

**Regulatory and related arrangements to tackle malpractices
by financial intermediaries for money lending**

Purpose

This information note updates Members on the latest developments relating to our proposal to introduce more stringent licensing conditions on money lender licences to tackle malpractices of financial intermediaries for money lending (“intermediaries”).

Background

2. At the meeting held on 11 April 2016, we briefed the Panel on Financial Affairs on the Government’s proposed four-pronged approach to address public concern about malpractices of intermediaries, viz. enhanced enforcement, enhanced public education and publicity, enhanced advisory services to the public, and more stringent regulatory measures. Measures to enhance enforcement, public education and publicity, and advisory services to the public have been implemented.

Latest Developments

3. The Registrar of Money Lenders (“the Registrar”) wrote to all licensed money lenders on 11 April 2016 setting out the details of the proposed additional licensing conditions and inviting them to submit written comments by 16 May 2016. By the end of this period, 13 written submissions from associations of money lenders and individual licensees were received. The Registrar and representatives of FSTB have also conducted meetings with relevant associations and groups of money lenders to discuss the matter.

4. We have duly considered all written submissions and views expressed. Some refinements or modifications have been made to the proposed additional licensing conditions to enhance clarity and to address the concerns raised by respondents. We have published the outcome of the engagement, the details of which are set out in the Annex.

Next Steps for Implementation

5. Taking into account all relevant factors, and allowing reasonable time for money lenders to make necessary preparation for implementation, we have proposed to the Licensing Court that the additional licensing conditions should take effect as from 1

December 2016. We will make further public announcement before implementation of any such new arrangements.

**Financial Services and the Treasury Bureau
Companies Registry
5 August 2016**

**Planned Introduction of More Stringent Licensing Conditions on Money Lenders
to Tackle Money Lending-Related Malpractices - Next Steps**

Purpose

This note sets out the outcome of our engagement with licensed money lenders on the proposal to introduce more stringent licensing conditions on money lenders and the steps being taken to implement the proposal.

Background - Need for more stringent regulatory measures

2. In recent years, there have been increasing public concerns that deceptive tactics are being used by fraudsters who claim themselves to be financial intermediaries for money lending (“intermediaries”) to induce intending borrowers to engage them for arranging loans with money lenders and charge very high fees under different pretexts in the process. Many unscrupulous intermediaries have resorted to different means to conceal their relationship with related money lenders so as to circumvent the statutory ban on separate fee charging under the Money Lenders Ordinance (“MLO”), which applies not only to money lenders but also their connected parties (e.g. their employees, agents, and persons acting for them) as well as any person who acts in collusion with a money lender. And in some cases, the fraudsters who misrepresented themselves as being able to assist intending borrowers to secure loans from money lenders subject to a fee under different pretexts simply absconded after receiving the fee.

3. In April 2016, the Financial Services and the Treasury Bureau (“FSTB”) announced that a four-pronged approach would be adopted to tackle the money lending-related malpractices, viz. enhanced enforcement, enhanced public education and publicity, enhanced advisory services to the public, and introduction of more stringent conditions on money lender licences. Measures to enhance enforcement, public education and publicity, and advisory services to the public have been implemented.

Engagement with licensed money lenders

4. The proposal to impose additional licensing conditions on all money lenders seeks to facilitate effective enforcement of the statutory ban on separate fee charging by money

lenders and their connected parties, ensure better protection of privacy, enhance transparency and disclosure, and promote the message of prudent borrowing. We wrote to all licensed money lenders on 11 April 2016 setting out the details of the proposed additional licensing conditions and inviting them to submit written comments by 16 May 2016. By the end of this period, we received 13 written submissions from associations of money lenders and individual licensees. We have also conducted meetings with relevant associations and groups of money lenders, which were also attended by representatives of FSTB and the Registrar of Money Lenders, to discuss the matter.

5. Overall, the respondents shared the view that the Government should introduce appropriate measures as soon as possible to tackle the money lending-related malpractices. In particular, a number of respondents indicated express support to many of the proposed additional licensing conditions. On the other hand, some have raised questions or other views on certain elements of the proposal.

6. We have duly considered all written submissions and views expressed. Some refinements or modifications have been made to the proposed additional licensing conditions to enhance clarity and to address the concerns raised by respondents. A summary of the more commonly raised questions and the Government's responses are given at the Appendix. We have issued a written reply to all respondents.

Next steps for implementation

7. In order to tackle the money lending-related malpractices and in view of increasing public concern, it is important that the proposed additional licensing conditions should be implemented as soon as possible. Taking into account all relevant factors, and allowing reasonable time for money lenders to make necessary preparation for implementation, we have proposed to the Licensing Court that the additional licensing conditions should take effect as from 1 December 2016. We will make further public announcement before implementation of any such new arrangements.

Money Lenders Unit
Companies Registry
5 August 2016

Commonly raised questions by respondents and the Government's responses

The following is a summary of the more commonly raised questions and the responses of the Government, which also highlights the refinements or modifications made to the proposed additional licensing conditions.

- 1. Whether it would be more appropriate or effective to introduce a separate licensing regime to regulate the intermediaries instead, as money lenders and intermediaries are independent entities.*

One of the key problems we are seeking to tackle is separate fee charging by intermediaries on borrowers. In this regard, the statutory prohibition under the Money Lenders Ordinance (“MLO”) applies not only to money lenders but also their connected parties (e.g. their employees, agents, and persons acting for them), as well as any person who acts in collusion with a money lender. Therefore we should not consider money lenders and intermediaries separately in enforcing the ban on separate fee charging, in particular given the public concern that there are unscrupulous intermediaries who have connection with money lenders but both parties have resorted to different means to conceal their relationship so as to circumvent the prohibition.

In gist, under the proposed additional licensing conditions, a money lender must ask the intending borrower whether he has entered into or signed any agreement with any third party for or in relation to the procuring, negotiation, obtaining or application of the loan or guaranteeing or securing the repayment of the said loan. If so, the money lender may grant the loan only if, inter alia, the third party is a person appointed by the money lender in relation to granting of loans and the appointed intermediary's particulars have been provided to the Registrar of Money Lenders (“the Registrar”) and included in the relevant public register open to public inspection. The money lender should also obtain a copy of the intermediary agreement from the intending borrower and attach it to the loan agreement. A money lender must not grant any loan to an intending borrower if he has knowledge or has reasonable ground to believe that the appointed intermediary involved has charged or will charge the intending borrower any fees. This new arrangement

will facilitate intending borrowers to identify unscrupulous intermediaries.

The proposal to introduce additional licensing conditions on all money lenders, combined with parallel actions to enhance enforcement, enhance public education and publicity as well as advisory services to the public, is a more appropriate approach to tackle the problem of money lending-related malpractices under the existing circumstances. It is expected to produce more direct and expeditious results in tackling the problem. In comparison, introduction of a licensing regime to regulate intermediaries would require substantive legislative changes or introduction of new legislation and it would take considerable time to complete the due public consultation and legislative processes. Besides, a new licensing regime for intermediaries would involve much wider and more complex issues which go beyond the most pressing issue of charging exorbitant fees on borrowers.

We note that there are general concerns that unscrupulous intermediaries will adopt new tactics to circumvent the new requirements. We are aware of cases involving unscrupulous intermediaries who misled borrowers into depositing a substantial part of the loan obtained from money lenders with them for custody (e.g. allegedly as proof of the borrowers' cash flow for improving the borrower's credit record, with the hope of securing a loan at lower interest rate from a bank later), or obliged the borrowers to pay a certain portion of the loan amount obtained to them or their connected parties under different pretexts (e.g. under the pretext of investment fund or for the purchase of other goods or services). To ensure effectiveness of the new requirements, we will elaborate on the wording of the relevant additional licensing conditions to make it clear that the reference to fees covers any charge, reward or consideration, however named, to the appointed intermediary or to any other party as agreed between the appointed intermediary and the borrower, whether for the purchase of any goods or services or not.

2. *Clarifications are sought on who would be required to be appointed by money lenders and registered on the relevant public register e.g. whether sales agents of money lenders and customer referral from friends and relatives will be caught, and whether the same would apply to solicitors who provide legal services to the borrowers.*

We note that all past cases involved the fraudster requiring the borrower to sign an agreement with him, and we are aware that sometimes fraudsters may not present themselves as intermediaries but rather as professional service providers instead to

win over the trust of intending borrowers. Therefore in the detailed wording of the additional licensing conditions, we have not used the term “intermediary” but rather referred to the person as a “third party” with whom the intending borrower has entered into or signed any agreement for or in relation to the procuring, negotiation, obtaining or application of the loan or guaranteeing or securing the repayment of the said loan. A determining factor for considering whether a person is to be considered a “third party”, in which case he must be one appointed by a money lender and registered as such in the public register before the money lender concerned can take up and conclude any loan application from an intending borrower referred by him, is whether the intending borrower has entered into or signed any agreement with him as aforesaid.

The employees and authorized sales agents of money lenders are already forbidden by the MLO from charging separate fees on intending borrowers. They will commit an offence if they charge the intending borrowers any separate fees. On the other hand, if all the agreements entered into or signed between them and the 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 with the money lender concerned are done in the name of their authorizing money lender concerned, the registration requirement will not apply to them.

As regards a person who is a friend or relative of an intending borrower and makes customer referral, that person will also not be considered a “third party” and subject to the registration requirement if he does not enter into or sign any agreement with the intending borrower in relation to the loan.

The introduction of the additional licensing conditions will not change the existing arrangement where a borrower may choose to obtain independent legal advice from a solicitor at his own cost to assist him in vetting the loan agreement document with a money lender. The relevant additional licensing conditions will make it clear that solicitors instructed by borrowers for the provision of legal services for the above-mentioned purpose will not be regarded as “third party”. There are already measures in place by The Law Society of Hong Kong to deal with unreasonable fee charging by solicitors for the provision of legal services. To protect himself before engaging a solicitor, a borrower should check “The Law List” kept by The Law Society of Hong Kong (available on its website) to ensure that the solicitor is holding a current practising certificate issued by The Law Society of Hong Kong.

On the other hand, noting that there have been cases where a solicitor also performed the role of an intermediary to the intending borrower, it should be pointed out that despite the clarification mentioned above in respect of the provision of legal services by a solicitor to an intending borrower, in case a solicitor is involved in the procuring, negotiation, obtaining or application of a loan from a money lender or guaranteeing or securing the repayment of that loan other than for the provision of legal services in relation to the loan e.g. vetting the loan agreement document, he must be appointed by the money lender concerned with his name and address appearing in the relevant public register before the money lender may conclude the relevant loan transaction with the intending borrower, and in such case the solicitor must not charge the borrower any fees for his intermediary service.

3. *Whether a money lender has to bear any responsibility if a borrower does not disclose the existence of an intermediary or if an appointed intermediary charges a borrower a fee despite there is an agreement between the money lender and the intermediary concerned stating clearly that the latter shall not charge the borrowers any fees.*

Under the proposed conditions, money lenders are required to, inter alia, ask the intending borrower to state whether or not he has entered into or signed any agreement with any third party for or in relation to the procuring, negotiation, obtaining or application of the loan, guaranteeing or securing the repayment of the loan. The money lender shall then state in writing the intending borrower's reply in the loan agreement. Money lenders are also required to, before entering into any agreement for loan, explain to the intending borrower all the terms of the agreement and keep written or video or audio records which show that they have complied with the requirements.

While there is no intention to make a money lender responsible for an act of an intending borrower outside of his control, it should be pointed out a money lender must not do any act to dissuade or deter an intending borrower from disclosing the existence of an intermediary.

As regards fee charging, money lenders should not knowingly allow or permit their appointed intermediaries to charge the borrowers any fees, and they should take appropriate steps to ensure compliance. In this regard, a money lender cannot simply adopt a passive stance without taking appropriate steps to ascertain compliance by his appointed intermediaries. For example, there is a requirement

on money lenders to establish and maintain proper systems and procedures to ensure that their appointed intermediaries shall be informed of and observe the licensing conditions and the provisions of the MLO. A money lender should, inter alia, ascertain from the intermediary agreement in relation to a loan whether the intermediary has included any fee charging provision in the intermediary agreement.

In order to facilitate compliance by money lenders and minimize the risk of abuse, the relevant additional conditions will stipulate that for each loan transaction that involves an intermediary, the money lender should obtain written confirmation from the intermediary concerned that the latter has not and will not charge the borrower any fee for or in relation to procuring, negotiation, obtaining or application of that loan or guaranteeing or securing the repayment of that loan.

4. *There were questions about the lead time required for registration of appointed intermediaries and including their relevant particulars in the public register, and whether it would be acceptable if a money lender completes a loan transaction referred by a new intermediary once he has notified the Registrar of the appointment of the intermediary concerned without waiting for the particulars of the intermediary to be included in the public register.*

The requirement for pre-registration of appointed intermediaries and inclusion of their particulars in the public register before a money lender may complete a relevant loan transaction is an integral part of the proposal to better protect the interests of borrowers.

With the objective of ensuring that the interests of borrowers are better protected without unduly affecting the operation of money lenders, the Registrar will adopt a working target to complete the necessary procedures in not more than two working days after the Registrar receives all the required information and particulars of the appointed intermediary provided by money lenders. In any case, the Registrar will strive to complete the process as soon as practicable.

5. *There were concerns that the proposed risk warning statement in advertisements may cause negative impact on the money lending industry and a suggestion was made to modify the risk warning statement to also cover the message of no separate fee*

charging by intermediaries. Some respondents also suggested that to ensure a level playing field, banks who engage in similar money lending businesses should also be subject to similar requirement.

One of the key considerations for the proposed risk warning statement is to remind the public of the importance of prudent borrowing at the time when they receive an advertising message from money lenders to encourage them to borrow. We do not agree that this will affect the image of the money lenders concerned or contain any negative connotation about the money lending sector. On the other hand, we agree that it would be appropriate to include the message of no separate fee charging by intermediaries. The content of the risk warning statement will be modified as follows -

“忠告：借錢梗要還，咪俾錢中介”

“Warning: You have to repay your loans. Don't pay any intermediaries.”

We have conveyed the respondents' comments as they relate to banks to the Hong Kong Monetary Authority, which indicated that it would take into account the final decision of the Licensing Court and implementation details for the relevant licensing condition in considering whether to introduce similar requirement on banks to include a risk warning statement in their relevant advertisements.

- 6. There were suggestions that the risk warning statement can be waived or shown on the "landing page" directed from certain advertisements which are subject to pixel size and word count limitations, e.g. SMS and website banners.*

It is not appropriate to provide for a general waiver as this will undermine the effectiveness of the proposed measure. That said, regarding advertisements via mobile phones or the internet, we would like to clarify that where a SMS or website banner links to another advertising webpage (such as the landing page which is also part of the advertisement), it will be acceptable for the risk warning statement and complaint hotline to be shown on the landing page instead.

- 7. There were suggestions for the risk warning statement to be displayed but not read out in an audio-visual advertisement, and that single language risk warning statement should be acceptable for monolingual advertisements. There were also views that the*

requirement for money lenders to broadcast their complaint hotline in their advertisements should be relaxed.

One of the key considerations for the proposed risk warning statement is to remind the public of the importance of prudent borrowing at the time when they receive an advertising message from money lenders to encourage them to borrow. Thus, it is important that the risk warning statement must be prominently and easily legible in the written or visual part of the advertisement, and also clearly audible in the audio part of the advertisement. It is not appropriate to remove the requirement for the risk warning statement to be covered in the audio part of an audio-visual advertisement because this will undermine the effectiveness of the risk warning statement.

Taking into account the respondents' comments, on the basis that all relevant advertisements will be required to contain a risk warning message prominently and easily legible in the written or visual part of the advertisement and clearly audible in the audio part of the advertisement, the relevant additional licensing conditions will be modified such that the broadcast of the risk warning statement may be in the same language as that used by the advertisement itself (i.e. use of a single language), and the complaint hotline would be required to be displayed (but not necessarily also read out) in the advertisements.

8. *There was suggestion that the authorities should provide sample forms and guidelines as appropriate to facilitate compliance.*

In response to the suggestion, the Registrar will provide sample form for reference of money lenders on disclosure of involvement of third parties by intending borrowers and will issue guidelines on relevant aspects of the additional licensing conditions before implementation to facilitate compliance of the new requirements by relevant parties.

**Money Lenders Unit
Companies Registry**