

MONEY LENDERS LICENCE

LICENSING CONDITIONS

1. Before entering into any agreement for loan, the money lender
 - (a) shall ask the intending borrower to state whether or not he has entered into or signed any agreement (“the third party agreement”) with any person (“third party”) for or in relation to the procuring, negotiation, obtaining or application of the loan, guaranteeing or securing the repayment of the loan (other than an agreement with solicitors instructed by the intending borrower for the provision of legal services solely);
 - (b) shall state in writing the intending borrower’s reply in relation to Condition 1(a) above in the loan agreement; and
 - (c) if the intending borrower’s reply in relation to Condition 1(a) above is in the affirmative, shall further
 - (i) obtain from the intending borrower the name and address of the third party;
 - (ii) state in writing in the loan agreement the name and address of the third party and whether the money lender is in any way related to the third party and the nature of such relationship;
 - (iii) ask the intending borrower to personally provide a copy of the third party agreement; and
 - (iv) attach the third party agreement to the loan agreement.

2. The money lender shall not grant or agree to grant any loan to any intending borrower if the intending borrower’s reply in relation to Condition 1(a) above is in the affirmative, unless the third party as identified in Condition 1(c) above:
 - (a) is a person appointed by the money lender (“appointed third party”) for or in relation to granting a loan to any intending borrower or any specified class of intending borrower, whether as to the procuring, negotiation, obtaining, application, guaranteeing or securing the repayment of such a loan; and
 - (b) has, specifically in respect of the loan, confirmed in writing to the money lender that
 - (i) he has not charged, recovered, demanded or received and will not charge, recover, demand or receive any fees, charges, reward or consideration, however named, from such intending borrower for or in relation to the procuring, negotiation, obtaining or application of the loan or guaranteeing or securing the repayment of the loan; and
 - (ii) he has not otherwise agreed with the intending borrower that the intending borrower pays or would pay any fees, charges, reward or consideration, however named, to any other party whether for the purchase of any goods or services or not.

3. For the purposes of Condition 2,
 - (a) the money lender shall provide in writing to the satisfaction of the Commissioner of Police and the Registrar of Money Lenders the name, address and identification number (including identification card/passport, business registration and company number as applicable) of any appointed third party; and
 - (b) the third party as identified in Condition 1(c) above is not considered as an appointed third party until after the name and address of the appointed third party appear on the Register kept by the Registrar of Money Lenders.

4.
 - (a) The money lender shall not knowingly allow or permit any person, whether the money lender, or his partner, employer, employee, principal or agent or any person acting for him or any appointed third party, to charge, recover, demand or receive any fees, charges, reward or consideration, however named, from any borrower or intending borrower for or in relation to the procuring, negotiation, obtaining or application of a loan or guaranteeing or securing the repayment of a loan.
 - (b) The prohibition in Condition 4(a) above also covers any fees, charges, reward or consideration, however named, to be paid by the borrower or intending borrower to the appointed third party or any other person as agreed between the borrower/intending borrower and the appointed third party, whether for the purchase of any goods or services or not.

5. Before entering into any agreement for loan, the money lender must give explanation to the intending borrower of all the terms of the agreement, in particular the terms in relation to repayment, namely,
 - (a) the interest rate expressed as a rate per cent per annum and the total amount of interest payable under the agreement;
 - (b) amounts of repayments, periodically and in total, under the agreement;
 - (c) the possible consequences for any default in repayment, including –
 - (i) the taking into possession and sale of any security involved (including the property charged, if any); and
 - (ii) any overriding right of the money lender to demand an immediate repayment.

The money lender must also keep written or video or audio records which show that he complies with the requirements under this condition.

6. The money lender shall not obtain or collect personal data of any person from another person or use such personal data obtained or collected from another person for the purpose of or in relation to the money lender's business (a) without the written confirmation from that other person that the disclosure/provision of such personal data by that other person for such use of the money lender is not in contravention of the provisions of the Personal Data (Privacy) Ordinance, Cap. 486; or (b) when the money lender has knowledge, or has reasonable grounds to believe, that the disclosure/provision of the personal data by that other person for such use of the money lender is likely to be in contravention of the provisions of the Personal Data (Privacy) Ordinance, Cap. 486. The money lender must also keep records which show that he complies with this requirement and the provisions of the Personal Data (Privacy) Ordinance.

7. The money lender shall not accept a subsidized flat provided by the Hong Kong Housing Authority as collateral for the loan to the borrower unless the borrower has produced to the money lender either—
 - (a) a written confirmation from the Hong Kong Housing Authority that the necessary premium for removing the restrictions on alienation on the said flat has been fully paid; or
 - (b) the written approval of the Director of Housing granting approval to mortgage or charge the said flat.

8. The Chinese version of any advertisement issued or published by the money lender for the purpose of the money lender's business as a money lender must clearly show the Chinese characters “放債人牌照號碼” immediately followed by the number of the money lender's licence.

9. Any advertisement in relation to the money lending business of a money lender issued or published by the money lender, in his own name or through any other person, whether in textual, audio or visual form, must:
 - (a) be fair and reasonable and not contain misleading information; and
 - (b) contain the money lender's telephone hotline for handling complaints and a risk warning statement (in the same language as that of the advertisement or the relevant part thereof) as set out below, both of which must be prominent and easily legible in the written or visual part of the advertisement. The risk warning statement must also be clearly audible in the audio part of the advertisement:
 - "忠告: 借錢梗要還, 咪俾錢中介"
 - "Warning: You have to repay your loans. Don't pay any intermediaries."

10.
 - (a) The money lender and his debt collectors shall not try to recover debts, whether directly or indirectly, from anyone unless such person is in law indebted to him.
 - (b) The money lender shall take all practicable steps and measures to ensure that personal data collected in the course of his business are protected against unauthorized or accidental access, processing, erasure or other use by any debt collectors, and shall at all times comply with the Personal Data (Privacy) Ordinance, Cap 486, Laws of Hong Kong, in the collection, use, holding and processing of such information or personal data.
 - (c) The money lender and his debt collectors shall not, while trying to locate the whereabouts of debtors, harass anyone, adopt unlawful or improper debt collection practices.
 - (d) The money lender shall, so far as reasonably practicable, maintain and monitor proper systems and procedures for handling complaints and/or inquiries relating to the loans lent by him in the ordinary course of business and the debt collection activities arising therefrom.
 - (e) The money lender shall, so far as reasonably practicable, keep updated and accurate records of the debt collection activities of his debt collectors during the term of the licence.

11. The money lender shall provide information relating to his money lending business during the term of the licence as may be required by the Registrar of Money Lenders or the Commissioner of Police and such information shall be provided within such time as the Registrar of Money Lenders or the Commissioner of Police may specify.

12. The money lender must establish and maintain proper systems and procedures to ensure that the money lender, or his partners, employers, employees, principals or agents, any persons acting for him and any appointed third parties shall be informed of and observe the licensing conditions and the provisions of the Money Lenders Ordinance.

13.
 - (a) Where any referee is provided in respect of the loan application, the money lender shall, before entering into any agreement for loan,
 - (i) ask the intending borrower to provide the written consent signed by the referee(s) confirming his/her agreement to act as referee for the intending borrower in respect of the loan application (“the written consent”); and
 - (ii) attach the written consent to the loan agreement.
 - (b) If the money lender is informed or aware that the written consent was, in fact, not signed by the referee, the money lender shall immediately cease to use the information of the referee.

For the purposes of this Condition, a referee is a person who provides, on a voluntary basis and upon request by the money lender, information about the intending borrower in respect of the loan application.

14. The money lender shall comply with the Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Licensed Money Lenders.

15. The money lender shall, before entering into any agreement for unsecured personal loan or before granting any significant increase in the amount of loan under an agreement for unsecured personal loan, undertake an assessment of the intending borrower's or borrower's ability to make repayments under the loan agreement affordably and have due regard to the outcome of the assessment in respect of affordability.

In carrying out the assessment, the money lender shall consider:

- (a) the intending borrower's or borrower's current income and expenditure; and
- (b) the intending borrower's or borrower's ability to make repayments under the loan agreement:
 - (i) as they fall due over the life of the loan agreement;
 - (ii) without the intending borrower or borrower having to borrow to meet the repayments; and
 - (iii) without the repayments having a significant adverse impact on the intending borrower's or borrower's overall financial situation.

The money lender must also keep written or video or audio records which show that the requirements under this condition have been complied with.