

立法會
Legislative Council

LC Paper No. CB(1)1005/18-19(02)

Ref: CB1/PL/FA

Panel on Financial Affairs

Meeting on 6 May 2019

**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 Administration to tackle the malpractices of financial intermediaries for money lending ("intermediaries") and the latest developments. It also summarizes the views and concerns expressed by the Panel on Financial Affairs ("FA Panel") related issues since 2016.

Background

2. Legislative Council ("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 include inducing persons to borrow money, charging exorbitant handling fees or very high interest rates for loans, fraudulent use of personal data 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 Administration to tackle the malpractices of financial intermediaries for money lending

6. The Administration has explained that it had adopted a four-pronged approach since 2016 to tackle the problems of malpractices of unscrupulous intermediaries and to raise public awareness of the matter. The measures covered under the four-pronged approach are as follows:

- (a) Enhanced enforcement by the Police
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 Administration has rolled out 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 Administration 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 facilitate checking by prospective borrowers.² Details of the licensing conditions are set out in **Appendix I**.

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

² As at 31 December 2017, 309 (or 15% of all) licensed money lenders had appointed intermediaries. There were around 3 000 such appointments registered with the Companies Registry and shown on RML. These some 3 000 appointments involved 990 appointed intermediaries, i.e. some intermediaries were appointed by multiple licensed money lenders.

7. The Administration conducted a review of the four-pronged approach in the second half of 2017 ("the Review"). According to the Administration, a number of new *modus operandi* adopted by unscrupulous intermediaries had been identified.³ To tackle the new *modus operandi*, the Administration would explore the following further enhancement measures:

- (a) the Companies Registry ("CR") would develop a new sample record form to facilitate money lenders in keeping the records of their explanations on the terms and conditions of loans, and include a statement in the relevant form to remind the prospective borrower to disclose any involvement of intermediary in relation to the loan;
- (b) CR might produce "Notes to Borrowers" that might be given to prospective borrowers by money lenders at first contact or as soon as practicable before entering into a loan agreement. In particular, borrowers should be reminded not to pass any borrowed money to any suspicious third parties; and
- (c) to impose an additional licensing condition that if there was a referee involved in a loan, a money lender was required to obtain such referee's consent to act as a referee through the borrower.

Major views and concerns expressed by Members

8. The Administration briefed FA Panel on the measures to tackle the malpractices of intermediaries and update members on the developments on 11 April 2016, 29 May 2017 and 5 February 2018. FA Panel 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. The major views and concerns expressed by members at these meetings are summarized in the ensuing paragraphs.

Regulation of money lenders and their related financial intermediaries

9. Panel members in general welcomed the introduction of more stringent regulatory measures. Some members expressed concern that money lenders

³ The major *modus operandi* identified by the Administration were:

- (a) instead of charging the borrower a fee for arranging the loan, fraudsters tried to swindle the loan money after the borrowers had successfully obtained a loan; and
- (b) fraudsters would make up different pretexts to deceive the borrowers to pass them the borrowed money and then abscond.

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, by increasing sanctions and conducting review of the licensing regime of money lenders including the imposition of minimum capital requirements. 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 expressed concern that the overly stringent regulatory measures might affect viability of the money lending industry and create difficulties to people in financial distress in obtaining loans.

10. The Administration 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 prevent money lenders from using the excuse of lack of knowledge to conceal their relationship with intermediaries. The Administration would continue to enhance public education to remind members of the public to stay vigilant of the fraudulent acts of intermediaries. The Administration also advised that in formulating new regulatory measures, it would be mindful of the need to strike a balance between enhancing regulation and ensuring business viability of law-abiding money lenders and intermediaries.

11. As regards the licensing regime for money lenders, the Administration advised that the existing legislation empowered the Licensing Court 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.

12. On the suggestion of imposing a minimum capital requirement on money lenders, the Administration pointed out that it might not be justifiable to impose such requirement as capital requirement was a means of prudential supervision for ensuring the financial stability of licensees. Yet money lenders, unlike financial institutions such as banks and insurance companies, did not accept or handle deposits and premium payments from the public.

13. Regarding the suggestion of introducing mandatory requirements of cooling-off period and audio-recording of the loan obtaining process, the Administration remarked that the proposal would require careful consideration and it would discuss the issue with the industry. 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 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 Administration 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. Besides, intermediaries were already required under the measures to be formally appointed by licensed money lenders, and members of the public could verify the identities of intermediaries by checking RML. The Administration also advised that the proposal of introducing a licensing system for intermediaries would give rise to many complicated issues (e.g. 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 Administration 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, and to address possible loopholes arising from the new *modus operandi* of money lenders identified in the Review.

17. The Administration 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 Administration 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. The Administration currently did not have any plan to amend MLO.

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 Administration 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. Moreover, the Administration had rolled out a series of public education and publicity activities (including those targeting young people) to promote the message of prudent borrowing and proper debt management.

Loan referees

20. In respect of the Administration's proposed measure of requiring money lenders to obtain the consent of a loan referee if such a referee was involved in a loan arrangement, while some members agreed that the written consent from the loan referee should be obtained, some other members cast doubt on the need of involving a referee in a loan given that a loan referee, unlike a guarantor, did not have the legal obligation to repay the debts of the borrower in case of default.

21. On the need of involving a referee in a loan, the Administration advised that given the difference in nature between a loan guarantor and a loan referee, and after consultation with relevant stakeholders, it considered that there was no sufficient justification of banning such an arrangement.

Implementation and efficacy of the new regulatory measures

22. 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.

23. The Administration 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, the majority 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 Administration 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.

24. Some members enquired about the Administration's measures to address the changing *modus operandi* of unscrupulous intermediaries identified in the Review, and whether the Administration's proposed measures could regulate money lending activities involving the use of financial technologies ("Fintech") (like online lending platforms).

25. On the tackling of unscrupulous intermediaries' new *modus operandi*, the Administration advised that it would incorporate new messages in the upcoming public education activities to raise public awareness of different deceiving tactics used by fraudsters. As regards the regulation of money lenders running business using Fintech, the Administration pointed out that they were subject to the same licensing and regulatory requirements as traditional money lenders.

26. Some members enquired whether measures had been taken against unscrupulous intermediaries who impersonated as staff members or representatives of a licensed bank to induce prospective borrowers to engage them for arranging loans. The Administration advised that the Hong Kong Monetary Authority was aware of the situation and had required banks to take measures to help the general public identify possible scams. Banks were also prohibited from using referral services provided by intermediaries in respect of applications for retail consumer financial products or services. As regards other loan arrangements, only third parties appointed by a bank could provide referral services to the bank.

Council questions and motion passed at Council meeting

27. 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. The passed motion 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, impose more stringent licensing conditions for money lenders licence, and formulate more stringent procedures for vetting licence applications. Members have also raised a number of questions on the business practices and regulation of money lenders and related financial intermediaries at Council meetings since 2014. Details of the above motion and LegCo questions are given in the hyperlinks in **Appendix II**.

Latest development

28. The Administration will brief FA Panel on its measures to tackle money lending-related malpractices at the meeting on 6 May 2019.

Relevant papers

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

Council Business Division 1
Legislative Council Secretariat
3 May 2019

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)
(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.	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.
(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.	
(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.	To guard against unlawful disclosure or use of personal data of borrowers.
(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".	

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)
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)

Date	Event	Paper/minutes of meeting
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 a written 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)
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)

Date	Event	Paper/minutes of meeting
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)
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
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)

Date	Event	Paper/minutes of meeting
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 (pages 3583 – 3587)
31 January 2018	Hon CHAN Chun-ying raised a written question on combating malpractices of financial intermediaries and regulating the trade	Hansard (pages 6171 – 6174)
5 February 2018	The Administration briefed FA Panel on the review of the new regulatory measures to tackle money lending-related malpractices	Administration's paper (LC Paper No. CB(1)530/17-18(05)) Minutes (LC Paper No. CB(1)883/17-18)
17 April 2019	Hon Kenneth LEUNG raised a written question on regulation of money lenders	Press release