

For Information

Legislative Council Panel on Financial Affairs

Matters Related to the Charging of Fees and Advertising Practices of Financial Intermediaries

This information note sets out for Members' reference the regulatory provisions currently applicable to the charging of fees and advertising practices of financial intermediaries offering services of arranging loans, as well as the enforcement and public education efforts of relevant departments and organisations.

Charging of Fees

Regulatory Provisions

2. At present, the Money Lenders Ordinance (MLO) (Cap. 163) already contains a provision that prohibits the charging of fees other than interest by money lenders and their associated financial intermediaries. Section 29(10) of the MLO expressly provides that a money lender, as well as his principal, agent, or any person acting for or in collusion with the money lender, shall not recover any expenses or receive any reward from a borrower (or intending borrower) for procuring, negotiating or obtaining any loan made or guaranteeing or securing the repayment thereof. Offenders are liable to a maximum fine of \$100,000 and two years' imprisonment.

3. Section 24 of the MLO prohibits any person from lending money at an excessive interest rate. The provision provides that any person, whether a money lender or not, who lends money at an effective rate of interest exceeding 60% per annum commits an offence and shall be liable on conviction on indictment to a maximum fine of \$5 million and ten years' imprisonment. The provision aims at combating loansharking activities and an agreement for the repayment of loan shall not be enforceable if the effective rate of interest exceeds 60% per annum. The "interest" mentioned in that provision includes any amount, by whatever name called, in excess of the principal, the amount of which has been or is to be paid or payable to the money lender in consideration of or otherwise in respect of the loan.

4. In addition, licensed money lenders involved in improper acts with financial intermediaries may also be subject to revocation of licence or refusal of licence renewal. Section 11 of the MLO provides that where the Licensing Court receives an objection to an application (including a renewal application) for a money lender's licence and it is not satisfied that the applicant is a fit and proper person to carry on business as a money lender, the Licensing Court shall not approve the application.

Enforcement

5. The Police are very concerned about the illegal practices related to money-lending activities and have taken actions to combat these malpractices in recent years. Between May 2014 and February 2015, the Police mounted operations codenamed Operation SMARTHOOK, Operation FIRECOBBLER and Operation TOPCLIMBER respectively to target contraventions of the MLO by money lenders and financial intermediaries. A number of money-lending companies and financial intermediaries were searched under these operations, resulting in the arrest of 80 persons in total and the seizure of loan application forms, related documents, computers and cash totalling around \$1.5 million.

6. The Police have successfully applied the MLO to prosecute licensed money lenders and financial intermediaries involved in illegal fee charging. In one of the cases, a licensed money lender which colluded with a financial intermediary to charge fees in the name of "administration fee" was convicted last year under section 24 of the MLO, namely lending money at an effective rate of interest which exceeds 60% per annum. The case illustrates that attempts to circumvent the interest rate cap by charging of fees can be dealt with by existing legislation. Moreover, the Police have previously applied to the Licensing Court to revoke the licences of money lenders or object to their renewal applications. Last year, the Police made an objection to the Licensing Court in relation to a renewal application by a licensed money lender who had colluded with a financial intermediary to charge an excessive interest rate through charging "administration fee". The money lender's licence renewal application was subsequently rejected by the Licensing Court. In another case, a licensed money lender was suspected to have colluded with a financial intermediary to demand reward from borrowers (the intermediary had previously been found guilty of the same offence) and had been involved in several cases of improper debt collection practices. The Licensing Court, having

considered the Police's application, revoked the money lender's licence last year.

Advertising Practices

Regulatory Provisions and Enforcement

7. Section 30(1) of the MLO provides that a person (including any money lender and any financial intermediary associated or unassociated with a money lender) shall not, by any false, misleading or deceptive statement, representation or promise, or by any dishonest concealment of material facts, fraudulently induce or attempt to induce a person to borrow money from a money lender. Offenders are liable to a maximum fine of \$10,000 and six months' imprisonment. If the acts of the financial intermediaries involve criminal elements such as blackmail, criminal intimidation, false imprisonment, deception, triad-related activities or theft, the Police may take actions against these illegal acts in accordance with the Crimes Ordinance (Cap. 200), the Theft Ordinance (Cap. 210) and the Organized and Serious Crimes Ordinance (OSCO) (Cap. 455), including applying the OSCO as appropriate to seek an enhanced sentence, freeze or confiscate proceeds obtained by illegal means, etc. The Police will continue to proactively combat these illegal acts and will seek to raise public awareness by publicising widely the successful enforcement actions and prosecutions.

8. Financial intermediaries that fall within the coverage of the Trade Descriptions Ordinance (TDO) (Cap. 362) commit an offence if they engage in a commercial practice prohibited by the Ordinance, such as "false trade descriptions" or "misleading omissions". The maximum penalty is a fine of \$500,000 and imprisonment for five years. Members of the public may report suspected contraventions of the TDO to the Customs and Excise Department (C&ED). The C&ED and the Consumer Council have been proactively handling complaints (including those involving financial intermediaries) within their ambits. They have also maintained close liaison with other relevant bodies for taking appropriate enforcement or follow-up actions.

Protecting the Personal Data of Bank Customers

9. According to the Hong Kong Monetary Authority (HKMA), if a bank customer suspects that his/her personal data or financial information has been stolen or abused, he/she should report to the Police

or the Office of the Privacy Commissioner for Personal Data (PCPD) with relevant details to facilitate investigation or follow-ups. They may also lodge a complaint with the banks concerned. For complaints received by the HKMA, it will enquire and follow up with the banks concerned in accordance with established procedures. Meanwhile, the HKMA has expressly requested banks to report suspected illegal acts to law enforcement agencies as soon as practicable. Where a bank comes across any suspected case that someone has impersonated as the bank or its employees, it should immediately report the case to the law enforcement agencies for follow-up and investigation by the Police.

10. The PCPD has received a number of complaints in which data subjects were approached by those claiming to be employees or former employees of banks or financial institutions through direct marketing calls to promote loan referral service. It transpired in the telephone conversations that the callers possessed the personal data (including financial status) of the data subjects. According to the PCPD, a person who uses a data subject's personal data in direct marketing without taking the actions specified in section 35C of the Personal Data (Privacy) Ordinance (PD(P)O) (Cap. 486) or without obtaining the data subject's consent under section 35E of the Ordinance commits an offence and is liable on conviction to a maximum fine of \$500,000 and three years' imprisonment.

11. Section 64 of the PD(P)O also provides that a person (including any existing or former employee of a bank or financial institution) commits an offence if he/she discloses a customer's personal data obtained from a data user (i.e. his or her employing bank or financial institution) without the data user's consent, with an intent to obtain gain in money or other property, whether for the benefit of himself/herself or another person, or to cause loss in money or other property to the data subject. The person is liable on conviction to a maximum fine of \$1 million and to five years' imprisonment.

12. According to the PCPD, there is so far no evidence of disclosure of customers' personal data (including financial status) to unrelated third parties by employees of banks or financial institutions in the cases it has handled. Meanwhile, the Police handled a suspected case of passing off as bank staff to promote loan service in March 2015 and raided a financial intermediary which was registered in the name of an accounting service company. As a result of the raid, the Police arrested 19 persons and seized loan application forms, related documents, computers and phone sets.

Public Education

13. The Government and related organisations have been advising the public through different means of the points to note when taking out loans. The Police has produced and aired in the “Police Magazine” Programme a simulated case with the theme of combatting loan deception. The HKMA has also been promoting financial consumer education through various channels and means, with a view to helping the public to be “smart and responsible” when using different kinds of banking products and services, such as personal loans and credit cards.

14. The Investor Education Centre (IEC) and the Consumer Council will conduct public education activities that remind the public of the need to pay close attention to the relevant terms and conditions, including those concerning fees and charges, before entering into any loan agreement or financial contract. The Consumer Council from time to time promotes the importance of “smart consumption” through its “CHOICE” magazine, website, etc., reminding consumers to calmly consider objective elements, and make enquiries and comparisons before they spend. On loan services, the Council provided a general overview of the market situation in the March 2014 issue of its “CHOICE” magazine and advised consumers to pay attention to loan terms and practices of financial intermediaries. Starting from June 2015, the IEC will make use of regular columns in newspapers and publications to draw the public’s attention to the points to note and the risk involved in borrowing when using property as collateral as well as cases of excessive fees charged by financial intermediaries. The IEC will also enhance its website content regarding borrowing, such as points to note when borrowing from licensed money lenders, and the risks involved when the loans are made through financial intermediaries. Last but not least, the IEC will employ various channels such as e-newsletters and outreach activities to step up educational activities related to borrowing.

Conclusion

15. Members are invited to note the contents of this paper.

**Financial Services Branch
Financial Services and the Treasury Bureau
June 2015**