



公司註冊處
COMPANIES REGISTRY

2022

Anti-Money Laundering Seminar for Licensed Money Lenders



公 司 註 冊 處
COMPANIES REGISTRY

Part 1

Overview of Licensing Conditions of Money Lenders

Ms Fanny LAM
Deputy Registry Manager
Companies Registry
23 November 2022

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 following:

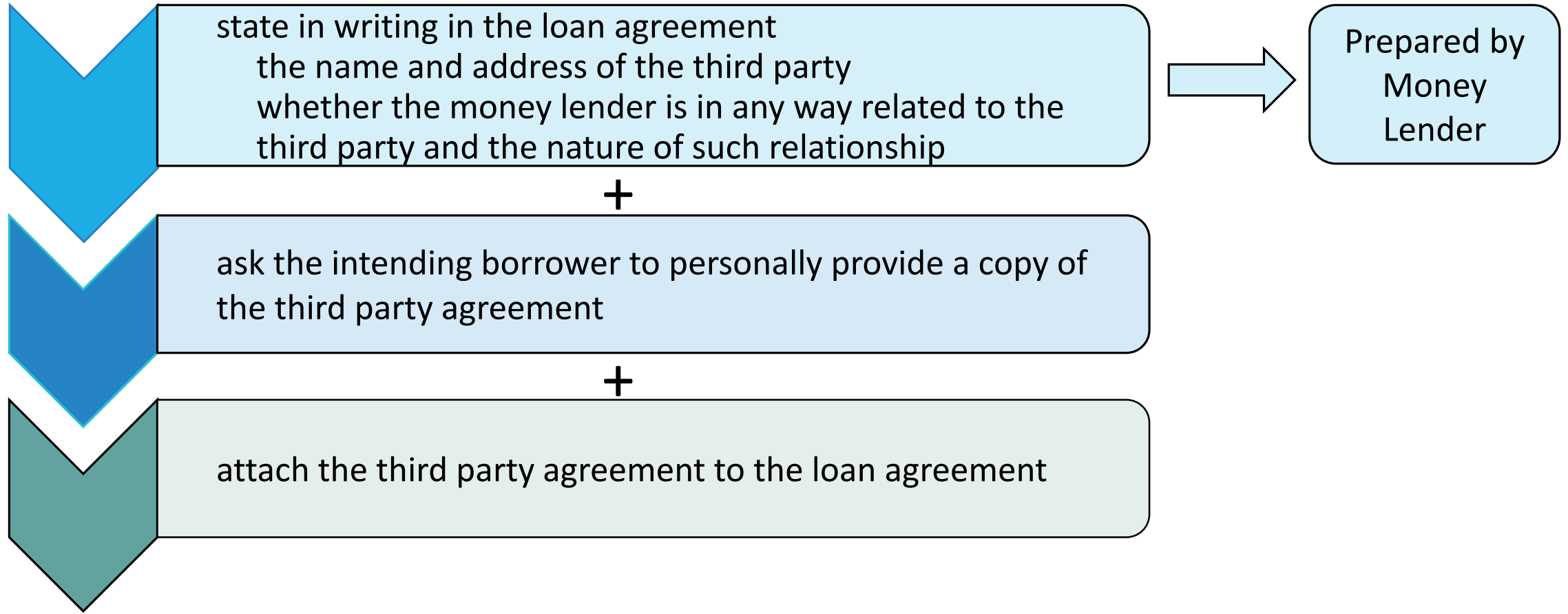
Procuring, negotiation, obtaining or application
of the loan

OR

Guaranteeing or securing the repayment
of the loan

Licensing Condition 1 - (2)

➤ If **YES**, the money lender shall:



Licensing Condition 2

- **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 3

- 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.

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)



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.

E.g. Purchase of goods or services or charging processing/administrative fee

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.



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)



- 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 .
- 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/2022



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 Conditions 8 & 9



- Advertisements related to money lending business (including all kinds of publicity materials) shall comply with **Licensing Conditions 8 & 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 license** (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.

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 of the debt collection activities of his debt collectors during the term of the licence



Licensing Condition 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 Condition 11

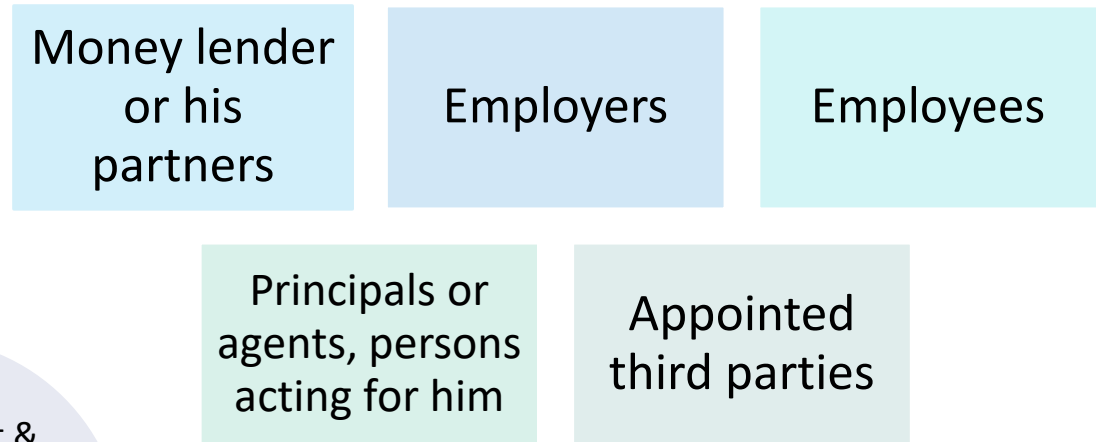
- The money lender shall provide information relating to his money lending business during the term of the licence as may be required by the Registrar of Money Lenders or the Commissioner of Police **within such time as specified**.



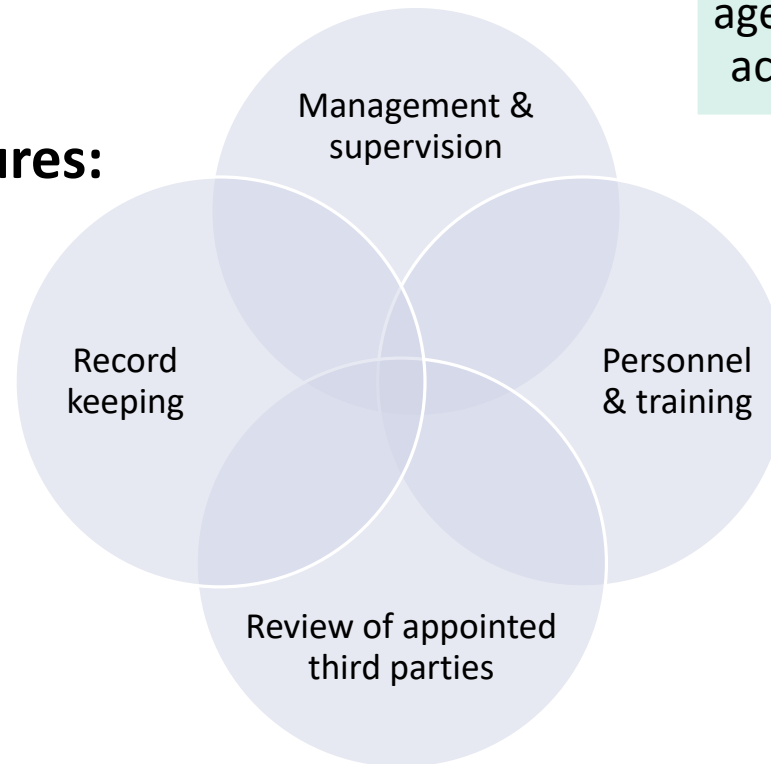
e.g. annual exercise for collection of financial information and thematic surveys in which money lenders are required to participate

Licensing Condition 12

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



Proper systems and procedures:



Licensing Condition 13

- 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).

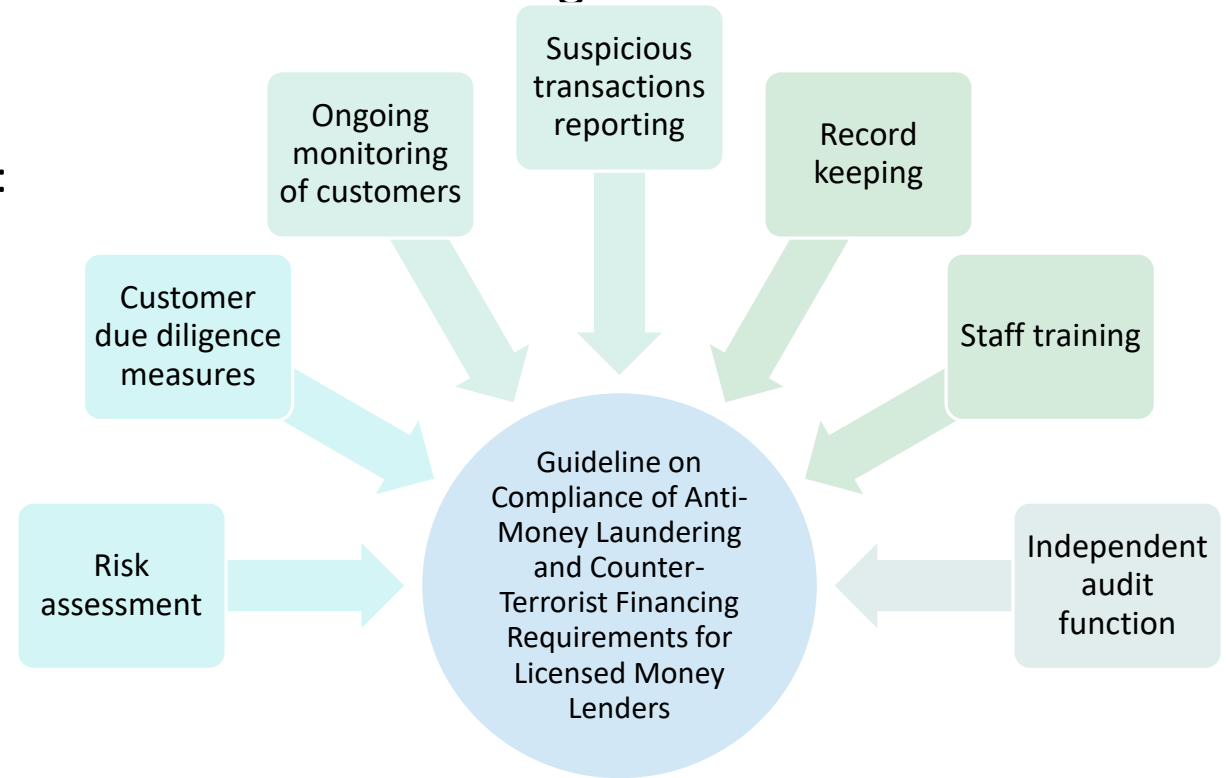


Referee is not for debt collection or for contacting the borrower after the loan agreement has been entered into.

Licensing Condition 14

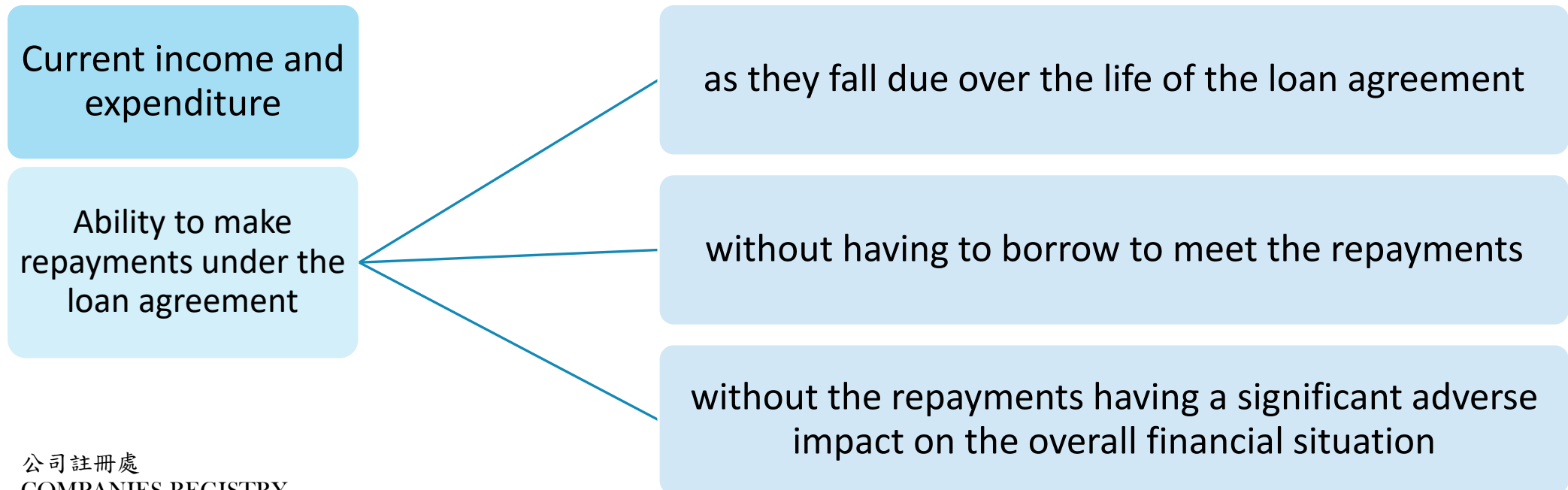
- The money lender must-
 - comply with the **Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Licensed Money Lenders**; and
 - assess the money laundering/terrorist financing risk of their businesses, develop, and implement policies, procedures and controls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

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



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 person 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:



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

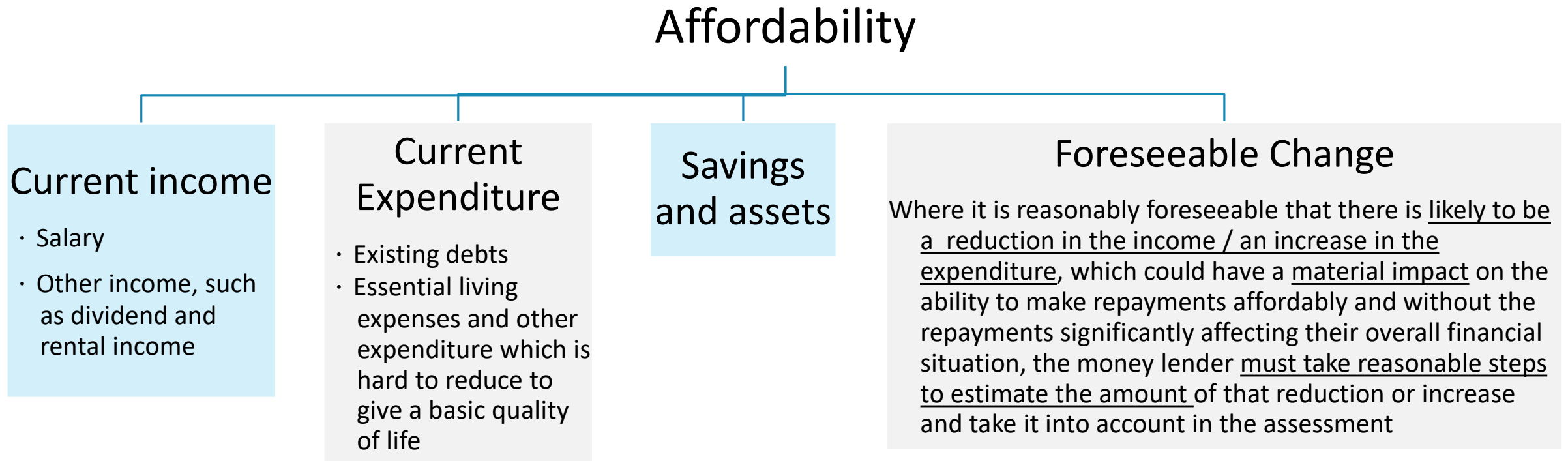
Current credit and financial information on the intending borrower or borrower

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:



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.



- 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.
- 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.

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

