

Code of Practice

September 2018



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PART I - INTRODUCTION

1. Status of the Code of Money Lending Practice

- 1.1 This Code of Money Lending Practice ("Code") is issued by the Hong Kong S.A.R. Licensed Money Lenders Association Limited ("LMLA").
- 1.2 This is a non-statutory Code issued on a voluntary basis. It is to be observed by members of the LMLA ("members") in dealing with their personal customers. It covers specifically money lending services. However, the principles of the Code apply to the overall relationship between members and their customers in Hong Kong.
- 1.3 LMLA expects their respective members to comply with the Code.
- 1.4 The recommendations set out in this Code are supplementary to and do not supplant any relevant legislation, in particular, the Money Lenders Ordinance (Cap.163).
- 1.5 The Code is subject to review and revision from time to time. Unless otherwise shown, this revised edition is effective from September 2018. Members should take active steps to comply with the revised provisions.

2. General Principles

2.1 Equitable and Fair Treatment of Customers

Members should treat all customers equitably, honestly and fairly at all stages of their relationship with the members. Treating customers fairly should be an integral part of the good governance and corporate culture of all members and their authorized agents.

2.2 Disclosure and Transparency

Members and their authorized agents should set out and explain clearly the key features, risks and terms of the products, fees or charges applicable, possible consequences for any default in repayment, and make available the details of these to customers. Additional disclosures, including appropriate warnings, should be developed to provide information commensurate with the nature and risks of the products and services. They should also provide information on conflicts of interest associated with the use by members of their authorized agents through which any product is sold. Appropriate information should be provided at all stages of the relationship with the customer. All financial promotional material should be accurate, honest, understandable and not misleading. Standardised pre-contractual disclosure practices should be adopted where applicable and practicable to allow comparisons between products and services of the same nature. [Amended in September 2018]

Where advice is provided, the advice should be as objective as possible and should in general be based on the customer's profile considering the complexity of the product, the risks associated with it as well as the customer's financial objectives, knowledge, capabilities and experience. Members should inform customers that it is important to provide members with relevant, accurate and available information.

2.3 Financial Education and Awareness

Recognising that customers have their responsibilities in enhancing financial literacy, members should join force with the government, regulatory bodies and other relevant stakeholders to promote financial education and awareness and help existing and future customers to develop the knowledge, skills and confidence appropriately to understand risks, including financial risks and opportunities, make informed choices, know where to go for assistance, and take effective action to improve their own financial well-being. The provision of broad based financial education and information to deepen customers' financial knowledge and capability should be promoted. Clear information on consumer protection, rights and responsibilities should be easily accessible by customers.

2.4 Responsible Business Conduct of Members and Authorized Agents

Members and their authorized agents should have as an objective, to work in the best interest of their customers and be responsible for upholding financial consumer protection. Members should also be responsible and accountable for the actions of their authorized agents and third party service providers. Depending on the nature of the transaction and based on information primarily provided by customers, members should assess the financial capabilities and needs of their customers before offering them a product, advice or service. Staff (especially those who interact directly with customers) should be properly trained and qualified. Members and their authorized agents should endeavour to avoid conflicts of interest. When this cannot be avoided, they should ensure proper disclosure, or have in place internal mechanisms to manage such conflicts, or decline to provide the product, advice or service. The remuneration structure for staff of members and, where appropriate, their authorized agents should be designed to encourage responsible business conduct, fair treatment of customers and to avoid conflicts of interest.

In relation to any fees charged by any authorised agents or any other third parties, members should pay attention to the Additional Licensing Conditions, in particular, conditions 2 and 4 thereof (i.e. the equivalent conditions 2 and 4 of the Merged Licensing Conditions). [Added in September 2018]

2.5 Protection of Consumer Data and Privacy

Members should have in place appropriate control and protection mechanisms to protect customers' financial and personal information. These mechanisms should comply with all applicable legislation and in particular should define the purposes for which the data may be collected, processed, held, used and disclosed. The mechanisms should also acknowledge the rights of customers to be informed about data-sharing, to access data and to obtain the prompt correction and/or deletion of inaccurate, or unlawfully collected or processed data.

2.6 Complaints Handling and Redress

Members and, where appropriate, their authorized agents should maintain and monitor proper systems and procedures for handling complaints and provide customers with reasonable channels to submit claims, make complaints and seek redress that are accessible, fair, accountable, timely and efficient. Such channels should not impose unreasonable cost, delays or burdens on customers. [Amended in September 2018]

2.7 Competition

Members should allow customers to search, compare and, where appropriate, switch between products and members easily and at reasonable and disclosed costs.

2.8 Internal Control

Members should establish and maintain proper systems and procedures to ensure their partners, employers, employees, principals or agents, any persons acting for them and any appointed third parties are informed of and observe the licensing conditions and the provisions of the Money Lenders Ordinance. [Added in September 2018]

2.9 Books and records

All books, records and documents of the money lending business of members must be kept on the premises specified in their money lenders licence. [Added in September 2018]

2.10 Responsibility statement

Members should keep abreast of any updates on laws and regulations governing their conduct. LMLA disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of the Code. [Added in September 2018]

3. Objectives

- 3.1 The Code is intended -
 - (a) to promote good money lenders practices by setting out the minimum standards which members should follow in their dealings with customers;
 - (b) to increase transparency in the provision of money lending services so as to enhance the understanding of customers of what they can reasonably expect of the services provided by members;
 - (c) to promote a stronger culture of treating customers fairly which will ensure customers' interests are taken into account by members in their business dealings with customers; and
 - (d) through the above, to foster customer confidence in the money lending industry.
- 3.2 The above objectives are to be achieved -
 - (a) having regard to the need for members to conduct business in accordance with prudential standards in order to preserve the stability of the money lending industry; and
 - (b) while striking a reasonable balance between customer rights and efficiency of money lending operations.

4. Enquiries

Enquiries about the Code should be addressed to the LMLA. Its current address and contact details are as follows -

The Hong Kong S.A.R. Licensed Money Lenders Association Limited

21/F., Allied Kajima Building 138 Gloucester Road Wanchai Hong Korg Tel: 2827 8281 Fax: 2827 8292 Website: www.lmla.com.hk Email: enquiry@lmla.com.hk

The Code can be viewed or downloaded from the websites of LMLA. All members will make copies of the Code available to customers or inform them how to obtain.

PART II - RECOMMENDATIONS ON MONEY LENDING PRACTICE

Chapter 1 - RELATIONSHIP BETWEEN MEMBERS AND CUSTOMERS

5. Terms and Conditions

- 5.1 Members should make readily available to customers or prospective customers written terms and conditions of a money lending service. Members should be prepared to answer any queries of customers or prospective customers relating to terms and conditions. In cases where the query relates to a service provided by a third party service provider, members may, where necessary, refer the query to the relevant third party service provider after obtaining the customer's consent or direct the customer to contact the third party service provider. Members should thereafter provide assistance to the customer if the customer so requests.
- 5.2 Members should provide written terms and conditions of a money lending service to prospective customers upon application of the money lending service as far as possible. Where the provision of written terms and conditions is not practicable at the point of sale, members should provide key terms and conditions orally to prospective customers and provide a full set of the terms and conditions to the customers as soon as practicable afterwards. Where the provision of written or oral terms and conditions is not practicable at the point of sale, members should inform prospective customers where they can find the terms and conditions (including providing a link to the member's website) and advise them to read and understand the terms and conditions before applying for the money lending service and provide a full set of terms and conditions as soon as practicable afterwards.
- 5.3 The terms and conditions should provide a fair and balanced description of the relationship between the customer and the member.
- 5.4 The terms and conditions should be available in both Chinese and English unless the money lending service is governed by law other than that of Hong Kong or there is little or no demand for bilingual information. Members should use plain language and avoid complex legal and technical terms wherever practicable. Where legal and technical language is used, appropriate explanation should be provided where practicable. The terms and conditions should be presented in a reasonable layout and font size that is readily readable.
- 5.5 The terms and conditions should, where applicable, highlight any fees, charges, relevant interest rates and total amount of interest payable (or the basis on which these will be determined), periodic amount of and total repayment, possible consequences for any default in repayment and the customer's liabilities and obligations in the use of a money lending service. [Amended in September 2018]
- 5.6 In drawing up terms and conditions for money lending services, members should have due regard to applicable laws in Hong Kong, including, in particular, the Money Lenders Ordinance (Cap. 163), the Personal Data (Privacy) Ordinance (Cap. 486), the Control of Exemption Clauses Ordinance (Cap.71), the

Unconscionable Contracts Ordinance (Cap. 458), and the Supply of Services (Implied Terms) Ordinance (Cap.457) and any other prevailing consumer protection legislation.

- 5.7 The terms and conditions should be consistent with this Code. Members should keep terms and conditions under review to ensure they are consistent with this Code.
- 5.8 Members should advise customers to read and understand the terms and conditions when applying for money lending services.
- 5.9 Members should give customers 30 days' notice before any variation of the terms and conditions which affects fees and charges and the liabilities or obligations of customers takes effect. For all other variation, members should give customers reasonable notice before such variation takes effect.
- 5.10 Where the variation involves substantial changes to existing terms and conditions or the changes are very complicated, the member should provide a written summary of the key features of the revised terms and conditions.
- 5.11 Members should issue a full version of the revised terms and conditions to customers if there are sufficient changes to warrant it, regardless of the nature of the changes.

6. Debt Recovery Expenses

- 6.1 Any cost indemnity provision contained in the terms and conditions should only provide for the recovery of costs and expenses which are of reasonable amount and were reasonably incurred.
- 6.2 At the request of customers, members should provide a detailed breakdown of the costs and expenses for which customers are required to indemnify the members.

7. Collection, Use, Holding and Erasure of Customer Information

- 7.1 Members should treat their customers' (and former customers') money lending affairs as private and confidential.
- 7.2 Members should at all times comply with the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") in the collection, use, holding and erasure of customers' information. They should also comply with any relevant codes of practice issued or approved by the Privacy Commissioner for Personal Data giving practical guidance on compliance with the PDPO.
- 7.3 On or before collecting customers' personal information, members should notify customers as specifically as possible of the classes of person to whom they may wish to make disclosure of customers' information and the purpose of such disclosure. Classes of person about which customers should be specifically notified include among others -
 - (a) debt collection agencies;
 - (b) data processors to which the processing of personal information is to be, or may be, outsourced;

- (c) credit reference agencies;
- (d) subject to section 7.4 below, persons to whom customers' contact details may be disclosed for marketing purposes including, related companies within the same group and other persons (classified in specific terms, such as co-branding partners of the member or third party loyalty programme providers which in each case should be shown in application forms/leaflets for the relevant services or products provided to customers); and
- (e) such other persons to whom disclosure may be required by applicable laws or regulatory guidelines issued from time to time.
- 7.4 Members should not, without the prescribed consent of their customers, provide credit references in respect of a customer. A member that intends to use customer information for direct marketing purposes shall comply with the PDPO and any relevant codes of practice.
- 7.5 Where personal information is used by a member for its own marketing purposes for the first time, the member should inform the customer that the member will, without charge to the customer, cease to so use the personal information if the customer so requests.
- 7.6 Members should remind customers at least once every year or by including a standard notice in their marketing materials of the right to make the request referred to in section 7.5 above.
- 7.7 When a customer objects to the disclosure of the information referred to in section 7.3 (d) above or refuses to give the consent or an indication of no objection or withdraws any consent or indication of no objection required under the PDPO, the member concerned should give effect to such objection, refusal or withdrawal and should not refuse to provide that customer with money lending services.
- 7.8 Where personal information is transferred to a third party service provider, for example, as part of an outsourcing arrangement, members should satisfy themselves that such information will be treated as confidential and adequately safeguarded by that service provider and adopt contractual or other means to prevent any information transferred to that service provider from being the subject of unauthorized or accidental access, processing, use, erasure or loss or kept longer than is necessary for the purposes stipulated in the outsourcing agreement. Members should remain accountable to customers for any complaints arising out of the handling of customer information by service providers and should not attempt to disclaim responsibility for any breach of customer confidentiality by service providers.
- 7.9 In the course of handling personal data, members should be aware of their obligations under condition 5 of the Additional Licensing Conditions (i.e. condition 6 of the Merged Licensing Conditions). [Added in September 2018]

8. Personal Referees

- 8.1 Members may require applicants for money lending services to provide in the application forms for such services the names and particulars of persons who have agreed to act as referees for the applicant.
- 8.2 The role of referees is confined to providing, on a voluntary basis and upon request by the member, information about the applicant in respect of the money lending service specified in the application form. Referees have no legal or moral obligation to repay to the member liabilities of a customer unless they have entered into a formal agreement to guarantee the liabilities of that customer.
- 8.3 Members should require applicants for money lending services to confirm that they have obtained the prior consent of the referees for their names to be used. If the applicant fails to give such confirmation, members should not approach the referees. In such cases, members should decide on their own judgment whether to continue to process the application.
- 8.4 Members should not attempt to seek, directly or indirectly, repayment of debt from a customer's referees who are not acting as guarantors. Related to this, members should not pass information about referees (or third parties other than debtors or guarantors) to their debt collection agencies. If a referee is to be approached for information to help locate a debtor or guarantor, this should be done, without causing nuisance to the referee, by staff of the member.

9. Equal Opportunity

- 9.1 Members should at all times comply with the relevant ordinances for the promotion of equal opportunity and any codes issued under these ordinances in the provision of money lending services.
- 9.2 In respect of customers with a disability, members should adopt a helpful approach to making available to them appropriate means to access money lending services. In particular, members are encouraged to install specialised machines or software and to provide physical access to facilitate the provision of money lending services to persons with a disability.
- 9.3 In addition to the statutory requirements, members should not discriminate against any customers simply on the ground of family status (for example, single parents), sexuality, age or race in the provision of money lending services and in the quality and terms of services provided.
- 9.4 Members should provide suitable training to front-line staff to raise awareness of the principles and guidelines relating to equal opportunity and the provision of assistance to customers with a disability.

10. Member Marketing

- 10.1 Members should exercise care in the use of direct mail and in particular should exercise restraint and be selective -
 - (a) where customers are minors; and
 - (b) when promoting loans.

- 10.2 Members should ensure that all advertising and promotional materials are fair and reasonable, do not contain misleading information and comply with all relevant legislation, codes and rules. Where benefits are subject to conditions, such conditions should be clearly displayed in the advertising materials wherever practicable. Where there are limitations as to space, e.g. in poster advertisements and television commercials, the advertisement should include reference to the means by which further information may be obtained.
- 10.3 In relation to any advertisement issued or published by members for their business, members should be aware of its obligations under condition 9 of the Additional Licensing Conditions (i.e. condition 9 of the Merged Licensing Conditions) and refer to the Guidelines on Additional Licensing Conditions of Money Lenders Licence issued by the Companies Registry for the requirements. [Added in September 2018]
- 10.4 In any marketing process and advertising and promotional material for a money lending service, members should indicate the interest rate and relevant fees and charges normally incurred, where appropriate, in a clear and prominent manner and that full details of the relevant terms and conditions are available on request. Where reference is made to an interest rate, members should also indicate the APR upon request.
- 10.5 Members should exercise restraint in making unsolicited (that is, cold) calls to customers.

11. Annual Percentage Rates

- 11.1 In verbal and written discussions with prospective customers concerning interest rates, members should be prepared to quote the APRs for loan products to facilitate comparison between different charging structures.
- 11.2 Members should be prepared to respond to inquiries from customers concerning APRs and the methods of calculation.

12. Handling Customer Complaints

- 12.1 Members should establish procedures for handling customer complaints in a fair and speedy manner. The complaint procedures should take into account the following criteria -
 - (a) transparency the applicable procedures should be documented;
 - (b) accessibility the procedures should be easily invoked by customers; and
 - (c) effectiveness the procedures should provide for the speedy resolution of disputes in a fair and equitable manner.
- 12.2 Details of how to invoke complaint procedures should be made available to customers and other interested parties such as personal referees and guarantors so that they know what steps to take if they wish to make a complaint.
- 12.3 Members should ensure that all their staff who deal directly with customers are made aware of the complaint procedures and are able to help customers by giving correct information about these procedures.

12.4 Members should send an acknowledgment to the complainant within 7 days upon receiving a written complaint (where the complaint cannot be resolved within 7 days) and a written response to the complaint within a reasonable period, normally not exceeding 30 days. Correspondence with the complainant should be sent in Chinese or English in accordance with the language of the complaint.

13. Additional Licensing Conditions of Money Lenders Licence and New / Revised Sample Forms

- 13.1 The Companies Registry has introduced 10 additional licensing conditions ("Additional Licensing Conditions") to, among other things, further elucidate the relationship between a money lender and intermediaries in a loan transaction, ensure effective enforcement of the ban on separate fee charging, ensure better regulation, and promote prudent money lending practice. [Added in September 2018 with reference to the Companies Registry's Money Lenders Licence - Additional Licensing Conditions which took effect from 1 December 2016]
- 13.2 The full text of the Additional Licensing Conditions, which had taken effect from 1 December 2016, and the Guidelines on Additional Licensing Conditions of Money Lenders Licence are at Appendix 1(a) and 1(b) respectively. [Added in September 2018]
- 13.3 For money lenders licences granted or renewed after 1 December 2016, the Additional Licensing Conditions are incorporated into the existing licensing conditions (i.e. the Merged Licensing Conditions) which are set out in Appendix 1 (c). [Added in September 2018]
- 13.4 The Company Registry has introduced a revised sample form on 8 June 2018 for Licensing Condition 1 (b) on disclosure of the existence of third parties by intending borrower, which is set out in Appendix 1 (d), to ensure that the intending borrower honestly discloses any involvement of third party. [Added in September 2018]
- 13.5 The Company Registry has introduced two new sample forms on 8 June 2018 for Licensing Conditions 1 (c)(ii) on recording the particulars of appointed third party involved in a loan agreement and for Licensing Condition 5 for recording explanation of terms of loan agreement given to intending borrower, which are set out in Appendix 1 (e) and 1 (f) respectively, to set out clearly the necessary information to be recorded and kept by licensed money lenders. [Added in September 2018]

Chapter 2 - LOANS

14. Loans

- 14.1 Approval of loans is subject to members' credit assessment which should take into account the applicants' ability to repay. In doing so, members may have regard to such factors as -
 - (a) prior knowledge of the customer's financial affairs gained from past dealings;
 - (b) the customer's income and expenditure;
 - (c) the customer's assets and liabilities;
 - (d) information obtained from credit reference agencies; and
 - (e) other relevant information supplied by the applicant.
- 14.2 Members should explain to a prospective borrower all the terms and conditions of any borrowing arrangement, and keep written or video or audio records. [Amended in September 2018] The following information should be provided upon application for a loan or, where relevant, in a subsequent offer, and on request -
 - (a) the rate of interest and the total amount of interest for the loan, and whether it may be varied over the period of the loan; [Amended in September 2018]
 - (b) a brief explanation of the basis on which interest will be determined and when it will be payable, including where relevant the APRs (see section 11 above);
 - (c) all fees and charges which will apply, and a brief explanation of the basis on which such fees and charges will be determined and when they will be payable;
 - (d) the specified period during which the loan offer may be accepted by the prospective borrower;
 - details of terms of repayment, periodically and in total, including the loan tenor and, where relevant, the instalments payable by the customer; [Amended in September 2018]
 - (f) the possible consequences for any default in payment, including (i) the taking into possession and sale of any security involved; and (ii) any overriding right to demand immediate repayment; [Amended in September 2018]
 - (g) other significant features such as security requirements and late payment charges, and a brief description of the basis of the late payment charges and the borrower's right to make early repayment.

- 14.3 In addition to the information set out in section 14.2 above, the following information on instalment loans (i.e. loans repayable by equal instalments) should be provided to customers upon application for a loan or in a subsequent offer, and on request -
 - (a) where applicable, the loan balance used as the basis for calculating the fees and charges under sections 14.2(c) and 14.2(g) above and the timing when the loan balance is determined; and
 - (b) the apportionment of interest and principal for each loan repayment throughout the loan tenor and the method of apportionment.
- 14.4 For loans with a specified maturity date, members should, upon request, quote the APRs for different tenors which are commonly selected by customers.
- 14.5 For loans which are revolving in nature, members should, upon request, quote the APR.
- 14.6 Where there is more than one applicable interest rate during the loan period, members should, upon request, quote an APR which takes into account all the applicable interest rates for different parts of the loan period.
- 14.7 Where the rate of interest for a loan is based on a reference rate, for example, best lending rate, members should notify customers of any changes in the reference rate as soon as practicable, unless such changes have been widely publicized in the media.
- 14.8 Default interest rate should be expressly stated in the terms and conditions. Members should also state the circumstances where default interest would be charged and the calculation method. If customers fail to make repayments without prior agreement, members may, in accordance with the relevant terms and conditions, charge simple interest on the sum payable to the member under the agreement, whether in respect of principal or interest, from the date of default until payment, at a rate not exceeding the normal rate under the agreement. Members should advise customers in advance of their right to charge such interest and inform customers promptly after exercising such right.
- 14.9 Members should advise customers to inform them as soon as possible of any difficulty in repaying or servicing the loan over the credit period.

15. Residential Mortgage Lending

- 15.1 This section applies to any mortgage loan secured on a residential property/ car park regardless of the purpose of the loan or the location of the residential property/car park. In the case of an individual providing (or proposing to provide) a residential property/car park as third party security, section 17 below will apply.
- 15.1A Members shall not accept a subsidised flat provided by the Hong Kong Housing Authority as collateral for the loan to the borrower unless (a) the Hong Kong Housing Authority confirms that the necessary premium for removing the restrictions on alienation on the said flat has been fully paid; or (b) the Director of Housing approves to mortgage or charge the said flat. [Added in September 2018]

- 15.2 Members should provide customers and prospective customers with information similar to that in section 14.2 above upon application for a mortgage loan secured on a residential property/car park or, where relevant, in a subsequent offer and on request. In addition, members should warn customers that the mortgage loan is secured on the property in question and that default may result in the member taking possession of, and selling, the property.
- 15.3 In the case of an "All Monies" mortgage (i.e. a mortgage which will secure all amounts payable by the borrowers) involving more than one borrower, the amount secured under the mortgage should not exceed the amount of money, obligations and liabilities owing or incurred at any time by the co-borrowers jointly. This does not restrict a co-borrower acting as surety from separately guaranteeing or securing the other's obligations in a transparent manner which complies with the provisions of section 17 below.
- 15.4 Members should provide customers with revised particulars of instalments payable by the customer after every adjustment of the interest rate.
- 15.5 Members should also inform customers or prospective customers that they have the right to employ separate solicitors for themselves, and the cost implications of doing so.
- 15.6 Customers may, from members' approved lists, appoint solicitors to represent both themselves and the members (unless it is the member's policy to require separate legal representation) and employ insurers which they think fit to insure the properties against fire or other serious damage. The coverage of such approved lists should be sufficiently wide to allow customers to make a choice. In the case of insurers, the approved list should include insurers which are not related to the member.
- 15.7 Members should inform customers and prospective customers that they may employ solicitors not on the approved lists of members (a) to represent themselves, and, (b) if the members' policy so allows to represent both themselves and the members, and if they do so, the procedures involved, the nature and amount of the fees and charges levied by the members, and the nature of any extra fees that may be charged by the solicitors which are known to the members including the costs for the additional work for each solicitor in reviewing the other solicitor's documentation under scenario (a).
- 15.8 If it is the members' policy to require separate legal representation or to employ only solicitors on the approved lists to represent the members, this should be highlighted to customers and prospective customers. Members should also inform customers and prospective customers of the cost implications as a result.
- 15.9 Members should inform customers and prospective customers that they may employ insurers not on the approved lists of members, and if they do so, the procedures involved, any criteria to be fulfilled by the insurers (e.g. any minimum policy cover), any fees charged by the members, and any extra costs involved. Any criteria imposed should be reasonable.
- 15.10 The amount and the nature of risks to be insured during the term of the loan should be reasonable and should be a matter of mutual agreement between

members and their customers. Members should provide an option for the customers or prospective customers to choose whether the insured amount should be based on the original loan value and the current loan value (provided it is not below the cost of reinstating the property), and should inform them of any extra costs or fees involved (for example, annual valuation fees) for the latter option.

- 15.11 On receipt of a request from customers for discharge of a mortgage, members should as soon as reasonably practicable release title deeds and any relevant documents (other than the mortgage itself) to the solicitor representing the customer against the solicitor's undertaking to return the documents on demand as appropriate. Unless members encounter any practical difficulties, this process should normally be completed within 21 days. If members are unable to meet this industry standard, they should promptly inform the customer.
- 15.12 Members should guard against fraud by person misrepresenting themselves as the owner(s) of the property.

16. Other Secured Lending

In the case of a security document other than a residential mortgage involving more than one borrower, the amount secured under the security document should not exceed the amount of money, obligations and liabilities owing or incurred at any time by the co-borrowers jointly. This does not restrict a co-borrower acting as surety from separately guaranteeing or securing the other's obligations in a transparent manner which complies with the provisions of section 17 below.

17. Guarantees and Third Party Securities

- 17.1 Subject to the consent of the borrower as required under section 17.9 below, members should provide an individual proposing to give a guarantee or third party security (the "surety") with a copy or summary of the contract evidencing the obligations to be guaranteed or secured.
- 17.2 Members should in writing (in printed form) advise the surety -
 - (a) that by giving the guarantee or third party security, the surety might become liable instead of or as well as the borrower;
 - (b) whether the guarantee or third party security is unlimited as to amount (that is to say that the member may agree to extend further facilities to the borrower without the consent of the surety) and, if so, the implications of such liability (for example, that the surety will be liable for all the actual and contingent liabilities of the borrower, whether now or in future including for further facilities extended to the borrower) and if this is not the case, what the limit of the liability will be;
 - (c) whether the liabilities under the guarantee or the third party security are payable on demand;
 - (d) under what circumstances the surety would be called upon to honour his or her obligations;

- (e) under what circumstances, and the timing within which, it would be possible for the surety to extinguish his or her liability to a member; and
- (f) that the surety should seek independent legal advice before entering into the guarantee or providing third party security.
- 17.3 A clear and prominent notice regarding the provisions in section 17.2 above should be included in or attached to the guarantees and other third party security documentation.
- 17.4 Members should provide a surety with an option to choose whether the guarantee or third party security should be limited or unlimited in amount (as described in section 17.2 (b) above).
- 17.5 For the purpose of section 17.4 above, a limited guarantee or third party security may include one which is either -
 - (a) limited in amount in respect of principal; or
 - (b) unlimited in amount but is limited to secure one or more specific facilities.

and may, with the consent of the surety (and only with the consent of the surety), secure additional amounts, further facilities or changed facilities (in the case of (a)) or further or changed facilities (in the case of (b)) beyond those originally secured.

- 17.6 Where a guarantee or third party security is unlimited in amount (as described in section 17.2 (b) above), members should give notice to the surety as soon as reasonably practicable when further facilities are extended to the borrower or when the nature of the facilities extended to the borrower is changed.
- 17.7 Subject to the consent of the borrower as required under section 17.9 below, members should provide the surety with a copy of any formal demand for overdue payment that is sent to the borrower who has failed to settle the overdue amount following a customary reminder.
- 17.8 Subject to the consent of the borrower as required under section 17.9 below, members should provide, upon request by the surety, a copy of the latest statement of account provided to the borrower, if any.
- 17.9 Before accepting a guarantee or a third party security, members should obtain the prescribed consent of the borrower to provide the surety with the documents mentioned in sections 17.1, 17.7 and 17.8 above. If the borrower does not give consent, the member should inform the surety of this in advance so that he or she can decide whether to provide the guarantee or the security.

Chapter 3 – RECOVERY OF LOANS AND ADVANCES

18. Application

This chapter applies to debt collection activities of members, whether undertaken directly by members or through third party debt collection agencies.

19. Debt Collection Activities

- 19.1 It is essential that debt collectors, no matter whether they are the staff of the members who are assigned the duty of debt collection or the staff of third party debt collection agencies appointed by the members to collect debts on their behalf, should act within the law, refrain from action prejudicial to the business, integrity, reputation or goodwill of the members for whom they are acting and observe a strict duty of confidentiality in respect of customer information.
- 19.2 With reference to condition 10 of the Merged Licensing Conditions, debt collectors must not resort to intimidation or violence, either oral or physical, against any person in their debt recovery actions. [Amended in September 2018] In addition, they should not employ harassment or improper debt collection tactics such as the following -
 - (a) Harassment tactics
 - putting up posters or writing on the walls of the debtor's residence or other actions designed to humiliate the debtor publicly;
 - (ii) pestering the debtor with persistent phone calls;
 - (iii) making telephone calls at unreasonable hours; and
 - (iv) pestering the debtor's referees, family members and friends for information about the debtor's whereabouts.
 - (b) Adopt other unlawful or improper tactics or debt collection practices [Amended in September 2018]
 - (i) using false names to communicate with the debtor;
 - (ii) making anonymous calls and sending unidentifiable notes to the debtor;
 - (iii) making abusive or threatening remarks to the debtor; and
 - (iv) making false or misleading representation with an intent to induce the debtor to make a payment.
- 19.3 Members and their debt collection agencies should not try to recover debts, whether directly or indirectly, from anyone unless such person is in law indebted to them. Members and their debt collection agencies should not try to recover debts, directly or indirectly, from third parties including referees, family members or friends of the debtors if these persons have not entered into a formal contractual agreement with the members to guarantee the liabilities of the debtors. Members should issue written instructions to their debt collection agencies, to this effect. [Amended in September 2018]

- 19.4 Members should enter into a formal, contractual relationship with their third party debt collection agencies. Members should specify, either in the contract or by means of written instructions, that the debt collectors employed by the debt collection agencies should, among other things, observe the requirements stated in sections 19.1, 19.2 and 19.3 above.
- 19.5 The contract between members and their debt collection agencies should make it clear that the relationship between the member and the debt collection agency is one of principal and agent. Members should remain accountable to customers for any complaints arising out of debt collection by third party debt collection agencies and should not disclaim responsibility for misconduct on the part of the debt collection agencies. Members should specify in their contract with debt collection agencies that the debt collection agencies should not subcontract the collection of debts to any other third parties.
- 19.6 Members intending to use third party debt collection agencies should specify in the terms and conditions of credit facilities that they may employ third party agencies to collect overdue amounts owed by the customers. Members which reserve the right to require customers to indemnify them, in whole or in part, for the costs and expenses they incur in the debt recovery process should include a warning clause to that effect in the terms and conditions.
- 19.7 Members should not pass information about referees or third parties other than debtors or guarantors to their debt collection agencies. If the referee is to be approached for information to help locate the debtor or guarantor, this should be done, without causing nuisance to such third parties, by staff of the member.
- 19.8 Members should give the customer advance written notice (sent to the last known address of the customer) of their intention to commission a debt collection agency to collect an overdue amount owed to the member. The written notice should include the following information -
 - (a) the overdue amount repayable by the customer;
 - (b) the length of time the customer has been in default;
 - (c) the contact telephone number of the member's debt recovery unit which is responsible for overseeing the collection of the customer's debt to the member;
 - (d) the extent to which the customer will be liable to reimburse the member the costs and expenses incurred in the debt recovery process (if the member requires the customer to indemnify it for such costs and expenses); and
 - (e) that the customer should in the first instance report improper debt recovery actions taken by the debt collection agency to the member.
- 19.9 Members should not engage more than one debt collection agency to pursue the same debt in one jurisdiction at the same time.
- 19.10 Members should require their debt collection agencies, when collecting debts, to identify themselves and the member for whom they are acting. Members should issue authorization documents with no account details to their debt collection agencies which should be presented to the debtor upon request for identification purposes.

- 19.11 Members should promptly update the amount of repayment(s) made by customers and establish effective communication with their debt collection agencies to update so that the debt collection agencies will stop immediately all recovery actions once the debts are settled in full by the customers.
- 19.12 If a customer owes several debts to more than one member that are being collected by the same debt collection agency, the customer has the right to give instructions to apply repayment to a particular debt.
- 19.13 Members should stop their debt collection activities on a debtor once they become aware that a bankruptcy order has been issued in relation to the debtor.
- 19.14 Where the debt collection process is ongoing, the member should as far as practicable provide periodic reminders to the customer concerned of the overdue amount repayable by the customer.

20. Management of Debt Collection Agencies

- 20.1 Members should have proper systems and procedures in place for the selection of third party debt collection agencies and the monitoring of their performance. These systems and procedures should be subject to regular review and should consist of the following essential elements -
 - (a) a review of the background information of the debt collection agency including a company search to identify the owners and directors of the debt collection agency;
 - (b) a basic assessment of the financial soundness of the debt collection agency;
 - (c) a site visit to ascertain the business address of the debt collection agency;
 - (d) an evaluation of the operation of the debt collection agency; and
 - (e) in the case of appointing a new debt collection agency, a procedure to obtain references from at least two of the existing clients (preferably members) of the agency.
- 20.2 Members should encourage their debt collection agencies to aspire to the highest professional standards and, where appropriate, to invest in suitable systems and technology.
- 20.3 Debt collection agencies should not be given a free hand as to recovery procedures. Members should establish effective procedures to monitor continuously the performance of their debt collection agencies, particularly to ensure compliance with the provisions in sections 19.1, 19.2 and 19.3 above.
- 20.4 Members should evaluate on a regular basis whether the charges of the debt collection agencies employed by them are reasonable having regard to the prevailing market practices. They should assess the reasonableness of any charge before passing it on to the customer concerned.

- 20.5 Members should keep updated and accurate records of the debt collection activities of their debt collection agencies. Members should require debt collection agencies to inform customers that all telephone communication with customers will be audio recorded and the purpose of doing so, and to keep records of all other contacts with customers. Such records should include information on the debt collector making the contact; the date, time and place of contact; and a report on the contact. Both the audio and the records should be kept for a minimum of 30 days after the contact is made. [Amended in September 2018]
- 20.6 Members should make unscheduled visits to the agencies to inspect their professionalism, operational integrity, the involvement of suitably trained personnel and the adequacy of resources to cope with the business volumes assigned to them and to ensure agencies' compliance with their contractual undertakings.
- 20.7 Members should have established procedures to handle complaints received from debtors. They should carry out a careful and diligent inquiry into the complaint to check whether there is any misconduct on the part of the debt collection agency and whether there is any violation of the requirements contained in this Code. Members should require debt collection agencies to take appropriate remedial actions if necessary.
- 20.8 Members should maintain a register of complaints about improper actions taken by their debt collection agencies and should respond promptly to the complainants after investigation.
- 20.9 Members should not delegate authority to debt collection agencies to institute legal proceedings against customers without the members' formal approval.
- 20.10 Where members are aware that their debt collection agencies perform similar functions for other members, the sharing of information as to their performance, approach, attitude, behaviour etc. is encouraged.
- 20.11 Members should bring apparently illegal behaviour by debt collection agencies to the attention of the Police. Members should also consider whether to terminate the relationship with a debt collection agency if they are aware of unacceptable practices of that agency or breaches of its contractual undertakings.

USEFUL DEFINITIONS

These definitions explain the meaning of words and terms used in the Code. They are not precise legal or technical definitions.

Additional Licensing Conditions -

Additional Licensing Conditions of Money Lenders Licence introduced by the Companies Registry which took effect from 1 December 2016.

Annual Percentage Rate or APR -

The true annual percentage rate of interest calculated in accordance with Schedule 2 of the Money Lenders Ordinance (Cap. 163).

Authorized agents -

Agents authorized by a member to deal with customers to provide services on its behalf in relation to the provision of money lending services, when acting in their capacity as agents for a member.

Credit references -

A credit reference is an opinion about a particular customer's ability to enter into or repay a financial commitment. It is given by a member, to an enquirer, with the prescribed consent of the customer concerned. Typically, the reference will cover information confirming that an account is held and how long for. It indicates the customer's financial position but is not intended to be conclusive proof of the customer's position.

Credit reference agencies -

Any data user who carries on a business of compiling and disseminating personal information, of a factual nature, about the credit history of individuals, whether or not that business is the role or principal activity of that data user.

Customer -

A private individual who -

- (a) maintains an account in Hong Kong with, a member; or
- (b) acts as guarantor or provider of third party security (whether or not the guarantor or provider of third party security is a customer of the member) for a borrower who is an individual or otherwise.

Day -

Day means calendar day if not otherwise specified.

Guarantee -

An undertaking given by a person called the guarantor promising to pay the debts of another person if that other person fails to do so.

Members -

Members of the Hong Kong S.A.R. Licensed Money Lenders Association Limited.

Merged Licensing Conditions -

The licensing conditions for money lenders licences granted or renewed after 1 December 2016, comprising the then existing licensing conditions and the Additional Licensing Conditions.

Prescribed consent -

Express consent of a customer given voluntarily.

Promotional material -

Any literature or information which is designed to help sell a product or service to a customer. This does not include information relating to service enhancements and changes to customers' existing accounts which need to be sent to the customers to meet legislative and regulative requirements or which may be sent where it is in the interest of customers.

Related companies -

This refers to a member's subsidiary, holding company or a subsidiary of the holding company.

Security -

A word used to describe the mortgaging or charging of assets as support for loans granted to customers. If the loans are not repaid the member's position is "secured" which means that it can sell the assets to meet the amount outstanding on the loan.

Third party security -

Security provided by a person who is not the borrower.

Appendix 1(a):

Money Lenders Licence -Additional Licensing Conditions

The following additional licensing conditions took effect from 1 December 2016.

MONEY LENDERS LICENCE ADDITIONAL LICENSING CONDITIONS

- 1. Before entering into any agreement for loan, the money lender
 - (a) shall ask the intending borrower to state whether or not he has entered into or signed any agreement ("the third party agreement") with any person ("third party") for or in relation to the procuring, negotiation, obtaining or application of the loan, guaranteeing or securing the repayment of the loan (other than an agreement with solicitors instructed by the intending borrower for the provision of legal services solely);
 - (b) shall state in writing the intending borrower's reply in relation to Condition 1(a) above in the loan agreement; and
 - (c) if the intending borrower's reply in relation to Condition 1(a) above is in the affirmative, shall further
 - (i) obtain from the intending borrower the name and address of the third party;
 - (ii) state in writing in the loan agreement the name and address of the third party and whether the money lender is in any way related to the third party and the nature of such relationship;
 - (iii) ask the intending borrower to personally provide a copy of the third party agreement; and
 - (iv) attach the third party agreement to the loan agreement.
- 2. The money lender shall not grant or agree to grant any loan to any intending borrower if the intending borrower's reply in relation to Condition 1(a) above is in the affirmative, unless the third party as identified in Condition 1(c) above:
 - (a) is a person appointed by the money lender ("appointed third party") for or in relation to granting a loan to any intending borrower or any specified class of intending borrower, whether as to the procuring, negotiation, obtaining, application, guaranteeing or securing the repayment of such a loan; and
 - (b) has, specifically in respect of the loan, confirmed in writing to the money lender that
 - (i) he has not charged, recovered, demanded or received and will not charge, recover, demand or receive any fees, charges, reward or consideration, however named, from such intending borrower for or in relation to the procuring, negotiation, obtaining or application of the loan or guaranteeing or securing the repayment of the loan; and
 - (ii) he has not otherwise agreed with the intending borrower that the intending borrower pays or would pay any fees, charges, reward or consideration, however named, to any other party whether for the purchase of any goods or services or not.

- 3. For the purposes of Condition 2,
 - (a) 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 (including identification card/passport, business registration and company number as applicable) of any appointed third party; and
 - (b) the third party as identified in Condition 1(c) above 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.
- 4. (a) The money lender shall not knowingly allow or permit any person, whether the money lender, or his partner, employer, employee, principal or agent or any person acting for him or any appointed third party, to charge, recover, demand or receive any fees, charges, reward or consideration, however named, from any borrower or intending borrower for or in relation to the procuring, negotiation, obtaining or application of a loan or guaranteeing or securing the repayment of a loan.
 - (b) The prohibition in Condition 4(a) above also covers any fees, charges, reward or consideration, however named, to be paid by the borrower or intending borrower to the appointed third party or any other person as agreed between the borrower/intending borrower and the appointed third party, whether for the purchase of any goods or services or not.
- 5. 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 (a) 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 (b) 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, Cap. 486. The money lender must also keep records which show that he complies with this requirement and the provisions of the Personal Data (Privacy) Ordinance.
- 6. 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 terms in relation to repayment, namely,
 - (a) the interest rate expressed as a rate per cent per annum and the total amount of interest payable under the agreement;
 - (b) amounts of repayments, periodically and in total, under the agreement;
 - (c) the possible consequences for any default in repayment, including -
 - (i) the taking into possession and sale of any security involved (including the property charged, if any); and
 - (ii) any overriding right of the money lender to demand an immediate repayment. The money lender must also keep written or video or audio records which show that he complies with the requirements under this condition.

- 7. 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 and such information shall be provided within such time as the Registrar of Money Lenders or the Commissioner of Police may specify.
- 8. The money lender shall not accept a subsidized flat provided by the Hong Kong Housing Authority as collateral for the loan to the borrower unless the borrower has produced to the money lender either–
 - (a) 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
 - (b) the written approval of the Director of Housing granting approval to mortgage or charge the said flat.
- 9. Any advertisement in relation to the money lending business of a money lender issued or published by the money lender, in his own name or through any other person, whether in textual, audio or visual form, must contain the money lender's telephone hotline for handling complaints and a risk warning statement (in the same language as that of the advertisement or the relevant part thereof) as set out below, both of which must be prominent and easily legible in the written or visual part of the advertisement. The risk warning statement must also be clearly audible in the audio part of the advertisement:
 - "忠告:借錢梗要還,咪俾錢中介"
 - "Warning: You have to repay your loans. Don't pay any intermediaries."
- 10. The money lender must establish and maintain proper systems and procedures to ensure that the money lender, or his partners, employers, employees, principals or agents, any persons acting for him and any appointed third parties shall be informed of and observe the licensing conditions and the provisions of the Money Lenders Ordinance.

Appendix 1(b):

Guidelines on Additional Licensing Conditions of Money Lenders Licence



公司註冊處 COMPANIES REGISTRY

Guidelines on Additional Licensing Conditions of Money Lenders Licence

November 2016

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Introduction

Under the Money Lenders Ordinance (Cap. 163) ("MLO"), no person shall carry on business as a money lender without a licence granted under section 11 of the MLO. A licence shall be subject to such conditions as the licensing court may impose.

In recent years, there have been increasing public concerns that deceptive tactics are being used by fraudsters who claim themselves to be financial intermediaries for money lending to induce intending borrowers to engage them for arranging loans with money lenders and charge very high fees under different pretexts in the process.

To combat the problem, the additional licensing conditions imposed on money lenders seek to facilitate effective enforcement of the statutory ban on separate fee charging by money lenders and their connected parties, ensure better protection of privacy of intending borrowers, enhance transparency and disclosure, and promote the importance of prudent borrowing. The additional licensing conditions will be applicable with effect from 1 December 2016.

This set of Guidelines aim to provide guidance for money lender licensees on the requirements of the additional licensing conditions. They are without prejudice to the requirements of the MLO and licensees should continue to comply with all the provisions of the MLO and all other laws in Hong Kong as are applicable to them.

In cases of doubts, licensed money lenders are advised to seek independent legal advice as they see fit.

Registrar of Money Lenders October 2016

Conditions 1, 2, 3, 4 and 6¹

Condition 1

Before entering into any agreement for loan, the money lender

- (a) shall ask the intending borrower to state whether or not he has entered into or signed any agreement ("the third party agreement") with any person ("third party") for or in relation to the procuring, negotiation, obtaining or application of the loan, guaranteeing or securing the repayment of the loan (other than an agreement with solicitors instructed by the intending borrower for the provision of legal services solely);
- (b) shall state in writing the intending borrower's reply in relation to Condition 1(a) above in the loan agreement; and
- (c) if the intending borrower's reply in relation to Condition 1(a) above is in the affirmative, shall further
 - (i) obtain from the intending borrower the name and address of the third party;
 - (ii) state in writing in the loan agreement the name and address of the third party and whether the money lender is in any way related to the third party and the nature of such relationship;
 - (iii) ask the intending borrower to personally provide a copy of the third party agreement; and
 - (iv) attach the third party agreement to the loan agreement.

Condition 2

The money lender shall not grant or agree to grant any loan to any intending borrower if the intending borrower's reply in relation to Condition 1(a) above is in the affirmative, unless the third party as identified in Condition 1(c) above:

(a) is a person appointed by the money lender ("appointed third party") for or in relation to granting a loan to any intending

¹ References in the additional licensing conditions and this Guideline to the masculine gender include the feminine gender.

borrower or any specified class of intending borrower, whether as to the procuring, negotiation, obtaining, application, guaranteeing or securing the repayment of such a loan; and

- (b) has, specifically in respect of the loan, confirmed in writing to the money lender that
 - (i) he has not charged, recovered, demanded or received and will not charge, recover, demand or receive any fees, charges, reward or consideration, however named, from such intending borrower for or relating to the procuring, negotiation, obtaining or application of the loan or guaranteeing or securing the repayment of the loan; and
 - (ii) he has not otherwise agreed with the intending borrower that the intending borrower pay or would pay any fees, charges, reward or consideration, however named, to any other party whether for the purchase of any goods or services or not.

Condition 3

For the purposes of Condition 2,

- (a) 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 (including identification card/passport, business registration and company number as applicable) of any appointed third party; and
- (b) the third party as identified in Condition 1(c) above 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.

Condition 4

(a) The money lender shall not knowingly allow or permit any person, whether the money lender, or his partner, employer, employee, principal or agent or any person acting for him or any appointed third party, to charge, recover, demand or receive any fees, charges, reward or consideration, however named, from any borrower or intending borrower for or relating to the procuring, negotiation, obtaining or application of a loan or guaranteeing or securing the repayment of a loan.

(b) The prohibition in Condition 4(a) above also covers any fees, charges, reward or consideration, however named, to be paid by the borrower or intending borrower to the appointed third party or any other person as agreed between the borrower/intending borrower and the appointed third party, whether for the purchase of any goods or services or not.

Condition 6

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 terms in relation to repayment, namely,

- (a) the interest rate expressed as a rate per cent per annum and the total amount of interest payable under the agreement;
- (b) amounts of repayments, periodically and in total, under the agreement;
- (c) the possible consequences for any default in repayment, including
 - (i) the taking into possession and sale of any security involved (including the property charged, if any); and
 - (ii) any overriding right of the money lender to demand an immediate repayment.

The money lender must also keep written or video or audio records which show that he complies with the requirements under this condition.

1. Conditions 1, 2, 3, 4 and 6 set out the obligations of licensees to undertake due diligence checks before entering into a loan agreement with an intending borrower.

Pre-contractual explanation to intending borrowers

- Before entering into any loan agreement, the licensee should clearly explain to the intending borrower all the terms and conditions of the loan agreement, in particular the terms of repayment, including:

 (a) the interest rate expressed as a rate per cent per annum;
 - (b) the maximum amount of interest payable under the agreement;
 - (c) the amounts of repayments periodically under the agreement;
 - (d) the amount of repayment in total (sum of the principal and maximum amount of interest payable) under the agreement;
 - (e) all the possible consequences for any default in repayment, in particular the licensee's taking into possession and sale of any security involved (including the property charged, if any); and
 - (f) the overriding right (if any) of the licensee to demand an immediate repayment.

Explanatory note

This is to ensure that the intending borrower understands the terms and conditions of the loan agreement so that he is able to make a conscious decision whether to sign the loan agreement.

- 3. Even where the intending borrower states that there is no need for an explanation, the licensee should still comply with the requirement to provide an explanation before entering into any loan agreement.
- 4. Licensees should keep records which show their compliance with the requirement of giving explanation to the intending borrowers of all the terms and conditions of the agreement. The records can be kept in either one of the three formats: written, video or audio form. The records should show in details what have been explained to the intending borrowers. A mere acknowledgement by the intending borrower that the terms of the agreement have been explained to him is not sufficient.

Illustrative example for reference

If a licensee chooses to keep written records to show compliance with the requirement of explaining to an intending borrower, he should not ask the intending borrower to sign an acknowledgement simply declaring that the terms of the agreement have been explained to him.

The licensee may prepare a document with notes of the explanations given to the intending borrower with the date, time, and venue when the explanation takes place duly recorded, and a copy of the document signed by the licensee and the intending borrower should be given to the latter for retention and reference.

Ascertaining the existence of third parties for or in relation to the loan

- 5. Before entering into any loan agreement, a licensee should ascertain from an intending borrower as to the existence of any third party involved in a loan transaction.
- 6. The licensee should ask the intending borrower whether he has entered into or signed any agreement, ("third party agreement") with any third party ("third party") for or in relation to the procuring, negotiation, obtaining or application of the loan, guaranteeing or securing the repayment of the loan.
- 7. The licensee should explain to the intending borrower that whether one will be regarded as a third party will depend on whether the intending borrower has entered into or signed any agreement with this party for or in relation to the procuring, negotiation, obtaining or application of the loan, guaranteeing or securing the repayment of the loan. To help the intending borrower understand the question, the licensee may specifically enquire if there is any of the following persons involved in any way in connection with the loan transaction:
- (a) a person who claims to provide professional (e.g. accounting or legal) or financial assessment services (e.g. stress test, debt restructuring, property valuation or improving credit records, etc.) for facilitating the intending borrower to arrange the loan;
- (b) a person who claims to be a representative of a bank or a money lender who can arrange a loan for the intending borrower;
- (c) a person who requests the intending borrower to deposit a portion of the loan that would be obtained from the licensee with him for custody (whether as proof of the intending borrower's cash flow allegedly to help improve the latter's credit record for increasing the chance of arranging a low-interest loan later or otherwise); or
- (d) a person who requests the intending borrower to pay a portion of the loan that would be obtained from the licensee to him or any other party under different pretexts allegedly for the purchase of goods or services, e.g. purchasing an "investment fund", or otherwise.

The above list is not exhaustive, and licensees are encouraged to seek other necessary clarification from the borrower as appropriate.

- 8. The licensee should explain to the intending borrower that the disclosure of the existence of any third party is to protect the intending borrower's interests, as this is one of the measures to help ensure that the intending borrower would not be subject to separate fee charging by any third party.
- 9. Licensees must not do any act to dissuade or deter an intending borrower from disclosing the existence of a third party involved in the loan transaction.

Illustrative examples for reference

Case 1 – car dealers

If a car dealer introduces and refers vehicle loans provided by a licensee to an intending borrower and has entered into or signed an agreement for the purpose with the latter, he will be considered a third party even if the car dealer only receives a commission from the licensee and does not charge the intending borrower any fee. The licensee will have an obligation to register this car dealer with the Registrar of Money Lenders. On the other hand, if the car dealer does not enter into any separate agreement with the intending borrower for or in relation to the loan, he will not be considered as a third party under the new licensing Conditions.

Case 2 – friends and relatives

If the intending borrower is referred to the licensee by his friend or relative where the borrower has entered into any agreement with his friend or relative for or in relation to the procuring, negotiation, obtaining or application of the loan or guaranteeing or securing the repayment of the loan, such agreement should be regarded as a third party agreement and his friend or relative will be regarded as a third party under the conditions.

Case 3 – authorised sales agents of licensees

A licensee may have employed sales agents for soliciting business for them. If the sales agent does not enter into or sign any separate agreement between himself and the intending borrower for or in relation to the procuring, negotiation, obtaining or application of the loan or guaranteeing or securing the repayment of the loan with the licensee concerned, that sales agent is not to be considered as a third party.

Case 4 – multiple referrals

In some cases, more than one third parties may be involved (e.g. an intending borrower engages Person A in applying for a loan. Person A then refers the case to Person B. Person B eventually refers the borrower's application to the licensee.). As long as any party has entered into an agreement with the intending borrower for or in relation to the procuring, negotiation, obtaining or application of the loan or guaranteeing or securing the repayment of the loan, he will be regarded as a third party. For instance, if only Person A enters into an agreement with the intending borrower while Person B has never entered into any agreement with the intending borrower.

- 10. An agreement between the intending borrower and a solicitor in connection with the loan agreement is not regarded as a third party agreement if the solicitor is instructed by the intending borrower to solely provide legal services (e.g. vetting of the loan documentation). But if the solicitor also provides an intermediary service in relation to the granting of the loan, he is a third party and licensees must follow the required steps as stated in paragraphs 13 25 below. The licensee should explain this clearly to the intending borrower.
- 11. The intending borrower's response to the above question should be stated in writing and form part of the loan agreement. For easy reference, a sample form on the disclosure of the existence of any third party in relation to the loan can be found at <u>Annex 1</u>.

Where no third parties are involved

12. Where the intending borrower confirms that he has not entered into or signed any relevant agreement with any third parties, the licensee should state this in writing in the loan agreement. If a licensee has done any act to dissuade or deter an intending borrower from

disclosing the existence of a third party, the licensee may be regarded as having breached Condition 1.

Third parties disclosed by intending borrowers

13. If the intending borrower confirms that he has entered into or signed an agreement with a third party for or in relation to the loan, the licensee should ask the intending borrower to personally provide a copy of the third party agreement.

Explanatory note

This is to ensure that the licensee can take appropriate steps to ascertain that the third party involved is his appointed third party who is registered with the Registrar of Money Lenders and that the third party agreement does not contain any clause that breaches the requirement on no separate fee charging.

- 14. The licensee should explain to the intending borrower that such third party agreement should be personally provided by the latter (and must not be through the appointed third party or any person connected with the third party), and that this is to ensure that the intending borrower is in full picture of what he has agreed with the third party.
- 15. The licensee should withhold from entering into a loan agreement with the intending borrower if the intending borrower fails to **personally** provide a copy of the third party agreement to the licensee so that he is unable to attach a copy of the third party agreement to the loan agreement.
- 16. A licensee should carefully check the name and address of the third party shown on the third party agreement provided by the intending borrower against the list of appointed third parties maintained by the Registrar of Money Lenders ("the Registrar") [see paragraphs 26 to 33].

- 17. If the third party as shown on the third party agreement is not an appointed third party of the licensee whose appointment has been registered by the Registrar and appears in the Register kept by the Registrar, the licensee shall not enter into any loan agreement with the intending borrower.
- 18. Where the third party involved is an appointed third party of the licensee, the licensee should state in writing in the loan agreement:
 - (a) the name and address of the third party;
 - (b)whether the licensee is in any way related to the third party; and
 - (c) the nature of relationship between the licensee and the third party.(e.g. appointed third parties and, where applicable, parent company, subsidiary, fellow subsidiary etc.).

The third party agreement obtained should then be attached to the loan agreement. In this regard, licensees should ensure that their appointed third parties are aware of this requirement and adopt proper practice in their course of dealings with intending borrowers so that there will not be any difficulty for intending borrowers to obtain and provide to the licensees a copy of the third party agreement.

Prohibition of fee charging by licensee's staff, agents and appointed third parties etc.

- 19. A licensee should not allow or permit any person, whether the licensee, his staff, agents, appointed third parties and other persons acting for the licensee to charge, recover, demand or receive any fees, charges, reward or consideration, however named, from any borrower or intending borrower for or in relation to the procuring, negotiation, obtaining or application of a loan or guaranteeing or securing the repayment of a loan.
- 20. Nor should a licensee allow or permit any appointed third party to, for or in relation to the loan, enter into or sign an agreement with the borrower or intending borrower under which the borrower or intending borrower shall pay any fees, charges, reward or consideration to any party, whether for the purchase of goods or services or not.

- 21. A licensee should not simply adopt a passive stance without taking appropriate steps to ascertain compliance with the licensing conditions and the MLO by his appointed third parties. In particular, he should check and ensure that there is no fee charging provision in the third party agreement provided by the intending borrower. He should also ensure that his appointed third parties are aware of and comply with the prohibition on charging prospective borrowers any fees under the licensing conditions and the MLO.
- 22. A licensee should not enter into the loan agreement with the borrower if the third party agreement contains any term/provision which shows that the third party has charged or intends to charge the borrower any fee (under whatever pretexts and however the fee is named), whether it is for the purchase of goods or services from the third party or another party. If a licensee is aware that an intending borrower has been charged any fees by his appointed third party, he should liaise with the appointed third party concerned for rectifying the problem and such third party agreement should be rescinded. If the appointed third party refuses, the licensee should terminate the appointment and bring the matter to the attention of Police and report the termination of appointment to the Registrar.

Illustrative example for reference

If the borrower is required by the third party to make a payment to another party after the loan has been granted, say, for the purchase of an investment fund unit, a licensee should not enter into a loan agreement with the borrower, and review whether the third party should continue to be appointed by him.

- 23. For each proposed loan transaction, a licensee should, before entering into the relevant loan agreement, obtain a written confirmation from the appointed third party involved that the appointed third party:
 - (a) has not charged, recovered, demanded or received and will not charge, recover, demand or receive any fees, charges, reward or

consideration, however named, from the intending borrower for or in relation to the procuring, negotiation, obtaining or application of the loan or guaranteeing or securing the repayment of the loan; and

- (b) has not otherwise agreed with the intending borrower that the intending borrower pay or would pay any fees, charges, rewards or consideration, however named, to any other party whether for the purchase of any goods or services or not.
- 24. In addition to the requirement under paragraph 23 above, a licensee should check and ensure there is no fee charging provision in the third party agreement.
- 25. For ready reference, a sample form on the written confirmation to be provided by the appointed third party can be found at <u>Annex 2</u>.

Reporting of appointed third parties

- 26. Licensees should keep an updated list of all their appointed third parties.
- 27. The Registrar has provided the following forms for use by licensees to report about their appointed third parties:
 - (a) Notice of Particulars of Third Party Appointed by Licensed Money Lenders in relation to Granting of Loans (Form ML-ATP-1);
 - (b) Notice of Changes in Particulars of Appointed Third Party of Licensed Money Lenders (Form ML-ATP-2);
 - (c) Notice of Termination of Appointment of Appointed Third Party of Licensed Money Lenders (Form ML-ATP-3)

Samples of these forms can be found at <u>Annex 3</u>.

- 28. All forms should be properly completed and signed by the licensees.
- 29. For the purpose of reporting, a licensee should provide the name, address and identification number of any person appointed by him for or in relation to the granting of loans.

- 30. For an appointed third party who is an individual, a copy of his Hong Kong Identity Card or Passport (in the absence of a Hong Kong Identity Card) should be provided together with the relevant form.
- 31. Particulars of appointed third party reported to the Registrar will generally be registered in two working days after receipt of the relevant form. Completed forms should therefore be delivered to the Registrar for registration as early as possible. A licensee should not grant a loan to an intending borrower if the loan involves an appointed third party whose particulars have not yet appeared on the Register kept by the Registrar.
- 32. Any subsequent changes in the particulars of an appointed third party should also be reported in writing to the Registrar within 21 days after the change by using Form ML-ATP-2 and the Registrar may in respect of any such change enter such particulars, or alter any particulars entered, in the Register as the Registrar thinks fit.
- 33. It will be in the licensees' own interest to report any cessation of their appointment of any third party to the Registrar as soon as possible, and in any case the licensee should report to the Registrar within 21 days after the cessation takes place by using Form ML-ATP-3. The Registrar will then update the list of appointed third parties of licensees kept in the Register of Money Lenders.

Condition 5

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 (a) 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 (b) 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, Cap. 486. The money lender must also keep records which show that he complies with this requirement and the provisions of the Personal Data (Privacy) Ordinance.

Explanatory note

The additional condition requires licensees to take steps to ensure that when collecting or receiving personal data from another person, they will not take part in any unlawful disclosure or use of personal data.

- 34. For the purpose of the money lending business, if licensees want to obtain or collect the personal data of any person from another party or use such data, they must:
 - (a) obtain written confirmation from that party that the disclosure / provision of such personal data by that party for such use of the licensee is not in contravention of the provisions of the Personal Data (Privacy) Ordinance (Cap. 486)

AND

- (b) satisfy themselves that there is no reasonable ground to believe that the disclosure / provision of the personal data by that party for such use of the licensee is likely to be in contravention of the provisions of the Personal Data (Privacy) Ordinance.
- 35. For compliance with Condition 5(b), licensees must not merely rely on the written confirmation provided by that party without going through a proper procedure to satisfy themselves that the disclosure or provision of the personal data is not likely to be in contravention of the provisions of the Personal Data (Privacy) Ordinance. Generally speaking, licensees should, among other things –
 - (a) request that party to explain how the personal data are obtained;
 - (b) ascertain whether that party may have access to the personal data in his current or previous employment(s);
 - (c) if so, ask that party to provide appropriate proof showing that the latter has been duly authorised to disclose or provide the personal data to the licensees; and
 - (d) if in doubt, licensees should contact the relevant employer(s) of the party to verify.
- 36. Licensees should be particularly vigilant if the party providing the personal data appear to be employed or has been employed by telecommunication service providers or financial institutions (such as banks, insurance companies and securities brokers).
- 37. For the purpose of Condition 5(a), licensees may accept a confirmation from the other parties covering the full duration of their service contracts instead of requiring a written confirmation from the other parties each time they collect or receive personal data from them.

38. Licensees must keep record of the written confirmation obtained and any other records which show their compliance with Condition 5 and the provisions of the Personal Data (Privacy) Ordinance. On recordkeeping, licensees may refer to paragraphs 56 to 57 under Condition 10 for more practical guidance.

Illustrative example for reference

When a licensee is offered or provided with bulk personal data by a person who is a former employee of a bank, he should take reasonable steps to ascertain that person has the right to access and transfer the personal data concerned, e.g. ask that person for an appropriate proof of authorisation by the bank or consents given by the relevant customers of the bank to the disclosure or use of their personal data by the licensee.

Condition 7

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 and such information shall be provided within such time as the Registrar of Money Lenders or the Commissioner of Police may specify.

- 39. Licensees must provide information relating to their money lending businesses as required by the Registrar or the Commissioner of Police during the term of the respective licences.
- 40. Licensees must provide the required information within such time as specified by the Registrar or the Commissioner of Police.

Condition 8

The money lender shall not accept a subsidized flat provided by the Hong Kong Housing Authority as collateral unless the borrower has produced to the money lender either–

- (i) 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
- (ii) the written approval of the Director of Housing to mortgage or charge the said flat.
- 41. Before entering into a loan agreement which involves accepting a subsidized flat as collateral, the licensee must obtain from the borrower <u>either</u> of the following:
 - (a) a written confirmation from the Hong Kong Housing Authority that the necessary premium for removing the restrictions on alienation on the relevant flat has been fully paid; or
 - (b) the written approval of the Director of Housing to mortgage or charge the relevant flat.

The use or acceptance of a subsidized flat provided by Hong Kong Housing Authority as collateral without first removing the restrictions on alienation on the flat or obtaining the Director of Housing's relevant prior approval would render the licensee and the intending borrower liable to prosecution for an offence under the Housing Ordinance (Cap. 283) and the charge or mortgage concerned shall be void.

Condition 9

Any advertisement in relation to the money lending business of a money lender issued or published by the money lender, in his own name or through any other person, whether in textual, audio or visual form, must contain the money lender's telephone hotline for handling complaints and a risk warning statement (in the same language as that of the advertisement or the relevant part thereof) as set out below, both of which must be prominent and easily legible in the written or visual part of the advertisement. The risk warning statement must also be clearly audible in the audio part of the advertisement:

- "忠告:借錢梗要還,咪俾錢中介"

- "Warning: You have to repay your loans. Don't pay any intermediaries."

Content of the advertisement

- 42. Any advertisement in relation to the money lending business of a licensee issued or published by the licensee, in his own name or through any other person (including but not limited to the licensee's agents and appointed third parties), must contain:
 - (a) the licensee's telephone hotline for handling complaints; and
 - (b) 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"]

43. In particular, if the licensee asks any other person, e.g. the licensee's agents or appointed third parties, to issue an advertisement about the licensee's money lending business, irrespective of whether or not such advertisement is issued in the name of the licensee, the requirement under Condition 9 will still apply to such advertisement and the licensee should ensure compliance with the Condition.

- 44. The display or broadcast of the required information as stated in paragraph 42 must be prominent and easily legible in the written or visual part of the advertisement and clearly audible in the audio part of an advertisement (as the case may be).
- 45. The risk warning statement must be displayed or broadcast in the same language as that of the advertisement itself (or the relevant part thereof). The use of a single language for display or broadcast of warning statement is acceptable for monolingual advertisements.
- 46. Practical guidance as to how the risk warning statement should be displayed or broadcast in different forms of advertisements so as to meet the requirements is set out in <u>Annex 4</u>.
- 47. For the telephone hotline for handling complaints, it should be displayed (but not necessarily read out) in audio-visual advertisements. However, for audio advertisement with no visual display, such telephone hotline should be audible and clearly read out in a voice-over in the same pace as the other contents of the advertisement.

Condition 10

The money lender must establish and maintain proper systems and procedures to ensure that the money lender, or his partners, employers, employees, principals or agents, any persons acting for him and any appointed third parties shall be informed of and observe the licensing conditions and the provisions of the Money Lenders Ordinance.

48. Licensees should establish and maintain proper systems and procedures to ensure that they themselves, their employees, agents, any persons acting for them and any appointed third parties are informed of and observe the licensing conditions and the provisions of the MLO.

Management and supervision

- 49. Detailed policies and procedures pertaining to authorisations and approvals, as well as the authority of key positions for the compliance of statutory obligations should be clearly defined and communicated to and followed by staff, agents, appointed third parties and any persons acting for the licensees.
- 50. Reporting lines should be clearly identified with supervisory and reporting responsibilities assigned to appropriate staff members.
- 51. Licensees should establish procedures to ensure the proper handling of customers' complaints and that appropriate remedial actions are taken. They should ensure that all their staff, agents, appointed third parties and other persons acting for them who deal with intending borrowers or borrowers are aware of the complaint procedures and are able to provide customers with correct information about the procedures.

Personnel and training

- 52. Appropriate personnel recruitment and training policies should be established with adequate consideration given to training needs to ensure compliance with the licensee's operational and internal control policies and procedures and all applicable legal and regulatory requirements to which the licensee is subject. In particular:-
 - (a) Licensees should ensure that, for compliance with the MLO and the licensing conditions, adequate training suitable for the specific duties which their staff perform is provided to these persons both before they commence their duties and on an ongoing basis. Their staff should be made aware of how the licensing conditions apply to their duties, the licensee's statutory obligations and the possible consequences for failure to comply with the licensing conditions or statutory requirements.
 - (b) Managerial staff should have specific training on their responsibilities for supervising or managing staff, agents, appointed third parties and other persons acting for the licensee and performing random checks in the daily operations of the licensee to ensure compliance with the licensing conditions and relevant statutory provisions.
- 53. Licensees should also take appropriate steps to ensure that their agents, appointed third parties and other persons acting for them are aware of how the licensing conditions apply to their duties, the licensee's statutory obligations and the possible consequences for failure to comply with the licensing conditions or statutory requirements before they commence their duties.
- 54. Licensees are encouraged to consider using a mix of training techniques and tools in delivering training, depending on the available resources and learning needs of their staff, agents, appointed third parties and other persons acting for them. These techniques and tools may include on-line learning systems, focused classroom training, videos as well as paper-based or intranet-based procedural manuals.

Review of appointed third parties

55. Licensees should from time to time ascertain the appointed third parties' continuous compliance with the relevant requirements for the purposes of the licensees' continuous compliance with the licensing conditions and the provisions of the MLO, in particular should ensure that the appointed third parties do not charge borrowers or intending borrowers any fees for or in relation to the loans granted by licensees.

Record keeping

- 56. Licensees should keep adequate and up-to-date documentation regarding the licensees' compliance with licensing conditions and the statutory provisions of the MLO.
- 57. In particular, licensees should maintain proper records as required under the various licensing conditions including but not limited to:
 - (a) Particulars of their appointed third parties;
 - (b) Appointed third parties' written confirmations on not charging borrowers or intending borrowers any fees for or in relation to loans granted by licensees;
 - (c) Written confirmations from any party from which personal data is obtained or collected that the disclosure / provision of such personal data is not in contravention of the provisions of the Personal Data (Privacy) Ordinance;
 - (d) Records which show the licensees' compliance with the requirement on providing explanations to intending borrowers of the terms of the loan agreements;
 - (e) Written confirmations or approvals by the relevant authorities produced by borrowers for loan agreements involving the acceptance of subsidized flats as collateral.

Annex 1 – Sample form on disclosure of the existence of third parties by intending borrowers

Confirmation from [] (intending borrower) To: (<i>Name of licensee</i>)
[/ We, (<i>Name of the intending borrower</i>), holder of [Hong Kong [dentity Card No] / [BR Certificate No] / [Company Number] * at (<i>address</i>) refer to my / our application to you for a loan and hereby confirm that:
 (1) I / We * [have entered into or signed an agreement with a third party] * [have not entered into or signed any agreement with any third party] for or in relation to the procuring, negotiation, obtaining or application of the loan, guaranteeing or securing the repayment of the loan (other than any agreement with solicitors instructed by me / us for the provision of legal services solely); (2) The name and address of the third party are as follows:
Name of third party 1:
Address of third party 1 :
Name of third party 2:Address of third party 2:
(Please set out particulars of other third parties on a separate sheet signed by the intending borrower bearing the same date if there are more than two third parties)

I / We hereby provide a copy of each of the agreement with the third party or parties and understand that such agreement(s) will be attached to the loan agreement.

Signature:

Name:

Date:

*Delete where appropriate

Annex 2 – Sample form on confirmation by appointed third party on the charging of fees

Confirmation from appointed third party

To: (Name of licensee)

I / We (*Name of appointed third party*) refer to the application of (*Name of intending borrower*) ("the intending borrower") for a loan from you and hereby confirm that:

- (a) I / We have not charged, recovered, demanded or received and will not charge, recover, demand or receive any fees, charges, reward or consideration, however named, from the intending borrower for or relating to the procuring, negotiation, obtaining or application of the loan or guaranteeing or securing the repayment of the loan; and
- (b) I / We have not otherwise agreed with the intending borrower that, for or relating to the loan, the intending borrower pay or would pay any fees, charges, reward or consideration, however named, to any other party whether for the purchase of any goods or services or not.

Signature:

Name:

Date:

Annex 3 – Sample form on reporting by licensees of particulars or changes in particulars of or termination of appointment of appointed third parties of licensees

List of Forms

(1) Form ML – ATP-1

Notice of Particulars of Third Party Appointed by Licensed Money Lenders in relation to Granting of Loans

(2) Form ML – ATP-2

Notice of Changes in Particulars of Appointed Third Party of Licensed Money Lenders

(3) Form ML – ATP-3

Notice of Termination of Appointment of Appointed Third Party of Licensed Money Lenders

持牌放債人為批出貸款而委任的第三方詳情通知書 Notice of Particulars of Third Party Appointed by Licensed Money Lenders in relation to Granting of Loans

放債人檔案號碼 MLR Number

1 持牌人姓名/ 名稱 Name of Money Lender Licensee

2 持牌人提供的電話查詢號碼 Licensee's Enquiry Telephone Number

3 持牌人委任的第三方的詳情

Particulars of the third party appointed by the Licensee

姓名/名稱 Name

地址 Address

身分證明 Identification

(A) 適用於個人 For Individual
 (香港身分證/護照副本必須連同本表格一併交付 A copy of Hong Kong Identity Card / Passport must be delivered with this Form)

(i) 香港身分證號碼 Hong Kong Identity Card Number

(ii) 護照簽發國家及號碼 Passport Issuing Country and Number

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(B) 適用於獨資、合夥或其他非法人團體 For Sole-proprietorship, Partnership and unincorporated body of persons

商業登記證號碼 Business Registration Certificate Number

(C) 適用於法人團體 For Body Corporate

公司編號 Company Number

簽署 Signed :

姓名 Name:

日期 Date:

持牌放債人 Money Lender Licensee / 持牌放債人的授權代表 Authorised Person of Licensee*

日 DD / 月 MM / 年 YYYY

*請刪去不適用者 Delete whichever does not apply

提交人資料 Presentor's Reference

姓名 Name:

電話 Telephone:

傳 真 Fax No. :

持牌放債人委任的第三方的詳情更改通知書 Notice of Changes in Particulars of Appointed Third Party of Licensed Money Lenders

放債人檔案號碼 MLR Number

1 持牌人姓名/ 名稱 Name of Money Lender Licensee

2 持牌人提供的電話查詢號碼 Licensee's Enquiry Telephone Number

3 持牌人委任的第三方的詳情更改

Changes in Particulars of the Appointed Third Party of the Licensee

A. 現時在放債人登記冊登記的詳情 Particulars Currently Registered in the Register of Money Lenders 姓名/名稱 Name

地址 Address

身分證明 Identification

(a) 適用於個人 For Individual

(i) 香港身分證號碼 Hong Kong Identity Card Number

- (ii) 護照簽發國家及號碼Passport Issuing Country and Number
- (b) 適用於獨資、合夥或其他非法人團體
 For Sole-proprietorship, Partnership and unincorporated body of persons

商業登記證號碼 Business Registration Certificate Number



(c) 適用於法人團體 For Body Corporate

公司編號 Company Number

B. 更改詳情 Details of Change(s)

<u>只須填報有更改的項目</u> Please complete item(s) with change(s) only

姓名/名稱 Name

地址 Address

身分證明 Identification

(a) 適用於個人 For Individual

OR⁽ⁱ⁾

- 香港身分證號碼 Hong Kong Identity Card Number
- (ii) 護照簽發國家及號碼Passport Issuing Country and Number
- (b) 適用於獨資、合夥或其他非法人團體
 For Sole-proprietorship, Partnership and unincorporated body of persons

商業登記證號碼 Business Registration Certificate Number

(c) 適用於法人團體 For Body Corporate

公司編號 Company Number

簽署 Signed :

姓名 Name:

日期 Date:

持牌放債人的授權代表 Authorised Person of Licensee*

持牌放債人 Money Lender Licensee /

on of Licensee"

日 DD / 月 MM / 年 YYYY

*請刪去不適用者 Delete whichever does not apply

提交人資料 Presentor's Reference	
姓名 Name:	

電話 Telephone:

[

持牌放債人委任的第三方的終止委任通知書 Notice of Termination of Appointment of Appointed Third Party of Licensed Money Lenders

放債人檔案號碼 MLR Number

1 持牌人姓名/ 名稱 Name of Money Lender Licensee

2 持牌人提供的電話查詢號碼 Licensee's Enquiry Telephone Number

3 現通知放債人註冊處處長,下述人士已於 _____年 ____月____日停任上述持 牌人為批出貸款而委任的第三方。

I / We * hereby notify the Registrar of Money Lenders that the following person has ceased to be the appointed third party of the abovenamed Money Lender Licensee in relation to the granting of loans with effect from the date of _____.

4 停任持牌人委任的第三方的人士的詳情

Particulars of the person who ceased to be the appointed third party of the Licensee

姓名/名稱 Name

地址 Address

身分證明 Identification

(A) 適用於個人 For Individual

香港身分證號碼 Hong Kong Identity Card Number

(i)

(i) 護照簽發國家及號碼
 Passport Issuing Country and Number

ber	

(B) 適用於獨資、合夥或其他非法人團體 For Sole-proprietorship, Partnership and unincorporated body of persons

商業登記證號碼 Business Registration Certificate Number

持牌放債人 Money Lender Licensee /

持牌放債人的授權代表Authorised Person of Licensee*

(C) 適用於法人團體 For Body Corporate

公司编號 Company Number

r			
	-		
	-		

簽署 Signed :

姓名 Name:

_____ 日期 Date:

日 DD / 月 MM / 年 YYYY

*請刪去不適用者 Delete whichever does not apply

提交人資料 Presentor's Reference

姓名 Name:

電話 Telephone:

傳真 Fax No.:

Annex 4 – Guidance for meeting the requirements on the display / broadcast of risk warning statement for different types of advertisements

Form of advertisement	Manner of display / broadcast accepted as meeting the requirements
Audio advertisement with no visual display (e.g. Radio broadcast)	 The warning statement should be audibly and clearly read out in a voice-over at the end of each broadcast. The warning statement should be read out in the same pace as other contents of the advertisement.
Audio-visual advertisement (including television, cinema or video clips on internet)	 Where the warning statement appears in an independent screenshot, the statement should be displayed visually for at least 3 seconds together with a clear read-out for the same duration. <u>OR</u> The warning statement should be shown clearly at the bottom of the screen throughout the entire advertisement with the height of each Chinese character of the statement be at least 1/15 of the screen and / or height of the capital letters of the English statement be at least 1/20 of the screen, together with a clear read-out in the same pace as other contents of the advertisement.
	• The warning statement should be displayed in darker colour than the background and there should

Form of advertisement	Manner of display / broadcast accepted as meeting the requirements
	be clear contrast in colour between the background or backdrop of the advertisement and the warning statement.
Advertisement in print	• The warning statement should be displayed in text in at least 50 per cent of the font size, same font type and colour as the other contents of the advertisement that bear the largest font size.
Internet advertisement	• For a website banner which links to another website, it is acceptable for the warning statement to be shown on the landing page instead of in the banner. The warning statement should be displayed in text in at least 50 per cent of the font size, same font type and colour as the other contents that bear the largest font size on the landing page.
	• For advertisements with a static screen on the internet, the guidance above for advertisement in print applies.
	• For audio-visual advertisement on the internet, the guidance above for the display of warning statement in audio-visual advertisements applies.
SMS advertising message on mobile phones	• The warning statement should be displayed as an independent paragraph in the SMS message.

Form of advertisement	Manner of display / broadcast accepted as meeting the requirements
	• Where the SMS message links to another advertising website, it is acceptable for the warning statement to be shown on the landing page instead of in the SMS message. In that case, the warning statement should be displayed in text in at least 50 per cent of the font size, same font type and colour as the other contents that bear the largest font size on the landing page.

Appendix 1(c):

Money Lenders Licence -Licensing Conditions

MONEY LENDERS LICENCE LICENSING CONDITIONS

- 1. Before entering into any agreement for loan, the money lender
 - (a) shall ask the intending borrower to state whether or not he has entered into or signed any agreement ("the third party agreement") with any person ("third party") for or in relation to the procuring, negotiation, obtaining or application of the loan, guaranteeing or securing the repayment of the loan (other than an agreement with solicitors instructed by the intending borrower for the provision of legal services solely);
 - (b) shall state in writing the intending borrower's reply in relation to Condition 1(a) above in the loan agreement; and
 - (c) if the intending borrower's reply in relation to Condition 1(a) above is in the affirmative, shall further
 - (i) obtain from the intending borrower the name and address of the third party;
 - (ii) state in writing in the loan agreement the name and address of the third party and whether the money lender is in any way related to the third party and the nature of such relationship;
 - (iii) ask the intending borrower to personally provide a copy of the third party agreement; and
 - (iv) attach the third party agreement to the loan agreement.
- 2. The money lender shall not grant or agree to grant any loan to any intending borrower if the intending borrower's reply in relation to Condition 1(a) above is in the affirmative, unless the third party as identified in Condition 1(c) above:
 - (a) is a person appointed by the money lender ("appointed third party") for or in relation to granting a loan to any intending borrower or any specified class of intending borrower, whether as to the procuring, negotiation, obtaining, application, guaranteeing or securing the repayment of such a loan; and
 - (b) has, specifically in respect of the loan, confirmed in writing to the money lender that
 - (i) he has not charged, recovered, demanded or received and will not charge, recover, demand or receive any fees, charges, reward or consideration, however named, from such intending borrower for or in relation to the procuring, negotiation, obtaining or application of the loan or guaranteeing or securing the repayment of the loan; and
 - (ii) he has not otherwise agreed with the intending borrower that the intending borrower pays or would pay any fees, charges, reward or consideration, however named, to any other party whether for the purchase of any goods or services or not.
- 3. For the purposes of Condition 2,
 - (a) 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 (including identification card/passport, business registration and company number as applicable) of any appointed third party; and
 - (b) the third party as identified in Condition 1(c) above 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.
- 4. (a) The money lender shall not knowingly allow or permit any person, whether the money lender, or his partner, employer, employee, principal or agent or any person acting for him or any appointed third party, to charge, recover, demand or receive any fees, charges, reward or consideration, however named, from

any borrower or intending borrower for or in relation to the procuring, negotiation, obtaining or application of a loan or guaranteeing or securing the repayment of a loan.

(b) The prohibition in Condition 4(a) above also covers any fees, charges, reward or consideration, however named, to be paid by the borrower or intending borrower to the appointed third party or any other person as agreed between the borrower/intending borrower and the appointed third party, whether for the purchase of any goods or services or not.

- 5. 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 terms in relation to repayment, namely,
 - (a) the interest rate expressed as a rate per cent per annum and the total amount of interest payable under the agreement;
 - (b) amounts of repayments, periodically and in total, under the agreement;
 - (c) the possible consequences for any default in repayment, including -
 - (i) the taking into possession and sale of any security involved (including the property charged, if any); and
 - (ii) any overriding right of the money lender to demand an immediate repayment.

The money lender must also keep written or video or audio records which show that he complies with the requirements under this 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 (a) 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 (b) when the money lender has knowledge, or has reasonable grounds to believe, that the disclosure/provision of the personal data by that other money lender is likely to be in contravention of the provisions of the Personal Data (Privacy) Ordinance, Cap. 486. The money lender must also keep records which show that he complies with this requirement and the provisions of the Personal Data (Privacy) Ordinance.
- 7. The money lender shall not accept a subsidized flat provided by the Hong Kong Housing Authority as collateral for the loan to the borrower unless the borrower has produced to the money lender either—
 - (a) 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
 - (b) the written approval of the Director of Housing granting approval to mortgage or charge the said flat.
- 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" immediately followed by the number of the money lender's licence.
- 9. Any advertisement in relation to the money lending business of a money lender issued or published by the money lender, in his own name or through any other person, whether in textual, audio or visual form, must contain the money lender's telephone hotline for handling complaints and a risk warning statement (in the same language as that of the advertisement or the relevant part thereof) as set out below, both of which must be prominent and easily legible in the written or visual part of the advertisement. The risk warning statement must also be clearly audible in the audio part of the advertisement:

- "忠告:借錢梗要還,咪俾錢中介"
- "Warning: You have to repay your loans. Don't pay any intermediaries."
- 10. (a) The money lender and his debt collectors shall not try to recover debts, whether directly or indirectly, from anyone unless such person is in law indebted to him.

(b) The money lender shall take all practicable steps and measures to ensure that personal data collected in the course of his business are protected against unauthorized or accidental access, processing, erasure or other use by any debt collectors, and shall at all times comply with the Personal Data (Privacy) Ordinance, Cap 486, Laws of Hong Kong, in the collection, use, holding and processing of such information or personal data.

(c) The money lender and his debt collectors shall not, while trying to locate the whereabouts of debtors, harass anyone, adopt unlawful or improper debt collection practices.

(d) The money lender shall, so far as reasonably practicable, 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.

(e) The money lender shall, so far as reasonably practicable, keep updated and accurate records of the debt collection activities of his debt collectors during the term of the licence.

- 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 and such information shall be provided within such time as the Registrar of Money Lenders or the Commissioner of Police may specify.
- 12. The money lender must establish and maintain proper systems and procedures to ensure that the money lender, or his partners, employers, employees, principals or agents, any persons acting for him and any appointed third parties shall be informed of and observe the licensing conditions and the provisions of the Money Lenders Ordinance.

Appendix 1(d):

Sample form on disclosure of the existing of third parties by intending borrower

Licensing Condition 1(b) Sample form on disclosure of the existence of third parties by intending borrower

Disclosure of the existence of third parties by intending borrower
Confirmation from [] (intending borrower)
To: (<i>Name of licensee</i>)
I / We, (<i>Name of the intending borrower</i>), holder of [Hong Kong Identity Card No] / [BR Certificate No] / [Company Number] * at (<i>address</i>) refer to my / our application to you for a loan and hereby confirm that:
 (1)I / We * [have entered into or signed an agreement with a third party] * [have not entered into or signed any agreement with any third party] for or in relation to the procuring, negotiation, obtaining or application of the loan, guaranteeing or securing the repayment of the loan (other than any agreement with solicitors instructed by me / us for the provision of legal services solely);
(2) The name and address of the third party are as follows:
Name of third party 1:
Address of third party 1 :
Name of third party 2:
Address of third party 2 :
(Please set out particulars of other third parties on a separate sheet signed by the intending borrower bearing the same date if there are more than two third parties)

I / We hereby provide a copy of each of the agreement with the third party or parties and understand that such agreement(s) will be attached to the loan agreement.

IMPORTANT NOTE:

Please note that it is an offence for a person to fraudulently induce a money lender to lend money by false or misleading statement or dishonest concealment of material facts.

You should make full and honest disclosure of the above information on the involvement of any third parties in relation to the loan for the protection of your own interests.

Signature:

Name:

Date:

*Delete where appropriate

Appendix 1(e):

Sample form on recording the particulars of appointed third party involved in a loan agreement

Licensing Condition 1(c)(ii) Sample form on recording the particulars of appointed third party involved in a loan agreement

Particulars of appointed third party involved in a loan agreement

I / We (Name of Money Lender) confirm that :

Please tick the relevant box

The following third party is involved in the loan agreement
Name of third party :
Address of third party :
I / We have appointed the above third party.
I am / We are related to the appointed third party
Nature of my / our relationship with the appointed third party : (<i>Please select at least one item below</i>)
Holding company of the Money Lender
Subsidiary of the Money Lender
Fellow subsidiary (i.e. subsidiary of the holding company of the Money Lender)
Others : (please specify)
Signature :

Name :		
Position :		
Name of Money Lender :		
Date :		

(Please record particulars of each appointed third party on a separate sheet.)

Appendix 1(f):

Sample form for recording explanation of terms of loan agreement given to intending borrower

Licensing Condition 5 Sample form for recording explanation of terms of loan agreement given to intending borrower

Confirmation of explanation of loan agreement by money lender

I confirm that I have explained to the intending borrower at the time and place set out below all the terms of the following loan agreement, in particular the terms in relation to repayment, namely,

- (a) the interest rate expressed as a rate per cent per annum and the total amount of interest payable under the agreement;
- (b) amounts of repayments, periodically and in total, under the agreement;
- (c) the possible consequences for any default in repayment, including
 - (i) the taking into possession and sale of any security involved (including the property charged, if any); and
 - (ii) any overriding right of the money lender to demand an immediate repayment.

Loan agreement /	
Contract no. /	
Reference No.	
Name of Intending	
Borrower	
Date of explanation	
Time	
Venue	

Sign	ature of staff :			
Nam	e of staff :			
Posi	tion of staff :			
Nam	e of Money Lender :			
	ged by intending borrow	ver		
Sign	ature :			
Nam	e of Intending ower :			
Date				

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