

立法會
Legislative Council

LC Paper No. CB(1)736/15-16(04)

Ref: CB1/PL/FA

Panel on Financial Affairs

Meeting on 11 April 2016

**Background brief on regulatory arrangements to tackle malpractices by
financial intermediaries for money lending**

Purpose

This paper provides background information on the regulatory regime for money lenders and related financial intermediaries. It also summarizes the views and concerns expressed by Legislative Council ("LegCo") Members on related issues during the 2014-2015 and 2015-2016 sessions.

Background

2. LegCo Members and the public have expressed grave concern about unscrupulous business practices of some companies (some of which are associated with money lenders or financial intermediaries) in promoting or arranging loan services for customers in recent years. The unscrupulous business practices engaged by the aforesaid companies include inducing persons to borrow money, charging exorbitant handling fees or very high interest rates for loans, etc. Some cases have also revealed suspected leakage of personal data of bank customers as staff of the companies can accurately tell the victims' personal particulars when contacting them. LegCo Members have urged the Administration to review the current regulatory regime for money lenders and associated companies and related ordinances to combat the above malpractices, as well as step up efforts in enhancing public awareness of fraudulent practices.

Regulatory provisions on licensing of money lenders and charging of fees, advertising practices and use of personal data by related financial intermediaries

Licensing of money lenders

3. Under the Money Lenders Ordinance (Cap. 163) ("MLO"), a money lender's licence is granted by the Licensing Court. MLO provides for the application procedures and requirements for the grant or renewal of a money lender's licence, the factors the Licensing Court will consider in processing an application for or renewal of the license (e.g. fit and proper person to carry on business as a money lender), and the powers of the Police to inspect records or documents of money lenders and investigate suspected cases where a money lender has committed an offence under the Ordinance.

Charging of fees

4. MLO currently prohibits the charging of fees other than interest by money lenders and their associated financial intermediaries. Section 29(10) of 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 demand any reward from a borrower or intending borrower for procuring, negotiating or obtaining any loan. Section 24 of MLO further prohibits any person from lending money at an excessive interest rate, i.e. effective interest rate exceeding 60% per annum. The "interest" mentioned in the 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.

Advertising practices and criminal acts of financial intermediaries

5. Section 30(1) of MLO provides that a person (including any money lender and any financial intermediary) 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. Moreover, financial intermediaries that fall within the coverage of the Trade Descriptions Ordinance (Cap. 362) ("TDO") commit an offence if they engage in a commercial practice prohibited by the Ordinance, such as "false trade descriptions" or "misleading omissions".

6. If the acts of 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 (Cap. 455).

Protection of personal data of bank customers

7. According to the Office of the Privacy Commissioner for Personal Data ("PCPD"), a person who uses a data subject's personal data in direct marketing without taking the actions specified in section 35C¹ of the Personal Data (Privacy) Ordinance (Cap. 486) ("PD(P)O") or without obtaining the data subject's consent under section 35E of the Ordinance commits an offence. Section 64 of PD(P)O also provides that a person (including any existing or former employee of a bank or financial institution) commits an offence if the person discloses a customer's personal data obtained from a data user (i.e. the person's 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 the person or another person, or to cause loss in money or other property to the data subject.

Major views and concerns expressed by Members

8. The Panel on Financial Affairs ("FA Panel") has not held discussion on the policy of regulating financial intermediaries in conducting money lending business in recent years. Upon request of a Member in April 2015, the Administration provided an information paper in June 2015 on the regulatory provisions 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 organizations.² During the briefing by the Administration on relevant policy initiatives in the Chief Executive's 2016 Policy Address at the FA Panel meeting on 15 February 2016, some Members enquired about the Administration's work in enhancing regulation of money lenders and related financial intermediaries. On 6 July 2015, the Panel on Housing discussed the subject of illegal lending activities in connection with refinancing of Home Ownership Scheme ("HOS") flats with premium unpaid. In addition, Members raised a number of questions on the business practices and regulation of money lenders and related financial intermediaries during Council meetings in the 2014-2015 and 2015-2016 sessions. The major views and concerns expressed by Members are summarized in the ensuing paragraphs.

¹ Section 35C of PD(P)O requires that the data user must (a) inform the data subject that he/she intends to so use the personal data, and may not so use the data unless he/she has received the data subject's consent to the intended use; (b) provide the data subject with information in relation to the intended use, including the kinds of personal data to be used and the classes of marketing subjects in relation to which the data is to be used; and (c) provide the data subject with a channel free-of-charge to communicate the data subject's consent to the intended use.

² LC Paper No. CB(1)955/14-15(02) which is hyper-linked in the Appendix.

Enforcement and public education

9. Members have expressed concerns about the malpractices of money lenders and related financial intermediaries, including charging exorbitant fees, impersonating employees of banks or financial institutions in inducing persons to borrow, misleading HOS flat owners into refinancing their properties, threatening borrowers in recovering fees and interests, etc. They have sought details on the enforcement actions taken by the Administration to combat the above practices, and the public education efforts to enhance public awareness.

10. On enforcement actions, the Administration has responded that the Police are concerned about the illegal practices related to money lending activities and have taken actions to combat the malpractices in recent years. From 2014 to September 2015, the Police conducted a number of special operations against malpractices of money lenders and related financial intermediaries. From 2012 to end November 2015, the Police instituted 45 prosecutions under MLO, resulting in the conviction of 24 persons. Regarding illegal commercial practices such as "false trade descriptions" and "misleading omissions" under TDO, the Customs and Excise Department received a total of 78 complaints involving financial intermediaries from July 2013 to May 2015, and referred appropriate cases to the Police for follow-up under MLO.

11. On public education, the Administration has replied that the Investor Education Centre ("IEC"), Consumer Council and Police have been advising the public through different channels of the points to note when taking out loans, including reminding the public the importance to understand thoroughly the terms and conditions concerning the fees and charges in any loan agreements or financial contracts. Loan and debt management have been a focus of IEC's education efforts. Since June 2015, IEC has launched a series of education activities to draw public attention to the risks involved in borrowing. IEC has also worked with social welfare institutions to promote debt management in the community. IEC will continue to enhance public education on money lending through the mass media and its e-newsletters.

Timetable for reviewing existing regulation

12. Members have enquired about the timetable for reviewing MLO to address possible loopholes in MLO and other relevant legislation which had rendered the Police's enforcement actions against malpractices of intermediaries ineffective, and measures in the interim to enhance protection for borrowers.

13. The Administration has responded that it attaches great importance to tackling malpractices involving money lenders and related financial intermediaries, and will take forward the review in a prudent manner. The Administration is studying the Police's experience in taking enforcement actions

under MLO and will not rule out the possibility of reviewing the relevant provisions in MLO. Meanwhile, the Police will continue to take enforcement actions against malpractices of money lenders and financial intermediaries. The Administration will also enhance public education on related issues, including increasing resources to enhance support services provided by non-governmental organizations to people in financial distress.

Licensing regime for money lenders

14. Members have enquired about the Administration's plans to reform the licensing system for money lending in order to enhance the standard of the industry. The Administration has advised that the existing legislation empowers the relevant authorities to take into consideration a set of relevant factors when examining licence or renewal applications. For instance, the Licensing Court will examine information on the money lender's directors and major shareholders, its financial situation and bank accounts, and proof of its capability in managing the money lending business; whether the money lender is fit and proper to carry on the money lending business; and whether the grant of licence is contrary to the public interest. A licence may be revoked if the Licensing Court considers that the licensee has ceased to be a fit and proper person or has been in serious breach of any condition of the licence.

Latest development

15. The Administration will brief FA Panel on the review of the existing regulatory arrangements for money lenders and intermediaries at the meeting on 11 April 2016.

Relevant papers

16. A list of relevant papers is in the **Appendix**.

List of relevant papers

Date	Event	Paper/minutes of meeting
17 December 2014	Hon Paul TSE raised a written question on regulation of financial intermediaries	Hansard
13 May 2015	Hon WONG Kwok-kin raised a written question on mortgage loans taken out for Home Ownership Scheme ("HOS") flats with premium unpaid	Hansard
15 June 2015	The Administration's written reply to a letter dated 20 April 2015 from Hon Alice MAK on issues relating to licensed money lenders	Hon Alice MAK's letter (Chinese version only) (LC Paper No. CB(1)955/14-15 (01)) Administration's reply (LC Paper No. CB(1)955/14-15 (02))
17 June 2015	Hon Alice MAK raised an oral question on regulation of financial intermediaries	Hansard
6 July 2015	The Panel on Housing discussed refinancing of HOS flats with premium unpaid	Administration's paper (LC Paper No. CB(1)1037/14-15 (03)) Minutes (LC Paper No. CB(1)1263/14-15) Follow-up paper (LC Paper No. CB(1)1192/14-15 (01))

Date	Event	Paper/minutes of meeting
11 November 2015	Hon Alice MAK raised an oral question on business practices of money lenders and financial intermediaries	Hansard
16 December 2015	Hon Kenneth LEUNG raised an oral question on financial intermediaries using confusing names	Hansard
15 February 2016	The Panel on Financial Affairs was briefed on the policy initiatives in the 2016 Policy Address	Administration's paper (LC Paper No. CB(1)440/15-16 (03))