

## 2024

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



# Part 1

# Overview of Licensing Conditions of Money Lenders Licence

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Companies Registry
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# 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)



公司註冊處 放債人註冊辦事處 COMPANIES REGISTRY MONEY LENDERS SECTION

# Licensing Condition 1 – (2)

> If YES, the money lender shall:

### Licensing Condition 1(c)(ii)

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)

### Licensing Condition 1(c)(iii)

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

### Licensing Condition 1(c)(iv)

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)	(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)
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:	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:
(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);	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.
(2) The name and address of the third party are as follows:  Name of third party 1:  Address of third party 1:	Signature:  Name:  Date:
Name of third party 2:	*Delete where appropriate

# 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

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



# Licensing Condition 2 – (1)

- > Unless the third party
  - has been appointed by the money lender as appointed 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 or agree to 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:



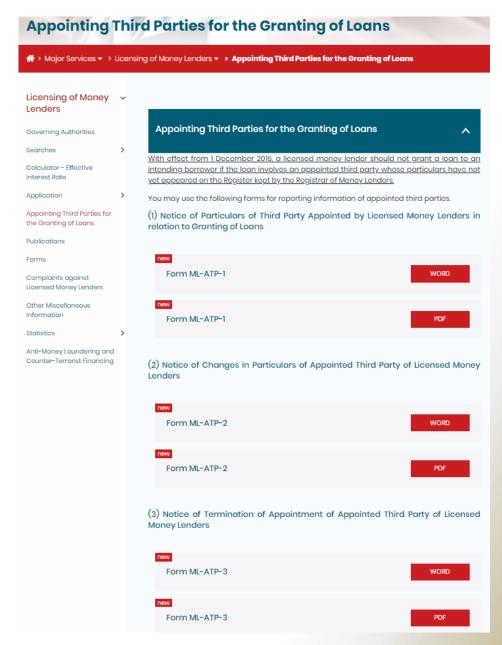
# Licensing Condition 3 – (1)

- 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)

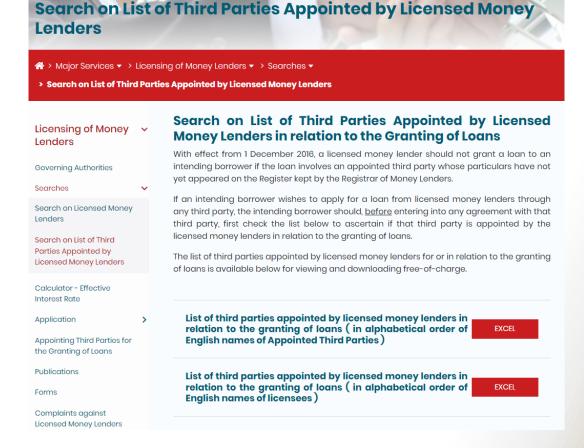
(Major services > Licensing of Money Lenders > Appointing Third Parties for the Granting of Loans)



# Licensing Condition 3 – (3)

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

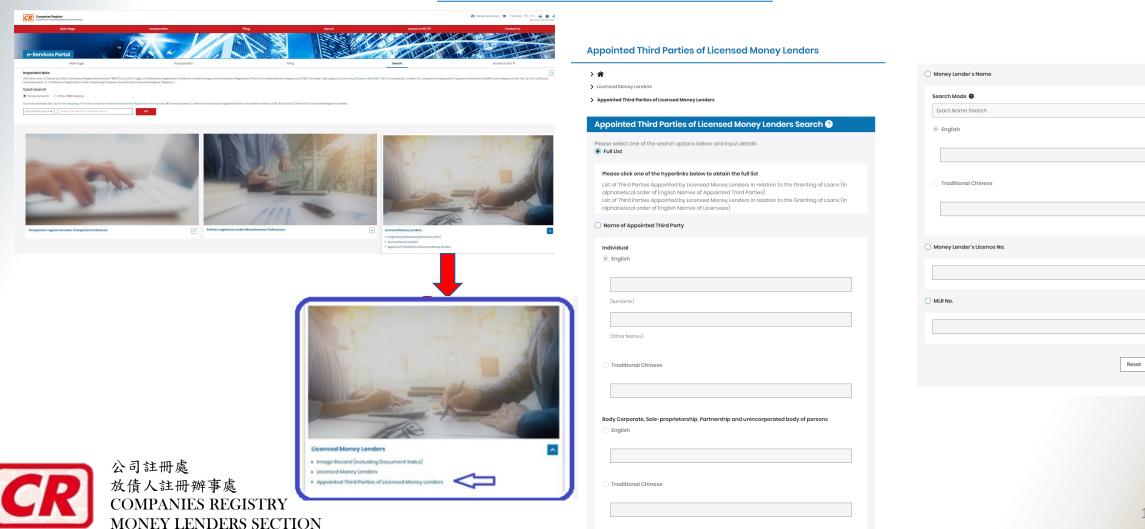
(Major services > Licensing of Money Lenders > Searches > Search on List of Third Parties Appointed by Licensed Money Lenders)





# Licensing Condition 3 – (4)

Particulars of appointed third parties can be searched from the e-Services Portal of the Companies Registry (www.e-services.cr.gov.hk)



➤ 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.

### ➤ Points to note:



- Borrowers shall not be required to purchase goods or services
- Borrowers shall not be charged with 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

### 公司註冊處 放債人註冊辦事處 COMPANIES REGISTRY MONEY LENDERS SECTION

#### 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 -
  - 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:		
	Name of Stall .		
	Position of staff:		
	Name of Money Lender :		
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1CKI	nowledged by intending bo	<u>rrower</u>	
	Signature :		
	Signature.		
	Name of Intending		
	Borrower:		
	Date :		

# Licensing Condition 5 – (3)

### Points to note:



- 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 money lenders who establish business relationship with borrowers by a non-faceto-face approach and keep records in video or audio form.

- 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.

- 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 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.

- 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/2024

# 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 colour
  - as 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
- with the height of each Chinese character of the statement be at least 1/15 of the screen
- with 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**

### Points to note

- 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 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 Condition 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<sup>#</sup> of the debt collection activities of his debt collectors during the term of the licence
    - (# records should at least include the dates and methods of the debt collection activities)



# Licensing Condition 10 – (2)

### Points to note



- 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.

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.



**Examples:** 

Annual exercise for collection of financial information, thematic surveys and quarterly return on personal loans in which the Registrar of Money Lenders requires the money lenders to participate

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.

Management & supervision

Review of appointed third parties

Appointed third parties

Principals or agents, persons acting for him

Employees

Employees

Personnel & training

Record keeping

# Licensing Condition 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).



- Point to note:
  - 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

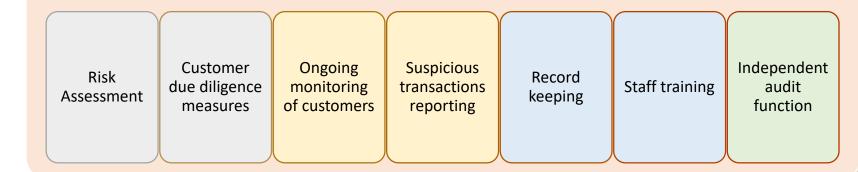
### Written Consent by Referee for Loan Application To: (Name of licensed money lender) ("money lender") (1) Referee's Information Name Address Contact Telephone Number Relationship with Intending Borrower (2) Intending Borrower's Information Name Contact Telephone Number (3) Details of the Loan Application Type of loan HKD Loan amount 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. 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. Signature of the Referee:



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



# Licensing Condition 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 Condition 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 Condition 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 Condition 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:

**Current Income** 

**Current Expenditure** 

Savings and assets

Foreseeable Change



# Licensing Condition 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 Condition 15 – (6)

### Points to note



- 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:

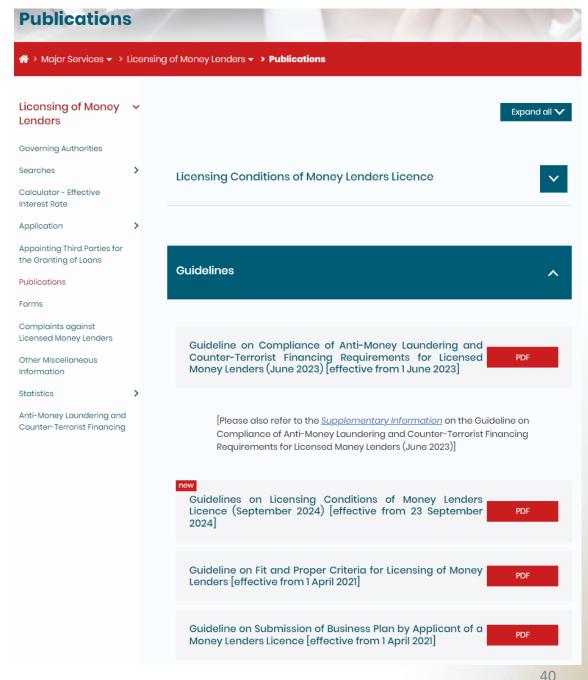
- Guideline on Fit and Proper Criteria Licensing of Money Lenders
- Guideline on Submission of Business Plan by Applicant of a Money Lenders Licence

(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





# Thank you!