

立法會 *Legislative Council*

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Panel on Financial Affairs

Meeting on 5 February 2018

Updated 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, measures taken by the Government in 2016 to tackle the malpractices of financial intermediaries for money lending ("intermediaries") and the latest developments. It also summarizes the views and concerns expressed by Legislative Council ("LegCo") Members on related issues since 2014.

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 intermediaries) in promoting or arranging loan services for customers in recent years. The unscrupulous business practices engaged by such 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 which has been used fraudulently by others resulting in the persons being deemed as a loan referee without their knowledge. 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.

Licensing of money lenders and charging of fees by related financial intermediaries

Licensing and regulation 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.

4. Section 30(1) of MLO provides that a person (including any money lender and any 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, intermediaries engaging in a commercial practice prohibited by the Trade Descriptions Ordinance (Cap. 362) such as "false trade descriptions" or "misleading omissions" commit an offence and are liable to criminal sanctions.

Charging of fees

5. MLO currently prohibits the charging of fees other than interest by money lenders and their associated 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.

Measures adopted by the Government to tackle the malpractices of financial intermediaries for money lending

6. According to the Government, one of the problems in the Police's enforcement actions against the malpractices of intermediaries is that the unscrupulous intermediaries and the money lenders involved have used various

means to conceal their relationship, thus making the collection of evidence for prosecution difficult. The Government also considers it necessary to raise public awareness of unscrupulous intermediaries. In this connection, the Government adopted in 2016 a four-pronged approach which consisted of the below measures to tackle the issue:

(a) Enhanced enforcement

The Police have conducted a number of special operations against malpractices of intermediaries and arrested people involved and instituted prosecutions since 2014, and will continue to step up enforcement actions against malpractices of intermediaries.

(b) Enhanced public education and publicity

The Government has rolled out since 2016 a series of activities (including distribution of information pamphlets and posters, broadcasting of an Announcement of Public Interest, and the launch of online education activities) to raise public awareness of the risks involved in applying for a loan through intermediaries and to alert the public of the usual deceptive tactics of unscrupulous intermediaries.

(c) Enhanced advisory services to the public

The Government continues to promote public awareness of the availability of advice, counselling and other supportive social welfare services provided by non-governmental organizations so that people in need can seek timely assistance through proper channels. The Social Welfare Department has commenced a three-year pilot programme to provide assistance/counsel through dedicated telephone hotlines to people in financial distress by two subvented non-government organizations (viz. Caritas-Hong Kong and Tung Wah Group of Hospitals).

(d) More stringent regulatory measures

The Licensing Court has imposed more stringent licensing conditions on money lender licences since 1 December 2016 with the objectives to ensure effective enforcement of the ban on separate fee charging, better protect privacy, enhance transparency and disclosure of information by money lenders, and promote prudent money lending of borrowers. The Register of Money Lenders ("RML")¹ has been expanded to include relevant information of the appointed intermediaries of money lenders to

¹ The Register of Money Lenders ("RML") is maintained by the Registrar of Companies.

facilitate checking by prospective borrowers.² Details of the licensing conditions are set out in **Appendix I**.

7. According to the Government, the Companies Registry ("CR") has been conducting inspections since January 2017 on money lenders and monitoring their advertisements to ascertain their compliance with the more stringent licensing conditions. As at 31 March 2017, a total of 258 site inspections have been conducted. For cases where non-compliance has been identified, CR has taken follow-up actions, including issuing letters to the money lenders concerned requiring rectifications within a specified period, and, where necessary, arranging a second site inspection on the money lenders concerned.³ The Police also received fewer complaints against unscrupulous intermediaries during the four-month period between December 2016 and March 2017.

8. The Government has planned to commence a review of the new regulatory measures in the third quarter of 2017 with a view to identifying changes in the modus operandi of unscrupulous intermediaries after taking into account operational data and relevant information for the first six months of implementation of the measures. The Government aims to come up with initial findings and observations by around end-2017 or early 2018 to facilitate further consideration of whether any new measures will be necessary.

Major views and concerns expressed by Members

9. The Government briefed the Panel on Financial Affairs ("FA Panel") on the proposed measures to tackle the malpractices of intermediaries on 11 April 2016, and updated members on the developments after implementation of the new measures on 29 May 2017. Members also discussed related issues at the briefing on the policy initiatives of the Financial Services and the Treasury Bureau in the Chief Executive's 2017 Policy Address on 6 February 2017, and during special meetings of the Finance Committee in April 2017 for the examination of the Estimates of Expenditure 2017-2018. In addition, the Panel on Housing discussed the subject of illegal lending activities in connection with refinancing of Home Ownership Scheme flats with premium unpaid at the meeting on 6 July 2015. The major views and concerns expressed by Members at these meetings are summarized in the ensuing paragraphs.

² As at 31 March 2017, RML contains relevant information of a total of 706 appointed intermediaries of money lenders, and 239 (or 13% of all) licensed money lenders have appointed such intermediaries.

³ The Companies Registry has issued letters to 38 money lenders as at 31 March 2017.

Regulation of money lenders and their related financial intermediaries and the additional licensing conditions

10. Members in general welcomed the more stringent regulatory measures. Some Members expressed concern that money lenders might circumvent the new regulatory requirements by claiming that they had no knowledge about the improper acts of their appointed intermediaries. There were views that the Administration should tighten regulation over unscrupulous money lenders and associated intermediaries, including increasing sanctions, and conducting review of the licensing regime of money lenders. Some Members further suggested introducing measures to protect the public such as imposing mandatory requirements of cooling-off period and audio-recording of the loan obtaining process. On the other hand, some Members were concerned that overly stringent regulatory measures might affect viability of the money lending industry and create difficulties to people in financial distress in obtaining loans.

11. The Government considered that it was of utmost importance to tackle the situation whereby unscrupulous intermediaries concealed their relationship with money lenders in order to circumvent the statutory prohibition on separate fee charging set out in MLO. The additional licensing conditions on money lenders aimed to ensure effective enforcement of the statutory prohibition on separate fee charging on borrowers, and would prevent money lenders from using the excuse of lack of knowledge to conceal their relationship with intermediaries. The Government would continue to enhance public education to remind members of the public to stay vigilant of the fraudulent acts of intermediaries. The Government also advised that in formulating new regulatory measures, it would strike a balance between enhancing regulation and ensuring business viability of law-abiding money lenders and intermediaries.

12. As regards the licensing regime for money lenders, the Government advised that the existing legislation empowered the relevant authorities to take into consideration a set of relevant factors when examining licence or renewal applications. For instance, the Licensing Court would 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 was fit and proper to carry on the money lending business; and whether the grant of licence was contrary to the public interest. A licence might be revoked if the Licensing Court considered that the licensee had ceased to be a fit and proper person or had been in serious breach of any condition of the licence.

13. Regarding the suggestion of introducing mandatory requirements of cooling-off period and audio-recording of the loan obtaining process, the

Government remarked that the proposal would require careful consideration and it would discuss the issue with the industry. It also pointed out that some borrowers with an urgent need of liquidity would wish to use the loans immediately rather than wait for the expiry of the cooling-off period. Therefore, borrowers must be given the right to waive the cooling-off period, which might be abused by some unscrupulous operators to render this measure unable to achieve its intended effect.

Proposal of introducing a licensing system for financial intermediaries associated with money lenders

14. Some Members had urged the Administration to regulate intermediary activities through introducing a licensing regime for the intermediaries and standardizing their names so that the public would be better aware of their identities. The regime could also restore public confidence in law-abiding intermediaries. Some other Members enquired if the Administration would consider banning the operation of intermediaries.

15. The Government emphasized that its focus was to enable effective enforcement of the statutory ban on separate fee charging and enhance public education to raise public awareness of malpractices of intermediaries. It was envisaged that the proposed measures could tackle the most important problems caused by unscrupulous intermediaries. The Government also advised that the proposal of introducing a licensing system for intermediaries would give rise to many complicated issues (like how to define an "intermediary"), which would require careful consideration and consultation with the stakeholders and the wider public. On the suggestion of banning the operation of intermediaries, the Government considered that there was no compelling reason to do so as some intermediaries operated properly and their practices complied with the requirements of MLO.

Review of the Money Lenders Ordinance

16. A number of Members urged the Administration to conduct a comprehensive review of MLO and amend the out-dated provisions, including the current cap of 60% per annum on the effective interest rate for a loan. Some Members also suggested amending MLO to tighten regulation over debt collection activities.

17. The Government advised that adjusting the cap on effective interest rate under MLO might not be an effective means to address the issue of separate fee charging by money lenders and intermediaries. The additional licensing conditions required money lenders to formally appoint their intermediaries so that any fee charged by the intermediaries had to be reflected in the interest

charged by the money lenders rather than for the intermediaries to separately charge the borrowers. The Government also advised that the Police had followed up cases involving improper debt collection practices of money lenders. In some cases, the Police had issued warning letters to or instituted prosecutions against the money lenders concerned.

Advertisements on money lending

18. Members pointed out that many advertisements of money lenders and intermediaries contained misleading information, and called on the Administration to tighten the regulation of advertisements on money lending. For instance, the Administration might make reference to restrictions imposed on the advertisements of tobacco products to help discourage imprudent borrowing.

19. The Government advised that the health warning, namely "You have to repay your loans. Don't pay any intermediaries", aimed to alert the public about the problem of over-borrowing. The Government would evaluate the effectiveness of the measures including the health warning after their implementation.

Protection of privacy

20. Some Members expressed concern about the effectiveness of the measure in protecting personal data privacy of prospective borrowers due to the difficulty in tracing the sources of the leakage of personal data. The Government advised that to better protect personal data privacy, money lenders who intended to use personal data provided by a third party for their business purposes was required to obtain written confirmation from the third party that it had obtained the personal data in accordance with the relevant legislation. Money lenders must also not use such personal data if they had reasonable suspicion that the data had been obtained through improper means.

Implementation and efficacy of the new regulatory measures

21. Some Members enquired about details of site inspections conducted by CR on money lenders, including details of the non-compliance cases in which CR had issued letters to the lenders concerned requiring rectifications within a specified period.

22. The Government advised that CR conducted site inspections on licensed money lenders (regardless of whether they had a retail branch or not) on an on-going basis, and would conduct more than one inspection on individual money lenders if necessary. On the non-compliance cases identified by CR, about

60% related to failure to keep proper records showing that the money lenders had explained the terms and conditions of the loan agreements to borrowers. The Government added that among such cases, only a few licensed money lenders were involved in unsecured personal loan business. As regards sanctions imposed on licensed money lenders for non-compliance with the new licensing requirements, CR advised that it would take prompt follow-up actions for cases of non-compliance. For the vast majority of cases, the licensed money lenders concerned had either completed rectification actions or had been taking steps to rectify the non-compliances. For serious cases of non-compliance, CR could consider seeking the Licensing Court's order to revoke the money lenders' licences, and/or make referral to the Police as appropriate.

23. Some Members suggested refining the expanded RML so that besides showing all the intermediaries appointed by a specific money lender, it would include information on the money lenders by whom a specific intermediary had been appointed to facilitate the public in identifying whether an intermediary had been appointed by any licensed money lenders. The Government advised that the current RML had already shown the particulars as suggested by Members.

Council questions and motion passed at Council meeting

24. At the Council meeting of 8 February 2017, Members passed a motion moved by Hon Alice MAK on "Urging the Government to step up the regulation of money lenders and financial intermediaries" as amended by Hon LEUNG Yiu-chung and Hon Kenneth LEUNG. Members urged the Government to, inter alia, comprehensively review and amend MLO to expand its ambit to the regulation of companies engaged in money lending-related business, and to impose more stringent licensing conditions for money lenders licence and formulate more stringent procedures for vetting licence applications. Since 2014, Members have raised a number of questions on the business practices and regulation of money lenders and related financial intermediaries at Council meetings. Details of the above motion and LegCo questions are given in the hyperlinks in **Appendix II**.

Latest development

25. The Government will brief FA Panel on the review of the effectiveness of the four-pronged approach to tackle money lending-related malpractices at the meeting on 5 February 2018.

Relevant papers

26. A list of relevant papers is in **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
1 February 2018

Additional licensing conditions imposed by the Licensing Court on money lender licences on 1 December 2016

Licensing Condition	Intended Effect(s)
<p>(a) Where the borrower has entered into or signed any agreement with an intermediary for or in relation to his application for a loan from a money lender, the money lender may grant the loan only if, inter alia, -</p> <ul style="list-style-type: none"> (i) it has already appointed the intermediary and such appointment has been reported to the Registrar of Money Lenders and included in the Register of Money Lenders for public inspection; (ii) the intermediary has not charged any fees on the borrower or required the borrower to pay any fees to any person (whether alleged to be for the purchase of any goods or services or not); and (iii) it has obtained a copy of the intermediary agreement from the borrower. 	<p>Under these new requirements, a money lender must undertake due diligence checks before entering into a loan agreement and the relationship between the money lender and the intermediary concerned will be made public, which will help the public and law-abiding money lenders guard against fraudsters and facilitate effective enforcement of the statutory ban on separate fee charging on borrowers.</p>
<p>(b) All money lenders must take appropriate steps to ensure that their appointed intermediaries would not charge any fees on the borrowers or require the borrowers to pay any person (whether alleged to be for the purchase of any goods or services or not), and they must establish and maintain a proper system so as to ensure that their appointed intermediaries are informed of the relevant provisions of the Money Lenders Ordinance (Cap. 163) and the relevant requirements under the money lender licences in respect of the conduct of money lending business involving intermediaries.</p>	<p>To help guard against collusion between unscrupulous intermediaries and money lenders and facilitate the evidence gathering efforts of the Police in their investigation of an alleged offence.</p>

Licensing Condition	Intended Effect(s)
<p>(c) A money lender must not accept a subsidized flat provided by the Hong Kong Housing Authority ("HA") as collateral unless the borrower has produced either a written confirmation from HA 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 to mortgage or charge the said flat.</p>	<p>To prevent breaches of the relevant provisions of the Housing Ordinance (Cap. 283) in respect of the use or acceptance of a subsidized flat provided by HA as collateral.</p>
<p>(d) All money lenders must keep written or video or audio record which shows that they have explained to the borrower all the terms and conditions of the loan agreement before entering into such agreement.</p>	
<p>(e) All money lenders must take appropriate safeguard measures before obtaining or collecting any personal data of borrowers from another party or using such personal data for the purposes of their money lending business.</p>	<p>To guard against unlawful disclosure or use of personal data of borrowers.</p>
<p>(f) All advertisements of a money lender in relation to its money lending business, whether in textual or audio or visual form, must contain the following risk warning statement which must be prominent and easily legible in the written or visual part of the advertisement as well as clearly audible in the audio part of the advertisement - "Warning: You have to repay your loans. Don't pay any intermediaries".</p>	

Source: paragraph 3 of the Administration's paper entitled "Implementation of New Measures to Tackle Money Lending-related Malpractices" (LC Paper No. CB(1)221/16-17(01))

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 (pages 3782 – 3785)
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 (pages 10269 – 10273)
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 (pages 13105 – 13110)
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 (pages 1274 – 1280)
16 December 2015	Hon Kenneth LEUNG raised an oral question on financial intermediaries using confusing names	Hansard (pages 2969 – 2973)
15 February 2016	The Panel on Financial Affairs ("FA Panel") was briefed on the policy initiatives in the 2016 Policy Address	Administration's paper (LC Paper No. CB(1)440/15-16 (03))
11 April 2016	The Administration briefed FA Panel on the proposed measures to tackle the malpractices of financial intermediaries	Administration's paper (LC Paper No. CB(1)736/15-16(03)) Minutes (LC Paper No. CB(1)979/15-16)
27 April 2016	Hon Kenneth LEUNG raised an oral question on strengthening regulation of intermediaries and related illegal financial activities	Hansard (pages 7842 – 7845)
11 May 2016	Hon TAM Yiu-chung raised a written question on regulation of money-lending advertisements	Hansard (pages 8661 – 8663)

Date	Event	Paper/minutes of meeting
5 August 2016	The Administration provided an information note on the latest development relating the proposed measures to tackle malpractices by financial intermediaries for money lending	Administration's paper (LC Paper No. CB(1)1158/15-16(01))
2 November 2016	Hon Alice MAK raised a written question on measures to combat unscrupulous business practices of financial intermediaries	Hansard (pages 156 – 160)
9 November 2016	Hon WU Chi-wai raised a written question on regulation of financial intermediaries	Hansard (pages 337 – 341)
30 November 2016	The Administration provided an information note on the implementation of new measures to tackle money lending-related malpractices	Administration's paper (LC Paper No. CB(1)221/16-17(01))
6 February 2017	The Administration briefed FA Panel on the policy initiatives of the Financial Services and the Treasury Bureau featured in the Chief Executive's 2017 Policy Address	Administration's paper (LC Paper No. CB(1)459/16-17(04)) Minutes (LC Paper No. CB(1)788/16-17)

Date	Event	Paper/minutes of meeting
8 February 2017	The Legislative Council passed a motion on "Urging the Government to step up the regulation of money lenders and financial intermediaries"	Wording of the motion passed Progress report
3 April 2017	Members raised questions relating to measures on tackling money lending-related malpractices during the examination of the Estimates of Expenditure 2017-2018	Speaking note of the Secretary for Financial Services and the Treasury
17 May 2017	Hon Alice MAK raised a written question on regulation of online crowdfunding and lending platforms	Hansard (pages 7467 – 7469)
29 May 2017	The Administration briefed FA Panel on developments after implementation of the four-pronged approach for tackling money lending-related malpractices	Administration's paper (LC Paper No. CB(1)993/16-17(04)) Minutes (LC Paper No. CB(1)1402/16-17)
8 November 2017	Hon Paul TSE raised a written question on personal data being used fraudulently by others for loan applications	Hansard (pages 1420 – 1424)
6 December 2017	Hon Paul TSE raised a written question on regulation of finance companies and financial intermediaries	Hansard (floor) (pages 73 – 75)