the prevention of money laundering and terrorism financing, are being complied with. These are powers to require a licensed housing developer, or a partner or director of or other person holding a responsible position in a licensed housing developer which is not an individual or a sole proprietorship, to produce any document or to provide any information.

The Controller may use the document or information obtained as a basis, or disclose the document, information or explanation, for an investigation of any criminal offence, and any subsequent criminal proceedings, under the HDCL Act or any other written law (such as the SCP Act), or any regulatory action under section 7 of the HDCL Act against a licensed housing developer.

Clause 7 amends the Minister’s rule-making powers in section 22 of the HDCL Act to expand it to make rules to provide for the prevention of money laundering and terrorism financing, or for the reporting of transactions which may involve money laundering or terrorism financing, necessary or expedient to give effect to any relevant FATF Recommendation.

Clause 8 amends section 25 of the HDCL Act so that any person who has been convicted of any money laundering or terrorism financing offence cannot hold or continue to hold a responsible position in a licensed housing developer. Contravening this prohibition is an offence which carries a maximum fine of \$100,000.

PART 2

AMENDMENTS TO SALE OF COMMERCIAL PROPERTIES ACT

Part 2 consists of clauses 9 to 13.

Clause 9 amends section 2 of the SCP Act by inserting new definitions of terms used in the new sections 5A to 5E inserted by clause 10. The new definitions are that of “building project”, “developer”, “FATF”, “FATF Recommendations”, “money laundering or terrorism financing offence”, “purchaser” and “substantial shareholder”.

Clause 10 inserts new sections 5A to 5E.

The new section 5A corresponds to the new sections 12A, 12B and 12D of the HDCL Act inserted by clause 5.

The new section 5B corresponds to the new section 12C of the HDCL Act inserted by clause 5.

The new section 5C corresponds to the new section 12E of the HDCL Act inserted by clause 5.

The new section 5D corresponds to the new section 12F of the HDCL Act inserted by clause 5.

The new section 5E corresponds to section 25 of the HDCL Act as amended by clause 8.

The new section 5E also prohibits from holding a responsible position in a developer a person who is convicted (whether in Singapore or elsewhere and whether before, on or after the date of commencement of clause 10) of an offence involving fraud or dishonesty, or a person who is an undischarged bankrupt (whether in Singapore or elsewhere) or who suspends payment to or compounds with the person's creditors. Contravening any of these prohibitions is also an offence and carries a maximum fine of \$50,000 or a maximum imprisonment term of 3 years or both.

Clause 11 inserts a new section 7A to confer powers on the Controller or a person appointed by the Controller, in order to ascertain whether the new sections 5A to 5E or rules made under the SCP Act are being complied with. These are powers to require a developer, or a partner or director of or other person holding a responsible position in a developer which is not an individual or a sole proprietorship, to produce any document or to provide any information.

The Controller may use the document or information obtained as a basis, or disclose the document, information or explanation, for an investigation of any criminal offence, and any subsequent criminal proceedings, under the SCP Act or any other written law (such as the HDCL Act), or any regulatory action under section 7 of the HDCL Act against the developer if it is licensed under that Act.

Clause 12 amends the Minister's rule-making powers in section 10(2) of the SCP Act to allow the making of rules to provide for the prevention of money laundering and terrorism financing, or for the reporting of transactions which may involve money laundering or terrorism financing, necessary or expedient to give effect to any relevant FATF Recommendation.

Clause 13 empowers the Minister to make regulations prescribing such provisions of a saving or transitional nature consequent on the enactment of any provision in the Bill, as the Minister may consider necessary or expedient. The Minister has the power to do so only within 2 years after the date of commencement of the provision.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
