



公 司 註 冊 處
COMPANIES REGISTRY



2023

Anti-Money Laundering and Counter-Terrorist Financing Seminar for Licensed Money Lenders



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Part 1

Overview of Licensing Conditions of Money Lenders Licence

Miss Maggie CHOW
Assistant Registry Manager
Companies Registry
3 November 2023

Licensing Condition 1 – (1)

- Before entering into any agreement for loan, the money lender shall ask the intending borrower to **state in writing** 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

Third Party Agreement

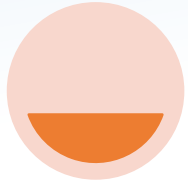
Agreement with solicitors
to provide legal services
solely

(An agreement with a solicitor
instructed by intending borrower for
the provision of legal services solely
is not a third party agreement)



Licensing Condition 1 – (2)

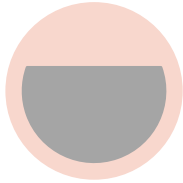
➤ If **YES**, the money lender shall:



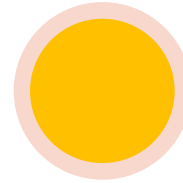
state in writing in the loan agreement

- name and address of the third party
- whether the money lender is in any way related to the third party and the nature of such relationship

(Prepared by Money Lender)



ask the intending borrower to personally provide a copy of the third party agreement



attach the third party agreement to the loan agreement

Licensing Condition 1 – (3)

Annex 1 of Guidelines on Licensing Conditions of Money Lenders Licence Sample form on disclosure of the existence of third parties by intending borrower

Disclosure of the existence of third parties by intending borrower

Confirmation from [] (intending borrower)

To: *(Name of licensee)*

I / We, *(Name of the intending borrower)*, holder of [Hong Kong Identity Card No. _____] / [BR Certificate No. _____] / [Company Number _ _____] * at *(address)* refer to my / our application to you for a loan and hereby confirm that:

(1) I / We

- * [have entered into or signed an agreement with a third party]
 - * [have not 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 (other than any agreement with solicitors instructed by me / us for the provision of legal services solely);

(2) The name and address of the third party are as follows:

Name of third party 1: _____

Address of third party 1 : _____

Name of third party 2: _____

Address of third party 2 : _____

(Please set out particulars of other third parties on a separate sheet signed by the intending borrower bearing the same date if there are more than two third parties)

I / We hereby provide a copy of each of the agreement with the third party or parties and understand that such agreement(s) will be attached to the loan agreement.

IMPORTANT NOTE:

Please note that it is an offence for a person to fraudulently induce a money lender to lend money by false or misleading statement or dishonest concealment of material facts.

You should make full and honest disclosure of the above information on the involvement of any third parties in relation to the loan for the protection of your own interests.

Signature:

Name:

Date:

**Delete where appropriate*



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MONEY LENDERS SECTION

Licensing Condition 1 – (4)

Annex 2 of Guidelines on Licensing Conditions of Money Lenders Licence

Sample form on recording the
particulars of appointed third party
involved in a loan agreement



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MONEY LENDERS SECTION

<u>Particulars of appointed third party involved in a loan agreement</u>	
I / We (Name of Money Lender) confirm that :	
<small>Please tick the relevant box</small>	
The following third party is involved in the loan agreement	
Name of third party :	_____
Address of third party :	_____ _____ _____
<input type="checkbox"/> I / We have appointed the above third party.	
<input type="checkbox"/> I am / We are related to the appointed third party	
Nature of my / our relationship with the appointed third party : <i>(Please select at least one item below)</i>	
<input type="checkbox"/> Holding company of the Money Lender	
<input type="checkbox"/> Subsidiary of the Money Lender	
<input type="checkbox"/> Fellow subsidiary (i.e. subsidiary of the holding company of the Money Lender)	
<input type="checkbox"/> Others : (please specify)	_____ _____
Signature : _____	
Name : _____	
Position : _____	
Name of Money Lender : _____	
Date : _____	
<small>(Please record particulars of each appointed third party on a separate sheet.)</small>	

Licensing Condition 2 – (1)

➤ Unless the third party

- has been appointed by the money lender as third party

and

- has confirmed in writing to the money lender that he:

- has not charged and will not charge any fees, however named, from the intending borrower

and

- has not otherwise agreed with the intending borrower that the intending borrower pays or would pay any fees, however named, to any other party whether for the purchase of any goods or services or not

otherwise, the money lender shall not grant any loan to the intending borrower.



Licensing Condition 2 – (2)

Annex 3 of Guidelines on Licensing Conditions of Money Lenders Licence

Sample form on confirmation by appointed third party on the charging of fees

Confirmation from appointed third party

To: *(Name of licensee)*

I / We *(Name of appointed third party)* refer to the application of *(Name of intending borrower)* (“the intending borrower”) for a loan from you and hereby confirm that:

- (a) I / We have not charged, recovered, demanded or received and will not charge, recover, demand or receive any fees, charges, reward or consideration, however named, from the intending borrower for or relating to the procuring, negotiation, obtaining or application of the loan or guaranteeing or securing the repayment of the loan; and
- (b) I / We have not otherwise agreed with the intending borrower that, for or relating to the loan, the intending borrower pay 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.

Signature:

Name:

Date:



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MONEY LENDERS SECTION

Licensing Condition 3 – (1)

- 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 of the appointed third party**.
- The third party 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.



Licensing Condition 3 – (2)

Forms for reporting information of appointed third parties can be downloaded from the Companies Registry's website (www.cr.gov.hk)

(Major services > Licensing of Money Lenders > Appointing Third Parties for the Granting of Loans)

The screenshot displays the Companies Registry website's 'Appointing Third Parties for the Granting of Loans' page. The breadcrumb trail at the top reads: Home > Major Services > Licensing of Money Lenders > Appointing Third Parties for the Granting of Loans. The left sidebar lists various services under 'Licensing of Money Lenders', with 'Appointing Third Parties for the Granting of Loans' highlighted. The main content area features a heading 'Appointing Third Parties for the Granting of Loans' and a notice stating that from 1 December 2016, licensed money lenders should not grant loans to appointed third parties who have not yet appeared on the Register. Below this, it lists three forms for reporting information: (1) Notice of Particulars of Third Party Appointed by Licensed Money Lenders, (2) Notice of Changes in Particulars of Appointed Third Party of Licensed Money Lenders, and (3) Notice of Termination of Appointment of Appointed Third Party of Licensed Money Lenders. Each form is available in Word and PDF formats.

Form Name	Download Format
Form ML-ATP-1	WORD
Form ML-ATP-1	PDF
Form ML-ATP-2	WORD
Form ML-ATP-2	PDF
Form ML-ATP-3	WORD
Form ML-ATP-3	PDF



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Licensing Condition 3 – (3)

List of appointed third parties can be found from the Companies Registry's website (www.cr.gov.hk)

(Major services > Licensing of Money Lenders > Searches > Search on List of Third Parties Appointed by Licensed Money Lenders)



The screenshot displays the Companies Registry website's search interface. The main heading is "Search on List of Third Parties Appointed by Licensed Money Lenders". Below this, a breadcrumb trail shows the navigation path: Home > Major Services > Licensing of Money Lenders > Searches > Search on List of Third Parties Appointed by Licensed Money Lenders. A sidebar on the left contains a menu with options: Licensing of Money Lenders, Governing Authorities, Searches (selected), Search on Licensed Money Lenders, Search on List of Third Parties Appointed by Licensed Money Lenders, Calculator - Effective Interest Rate, Application, Appointing Third Parties for the Granting of Loans, Publications, and Forms. The main content area is titled "Search on List of Third Parties Appointed by Licensed Money Lenders in relation to the Granting of Loans". It includes a paragraph explaining that since December 2016, lenders must check for appointed third parties before granting loans. It also states that the list of appointed third parties is available for viewing and downloading free of charge. At the bottom, there are two links for downloading the list in Excel format: "List of third parties appointed by licensed money lenders in relation to the granting of loans (in alphabetical order of English names of Appointed Third Parties)" and "List of third parties appointed by licensed money lenders in relation to the granting of loans (in alphabetical order of English names of licensees)".



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MONEY LENDERS SECTION

Licensing Condition 4

- The money lender shall not knowingly allow or permit any person# to charge, recover, demand or receive any fees, however named, from any borrower or intending borrower.

Any person includes the money lender, or his partner, employer, employee, principal or agent or any person acting for him or any appointed third party.



- E.g. Purchase of goods or services or charging processing/administrative fee
- No fee charging provision can be contained in the third party agreement

Licensing Condition 5 – (1)

- **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 interest rate expressed as a rate per cent per annum and the total amount of interest payable
 - amounts of repayments, periodically and in total, under the agreement
 - the possible consequences for any default in repayment, including:
 - the taking into possession and sale of any security involved; and
 - any overriding right of the money lender to demand an immediate repayment
- The money lender must keep **written or video or audio records** which show that he complies with the requirements under this condition.



Licensing Condition 5 – (2)

Annex 6 of Guidelines on Licensing Conditions of Money Lenders Licence

Sample form for recording
explanation of terms of loan
agreement given to intending
borrower



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Confirmation of explanation of loan agreement by money lender

I confirm that I have explained to the intending borrower at the time and place set out below all the terms of the following loan 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.

Loan agreement / Contract no. / Reference No.	
Name of Intending Borrower	
Date of explanation	
Time	
Venue	

Signature of staff : _____

Name of staff : _____

Position of staff : _____

Name of Money Lender : _____

Acknowledged by intending borrower

Signature : _____

Name of Intending
Borrower : _____

Date : _____

Licensing Condition 5 – (3)



- Money lenders should clearly explain to the intending borrower **all** the terms and conditions of the loan agreement, but not merely the crucial part of the loan agreement.
- Even where the intending borrower states that there is no need for an explanation, the money lenders should still comply with the requirement to provide an explanation before entering into any loan agreement.
- Licensing Condition 5 covers all kinds of money lenders including the money lenders who establish business relationship with borrowers by a non-face-to-face approach and keep records in video or audio form.

Licensing 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 :
 - 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
- 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**.
- The money lender must keep **records** which show that he complies with this requirement and the provisions of the **Personal Data (Privacy) Ordinance**.



Licensing Condition 7

- The money lender shall not accept a subsidized flat provided by the **Hong Kong Housing Authority** as collateral for the loan unless the borrower has produced to the money lender:
- 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
 - the **written approval of the Director of Housing** granting approval to mortgage or charge the said flat



Licensing Condition 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**”
and
 - immediately followed by the number of the money lender's licence.

放債人牌照號碼： XXXX/2023



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Licensing Condition 9 – (1)

- Any advertisement in relation to the money lending business whether in textual, audio or visual form, must :
 - be fair and reasonable and not contain misleading information; and
 - contain
 - ▣ money lender's telephone hotline for handling complaints; and
 - ▣ a risk warning statement

“忠告：借錢梗要還，咪俾錢中介”

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

- ▣ The risk warning statement must be in the same language as that of the advertisement or relevant part thereof, and clearly audible in the audio part of the advertisement.



Licensing Condition 9 – (2)

- To ensure that the advertisement is fair and reasonable and does not contain misleading information, the advertisement :

Must not contain information that is misleading or deceiving.

Must not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks.

Must not disguise, omit, diminish or obscure any relevant fact which will result in the information or message being insufficient, unclear, unfair or misleading.

Any important information **must** be in conspicuous text and placed in a conspicuous position in the advertisement.

Should not carry information that understates the costs of borrowing and overstates the ease of borrowing.



Licensing Condition 9 – (3)

- For the display or broadcast of risk warning statement for different types of advertisements (1)

Advertisement in print

- Displayed-
 - ▣ in text in at least 50 per cent of the font size; and
 - ▣ in the same font type and colouras the other contents of the advertisement that bear the largest font size



Licensing Condition 9 – (4)

- For the display or broadcast of risk warning statement for different types of advertisements (2)

Audio-visual advertisement

- Should be in clear contrast in colour with the background or backdrop of the advertisement:

Where it appears in an **independent screenshot**

- should be displayed visually at the end of the advertisement
- for at least **3 seconds**
- with a clear read-out for the same duration

Where it appears **throughout the entire advertisement**

- should be shown clearly at the bottom of the screen
- the height of each **Chinese character** of the statement be at least **1/15** of the screen
- the height of the **capital letters** of the English statement be at least **1/20** of the screen
- with a clear read-out in the same pace as other contents of the advertisement



Licensing Condition 9 – (5)

- For the display or broadcast of risk warning statement for different types of advertisements (3)

Internet Advertisement

Website banner (links to another website)

- Display of warning statement on the landing page
 - ▣ in text in at least 50 per cent of the font size; and
 - ▣ in the same font type and colour as the other contents that bear the largest font size on the landing page

Advertisements with a static screen on the internet

Guidance for advertisement in print applies

Audio-visual advertisement on the internet

Guidance for the display of warning statement in audio-visual advertisements applies



Licensing Conditions 8 and 9



- Advertisements related to money lending business (including all kinds of publicity materials) shall comply with **Licensing Conditions 8 and 9**.
- Ensure to display the **valid** money lender's licence number in advertisements.
- The advertisement must contain a **complaint hotline**. Application hotline or enquiry hotline is not equivalent to complaint hotline.
- The **name of the money lender as specified in the licence** (not only a business name) must be shown in the money-lending advertisements (s. 26 of the Money Lenders Ordinance).
- If an advertisement states that certain loans are “Interest-free”, “0% interest”, etc., it will give the impression that there are no interest or monthly fees. If a monthly administrative or handling fee is charged, the advertisement would be misleading.
- Money Lenders' posts on the social media (including but not limited to its pictures, videos and captions) may be regarded as one or more advertisements depending on the actual situation. Money lenders must ensure that such posts comply with **Licensing Conditions 8 and 9**.



Licensing Conditions 10 – (1)

➤ The money lender and his debt collectors shall not:

- try to recover debts, whether directly or indirectly, from anyone (e.g. referees, borrowers' family members or friends) unless such person is in law indebted to him
- harass anyone, adopt unlawful or improper debt collection practices

➤ The money lender shall:

- ensure personal data collected are protected against unauthorized or accidental access, processing, erasure or other use by any debt collectors
- comply with the Personal Data (Privacy) Ordinance (Cap. 486)
- 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
- keep updated and accurate records of the debt collection activities of his debt collectors during the term of the licence#
(# records should include the dates and methods of the debt collection activities)



Licensing Conditions 10 – (2)



- Whether the debt collector complies with the law and the relevant requirements under Condition 10 in his debt collection activities is a factor for determination of whether the money lender is a fit and proper person to carry on business as a money lender.
- Money lenders must exercise proper care and diligence to monitor the debt collection activities of their debt collectors.
- Debt collectors should not be given a free hand as to debt recovery procedures.

Licensing Conditions 11

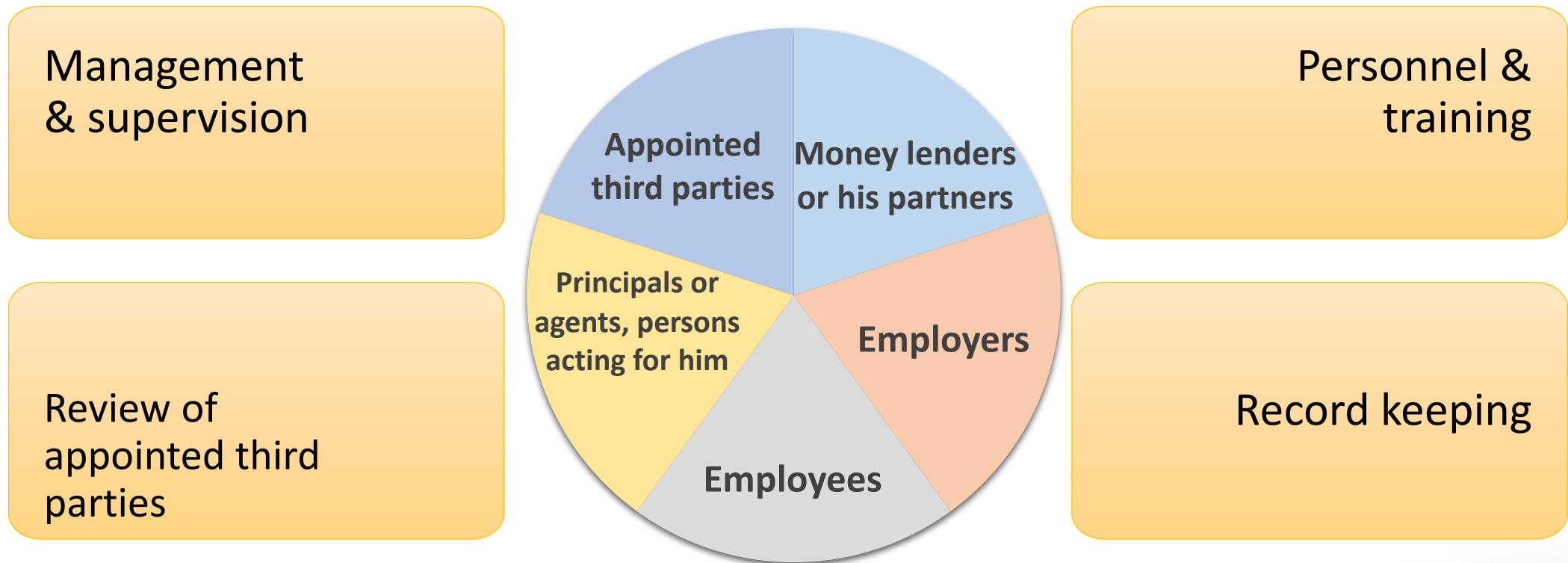
- The money lender shall provide information relating to his money lending business during the term of the licence as may be required by the Registrar of Money Lenders or the Commissioner of Police **within such time as specified**.



e.g. annual exercise for collection of financial information and thematic surveys in which the Registrar of Money Lenders requires the money lenders to participate

Licensing Conditions 12

- The money lender must establish and maintain **proper systems and procedures** to ensure that **the following parties** shall be informed of and observe the licensing conditions and the provisions of the Money Lenders Ordinance.



Licensing Conditions 13 – (1)

- Where any referee is provided in respect of the loan application, the money lender shall, **before entering into any agreement for loan**:
 - ask the intending borrower to provide the written consent signed by the referee(s) confirming his/her agreement to act as referee in respect of the loan application; and
 - attach the written consent to the loan agreement.
- 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.

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 (e.g. for identification purpose of the intending borrower before entering into the loan agreement).



Referee is not for debt collection or for contacting the borrower after the loan agreement has been entered into.

Licensing Condition 13 – (2)

Annex 5 of Guidelines on Licensing Conditions of Money Lenders Licence

Sample form on written consent by referee for loan application



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<u>Written Consent by Referee for Loan Application</u>	
To: <i>(Name of licensed money lender)</i> ("money lender")	
(1) Referee's Information	
Name	
Address	
Contact Telephone Number	
Relationship with Intending Borrower	
(2) Intending Borrower's Information	
Name	
Contact Telephone Number	
(3) Details of the Loan Application	
Type of loan	
Loan amount	HKD
<p>1. I, the above-named referee, hereby consent to act as the referee for the above intending borrower in respect of the above loan application.</p> <p>2. I understand that my role as a referee is confined to providing, on a voluntary basis and upon request by the money lender, information about the intending borrower in respect of the above loan application. I have no legal or moral liabilities in respect of the loan as a referee.</p> <p>Signature of the Referee: _____</p> <p>Name: _____</p> <p>Date: _____</p>	

Licensing Conditions 14

➤ The money lender must-

- comply with the **Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Licensed Money Lenders**; and
- assess the money laundering/terrorist financing risk of their businesses, develop, and implement policies, procedures and controls on the following:

The Guideline can be downloaded from
CR's website:
(Major Services > Licensing of Money
Lenders > Publications)

Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Licensed Money Lenders

Risk
Assessment

Customer
due diligence
measures

Ongoing
monitoring
of customers

Suspicious
transactions
reporting

Record
keeping

Staff training

Independent
audit
function



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Licensing Conditions 15 – (1)

- Before entering into agreement for or before granting any significant increase in the amount of loan under an agreement for **unsecured personal loan**, the money lender shall 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 the intending borrower's or borrower's:

Current income and expenditure

Ability to make repayments under the loan agreement

as they fall due over the life of the loan agreement

without having to borrow to meet the repayments

without the repayments having a significant adverse impact on the overall financial situation



Licensing Conditions 15 – (2)

Assessment must be reasonable (1)

- The money lender must base the affordability assessment on sufficient information available to him at the time of conducting the assessment.
- The extent and scope of the assessment, the steps that the money lender must take and the evidence to be taken into account, are dependent upon, and proportionate to, the individual circumstances of each case.
- The money lender should adopt a common sense approach and decide what is appropriate and proportionate in the circumstances of a particular case.



Licensing Conditions 15 – (3)

Assessment must be reasonable (2)

➤ Factors for consideration in the assessment:

Total amount of the principal and interest payable

Duration of the term for repayment of the loan

Frequency and amounts of the repayments

Interest rate

Purpose of obtaining the loan

Employment or business of the intending borrower or borrower

Current credit and financial information on the intending borrower or borrower

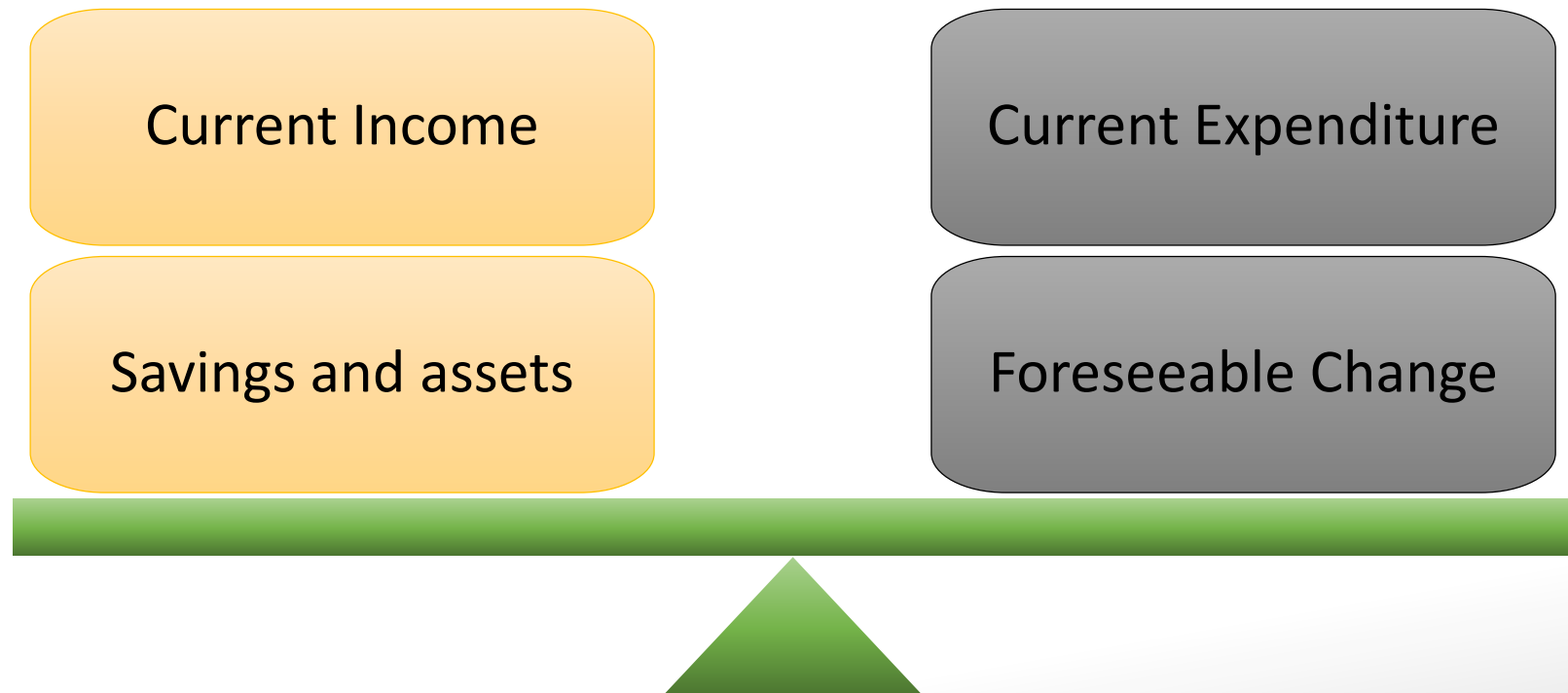
Any other potential adverse consequences for the intending borrower or borrower arising under the loan agreement from a failure to make a repayment by the due date



Licensing Conditions 15 – (4)

Assessment on current income and expenditure

- Must take reasonable steps to determine the amount, or make a reasonable estimate, of the current income and expenditure of the intending borrower or borrower:



Licensing Conditions 15 – (5)

- The money lender must also keep **written or video or audio records** which show that the requirements under this condition have been complied with.
- The licensee should establish, implement and maintain clear and effective written policies and procedures and set out the principal factors it will take into account in carrying out the assessment.



Licensing Conditions 15 – (6)



- Self-declaration of income and expenditure by the borrower or intending borrower is not an affordability assessment. The money lender must base the assessment on sufficient information available with evidence to show the assessment is carried out by the money lender, e.g. by signing and dating the written assessment
- Assessment record must show the factors that the money lender has considered, especially the special factors.
- The money lender must ensure the information shown in assessment matches the information provided by intending borrower or borrower (e.g. information from loan applications, proof of income etc.).
- The money lender should adopt a common sense approach and decide the reasonableness of the information provided by the intending borrower or borrower. The money lender should require the intending borrower or borrower to provide relevant supporting document, if appropriate, and keep copies of the supporting documents.

Extension or renewal of loan agreement



- In addition to new loan agreements, the above-mentioned licensing conditions relating to loan agreement also apply to the **extension or renewal of loan agreements**.
- When entering into any extension or renewal of loan agreements, money lenders are also required to comply with the relevant licensing conditions.

The Companies Registry has issued:

- Guidelines on Licensing Conditions of Money Lenders Licence; and
- Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Licensed Money Lenders

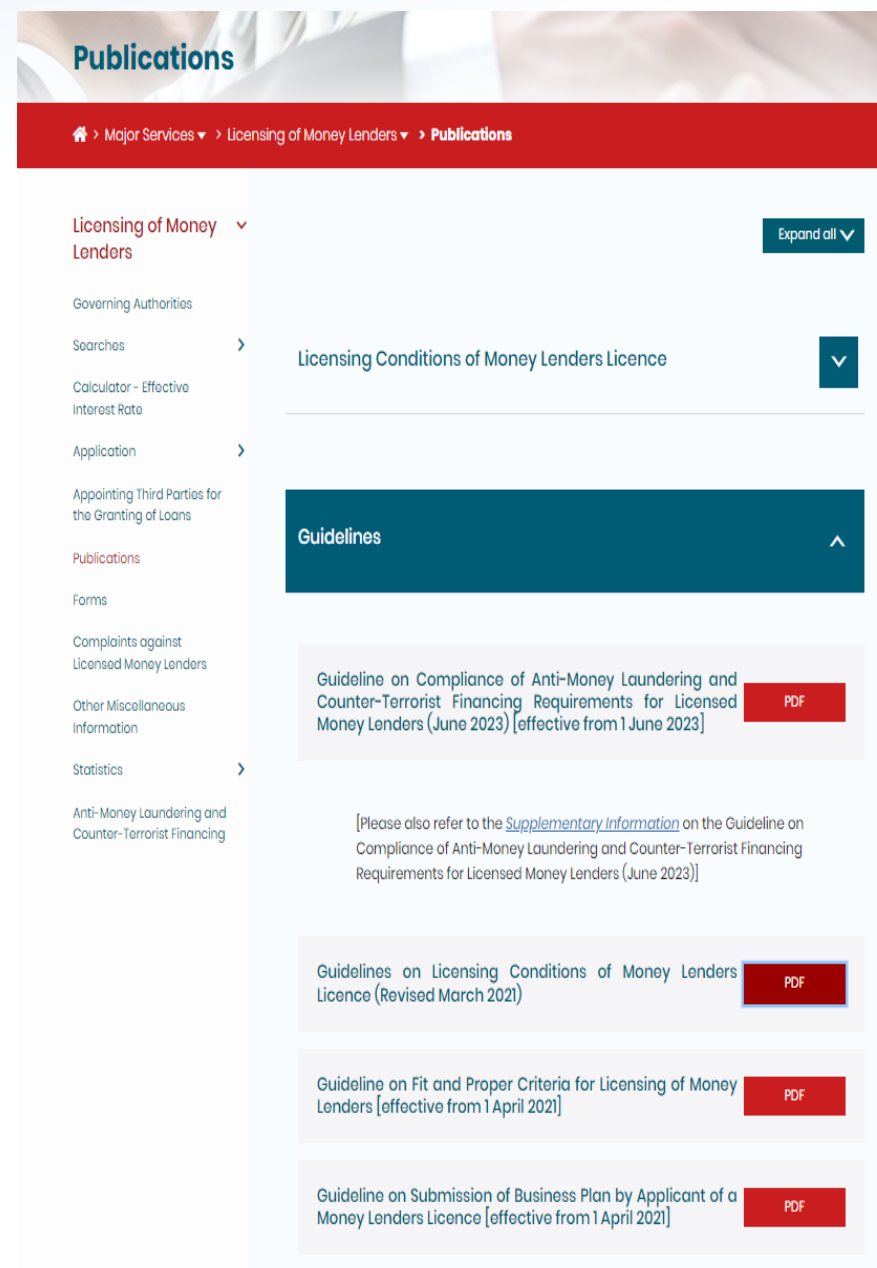
Other Guidelines:

- Guideline on Fit and Proper Criteria for Licensing of Money Lenders
- Guideline on Submission of Business Plan by Applicant of a Money Lenders Licence

(CR's Website: www.cr.gov.hk > Major services > Licensing of Money Lenders > Publications > Guidelines)

Enquiry Hotline: 2867 2634

Email Address: mlu@cr.gov.hk



The screenshot displays the 'Publications' page on the Companies Registry website. The breadcrumb trail at the top reads: Home > Major Services > Licensing of Money Lenders > Publications. A sidebar on the left lists various categories: Licensing of Money Lenders (selected), Governing Authorities, Searches, Calculator - Effective Interest Rate, Application, Appointing Third Parties for the Granting of Loans, Publications, Forms, Complaints against Licensed Money Lenders, Other Miscellaneous Information, Statistics, and Anti-Money Laundering and Counter-Terrorist Financing. The main content area features a 'Guidelines' section with a list of documents, each with a PDF icon. The documents listed are: 'Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Licensed Money Lenders (June 2023) [effective from 1 June 2023]', 'Guidelines on Licensing Conditions of Money Lenders Licence (Revised March 2021)', 'Guideline on Fit and Proper Criteria for Licensing of Money Lenders [effective from 1 April 2021]', and 'Guideline on Submission of Business Plan by Applicant of a Money Lenders Licence [effective from 1 April 2021]'. A note above the last three documents states: '[Please also refer to the [Supplementary information](#) on the Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Licensed Money Lenders (June 2023)]'.



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Thank you !

www.cr.gov.hk