



Money Lending - Reforming Law and Trade Practices for Consumer Protection

保障消費權益——改革放債法規和營商手法



消費者委員會
CONSUMER COUNCIL

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Abbreviations

AI	Authorised institution
APR	Annualised percentage rate
ASA	Advertising Standard Authority in the UK
ASIC	Australian Securities and Investments Commission
BO	Bankruptcy Ordinance (Cap. 6)
CONC	Consumer Credit Sourcebook issued by the Financial Conduct Authority in the UK
COP	Code of Money Lending Practice issued by the Hong Kong Licensed Money Lenders Association
CR	Companies Registry in Hong Kong
CR Guidelines	Guidelines on Additional Licensing Conditions of Money Lenders Licence issued by the Companies Registry in Hong Kong
Effective Rate	True annual percentage rate of interest
FCA	Financial Conduct Authority in the UK
FinTech	Financial technology
Four-Pronged Approach	The four-pronged approach implemented by the Government in 2016 to curb malpractices of financial intermediaries
FSC	Financial Supervisory Commission of the Republic of China
FSMA	Financial Services and Markets Act in the UK
FSTB	Financial Services and the Treasury Bureau in Hong Kong
GDP	Gross domestic product
Government	Government of the Hong Kong Special Administrative Region
Guiding Opinions	Guiding Opinions of China Banking Regulatory Commission and the People's Bank of China on the Pilot Operation of Small-sum Loan Companies (中國銀行業監督管理委員會、中國人民銀行關於小額貸款公司試點的指導意見)
HKMA	Hong Kong Monetary Authority
IFEC	Investor and Financial Education Council in Hong Kong
IVA	Individual voluntary arrangement
JCIC	Joint Credit Information Center in Taiwan
KOL	Key opinion leader
LMLA	Hong Kong Licensed Money Lenders Association
MLCB	Moneylenders Credit Bureau in Singapore
MLO	Money Lenders Ordinance (Cap. 163)
National Credit Act	National Consumer Credit Protection Act in Australia
NGO	Non-government organisation

Notes to Borrowers	Notes To Borrowers When Obtaining Loans From Moneylenders issued by the Registry of Moneylenders in Singapore
Ofcom	Office of Communications in the UK
ORO	Official Receiver's Office in Hong Kong
Promise	Promise (Hong Kong) Co., Limited
Registrar	The Registrar of Money Lenders in Hong Kong
RML	Registrar of Moneylenders in Singapore
SARS	Severe acute respiratory syndrome
The Council	The Consumer Council in Hong Kong
TU	TransUnion Limited
UAF	United Asia Finance Limited
UK	The United Kingdom

Online Content

All websites and electronically available materials referenced in this report were last accessed on 29 August 2019.

This report can be downloaded from www.consumer.org.hk.
In case of any update, the latest version shall prevail.

EXECUTIVE SUMMARY

Introduction

Over-indebtedness is an important issue worldwide. For Hong Kong, a local survey on young working adults showed that over 60% of the respondents had overspent and almost one-third were in debt. When things go seriously wrong for either the money lenders or the borrowers, this can bring about wider social-economic implications.

Both borrowers and money lenders have responsibilities in relation to credit and debt. On the one hand, borrowers have to make a proper assessment of their ability to repay the loan, and must provide accurate information to the money lender to assess the suitability of the loan. They also need to understand that once they sign a loan agreement, they have entered into a contract which they should honour. On the other hand, money lenders also have serious responsibilities. These include carrying out a prudent assessment of a borrower's ability to repay a loan, offering transparent and fair interest rates and contract terms, abiding by responsible marketing practices, and managing customer relations with due respect for consumer rights, such as having systems in place to assist debtors who are in difficulties.

According to the findings of this report, consumers face aggressive marketing practices coupled with opaque terms and conditions calculated to induce consumers into thinking that loans are easy and convenient to apply for, with apparently "low" interest rates which borrowers should be able to repay. Disclosures are either after the fact, or hidden in complex terms in fine print in contracts (if available) which consumers do not understand or are pressured to sign in haste. There is little surprise that consumers are ill informed of the true cost of loans and their obligations.

This report by the Consumer Council ("**the Council**") reviews the consumer lending practices and the current laws and regulations in Hong Kong to gain an insight into the state of the market especially from the consumers' perspective. As mentioned, what is revealed is a worrying picture of inadequate regulation and oversight, questionable practices by some money lenders and a lack of market transparency. This report sets out a range of recommendations for consideration by the Government, money lenders and other players in the money lending market aimed at strengthening the governance of the industry and bringing better protection to consumers when engaging in these services.

The Fast Growing Market and the Current Regulatory Framework

Hong Kong, being an international finance hub, has an active money lending market. Economic development with record employment, prolonged period of low interest rates, the emergence of online lending platforms, together with the aggressive practices of some credit providers encouraged greater consumer borrowing in the market, as evidenced by a 2.2 fold increase in the amount of credit card advances and personal loans provided by authorised institutions ("**Als**") over the last decade. The number of licensed money lenders also grew by 176% in 10 years, from approximately 779 in 2009 to 2,153 in 2018 (2,260 as of August 2019).

Als are closely regulated and supervised by the Hong Kong Monetary Authority ("**HKMA**"). They are obliged to comply with both the provisions of the Banking Ordinance and the recommended practices currently embodied in the HKMA endorsed Code of Banking Practice, as well as its various circulars and guidelines issued from time to time.

Conversely, the current regulatory regime for money lenders, namely the Money Lenders Ordinance (Cap. 163) (“**MLO**”) was enacted in 1980, with the original aim to combat the problem of “loansharking”. Unlike AIs, apart from the licensing and regulation of money lending transactions, money lenders in Hong Kong are not supervised by any regulators.

Under the MLO, three authorities govern the money lending industry - the Registrar of Money Lenders (“**Registrar**”), the Commissioner of Police and the Licensing Court. The Registrar deals with applications for money lender licences (new and renewal) and maintains a register of money lenders for public inspection. The Commissioner of Police scrutinises licence applications and investigates complaints against money lenders. The Licensing Court hears and determines applications for money lender licences. Both the Registrar and the Commissioner of Police may apply to the Licensing Court who has power to make an order revoking or suspending a licence.

In the years running up to 2016, there were concerns over the use of fraudulent and deceitful tactics by financial intermediaries (“**intermediaries**”) causing detriment to consumers who were prospective borrowers. Over the same period, the Council also received numerous complaints about undesirable or deceptive practices used by some money lenders and intermediaries.

In response, the Government implemented a Four-Pronged Approach with enhanced police enforcement actions, improved public education and publicity activities, strengthened advisory services, and more stringent licensing conditions to tackle these issues. The MLO, together with 14 licensing conditions, regulate the money lending industry in the following 5 main aspects.

- (1) Licensing of money lenders
- (2) Supply of information
- (3) Interest rates
- (4) Restrictions on advertising
- (5) Statutory ban on separate fee charging

Although the implementation was effective and the problems relating to intermediaries seem to have abated, the Council is concerned that with the rapid change in consumers’ borrowing behaviour and the significant growth in the money lending industry and their questionable trade practices, there is still the necessity to conduct an in-depth study to shed light on the state of consumer protection and safeguards in the money lending market and to advocate for effective measures to foster a fairer and more transparent marketplace.

Consumer Behaviour and Issues on Money Lending

A key study area is to look into the consumer borrowing experience to identify problems associated with the emerging usage of consumer credit and loans. Over the last year, the Council analysed its complaint cases, interviewed non-government organisations (“NGOs”) which provide financial advice and debt counselling support services to consumers and met with debtors and their families, to understand the different issues and concerns regarding consumer indebtedness and money lending. The review of the statistics by the Official Receiver’s Office (“ORO”) and the findings from surveys conducted by the Investor and Financial Education Council (“IFEC”) have also provided useful information on consumer attitudes and behaviour towards borrowing and debt. In summary, the Council observed that:

Overspending as a habit is a primary cause for bankruptcy and multi-time bankruptcy

The main reasons for consumer borrowing were found to be for “Buying favourite items”, “Entertainment/leisure” and “Travel”. The issue is serious and critical to Hong Kong’s future as the case interviews and the survey on young working adults showed that over 60% of the respondents had overspent and almost one-third were in debt. In addition, there is a rising trend of multi-time bankruptcy. According to the ORO, despite a declining trend in bankruptcy, the number of multi-time bankruptcy cases increased from 151 in 2013 to 617 in 2018 (a rise of 309%) and the top three causes of multi-time bankruptcy over these years were “Overspending”, “Lack of gainful employment”, and “Excessive use of credit card facilities”.

Poor debt management and inadequate knowledge of credit products and borrowing costs

Despite the majority of consumers repaying loans fairly on time, nearly one-fifth (19%) of the borrowers had experience of delayed debt repayments and 1% claimed they always delayed payments. An increasing trend of settling credit card bills with partial or minimum payment was found, indicating that consumers had inadequate knowledge of credit products, credit ratings and interest rates, as well as the consequence of not making ends meet. According to information from the NGOs interviewed, some borrowers were indebted to multiple money lenders with one extreme case where a borrower had debts with 120 money lenders. There were also misconceptions relating to the personal impact of individual voluntary arrangements and bankruptcies due to the improper marketing tactics practiced by some of the money lenders.

Inadequate advice on indebtedness

Both the NGOs and case interviewees (debtors and their families) reflected the lack of access to help and advice for those in financial difficulties, especially regarding the availability of and access to credit. There were also cases where money lenders bundled the borrowers’ mortgaged properties as collaterals for sub-mortgages without the borrowers’ informed consent or even knowledge. The borrowers could run the risk of losing their properties should the money lenders default in their sub-mortgage, which is beyond the borrowers’ control.

Consumer Over-Indebtedness



- Excessive exposure to misleading advertisement

- Overspending



- Ease of borrowing



- Limited access to financial advice
- Low financial literacy

Aggressive marketing to promote ease of borrowing without prudent assessment on repayment ability resulting in more consumer borrowing at high or even exorbitant interest rates

Aggressive marketing and technological evolution have substantially increased consumer's accessibility to and the choice of money lending services. Nowadays, a loan application and contract could be done online or even via social media platforms, according to the interview findings.

However, in the absence of prudent assessment on consumer's repayment ability, the cost of easy and convenient money borrowing is always high or even at exorbitant interest rates. To pay off these high interest debts, the consumer may need to take out other loans that charge much higher interest rates or have even more unfavourable borrowing terms, all of which merely intensify the consumer's problem of indebtedness and over-indebtedness.

Trade Practices of Money Lending

To understand what the practices are and how they affect consumer behaviour and decision-making, the Council also conducted research in relation to the advertising and marketing tactics of the money lending market. Meetings and engagement with different trade participants, including a consumer credit reporting agency (TransUnion), the money lenders association (the Hong Kong Licensed Money Lenders Association ("LMLA")), and money lenders (Promise (Hong Kong) Co., Limited ("**Promise**") and United Asia Finance Limited ("**UAF**")), have revealed certain obvious gaps that need to be closed through effective regulatory measures:

A gap in responsible lending – misleading and confusing marketing messages and claims

Claims of low interest rates with high reward and simple loan application and approval are common marketing tactics used to attract the potential loan applicants who are in need of quick money to offload their financial pressures. Representations such as "no credit report required", "0 or low interest" further encourage some chosen targets such as university graduates, self-employed, part-time employees, housewives and blacklisted, indebted or bankrupt individuals to borrow which further strain on their repayment ability. Despite the two interviewed money lenders giving assurances that they applied strict rules for loan applications, the lending policies of different money lenders were found to vary considerably. Meetings with NGOs, debtors and families also confirmed that these advertisements and claims tended to attract those loan applicants of higher credit risk as opined by TransUnion.

Lack of like-for-like interest rate comparisons

The different practices in the calculation of fees or charges, as well as the diverse presentations of interest rate could bring much confusion to the loan applicants when selecting a money lender. Without clear and comparable information, the loan applicant could easily be led into taking on a loan with higher interest and bear a higher cost of borrowing.

Excessive and misleading advertising

It has long been recognised that excessive advertising can have a deleterious effect on consumers' borrowing habits as consumption behaviour can be heavily influenced by advertisements. In Hong Kong, the majority of businesses are free to use various channels to promote their goods/services to the general public, with TV, radio, internet, newspaper/magazine, social media and telemarketing being the advertising media favoured by money lenders.

These advertisements could give the perception that access to credit is easy, possibly leading to irresponsible spending. Some advertisements placed by money lenders and AIs also tended to be light-hearted or humorous, distracting viewers from the seriousness and financial implications of making a loan decision. In addition, the advertisements also give the perception that entering into a loan would give them high reward and/or low or no interest rates charged.

Misinformation and poor practices

The transparency and scrutiny of money lenders must be improved as evidenced by the missing or questionable licence numbers found by the Council when reviewing money lenders' advertisements. The Council's complaint cases also showed that the over-indebtedness problems encountered by consumers often arose from misinformation, hidden costs, improper documentation or other malpractices such as the collection of loan referee information and the sharing of debtor information without consent.

Disparity in standard and governance

Illegal money lenders, commonly referred to as loan sharks, not only take advantage of vulnerable consumers but also bring disrepute to legitimate money lenders. Oversight by an effective and sector specific regulator and more stringent entry requirements of money lenders are not available at present. The money lenders interviewed saw the need to strengthen the standard of the industry with measures such as introducing capital requirement, specifying minimum qualifications and experience of money lenders as well as enhancing the licensing mechanism and governance in order to raise the industry standards.

Areas of Concern of the Existing Regulatory Framework in Hong Kong

The Council has conducted research examining the regulatory framework in other jurisdictions which included Australia, Mainland China, Singapore, Taiwan and the United Kingdom ("UK") and observed that all these jurisdictions have imposed more stringent controls over money lenders or credit providers by way of legislations, rules or regulations and guidances. By reference to these jurisdictions, it is clear that the regulatory framework under the MLO, enacted 40 years ago with no major reform, has failed to keep up with both the changing landscape of the money lending business and the trend of consumer indebtedness and that there is a substantial gap which has to be addressed. In this regard, the Council has identified nine areas of concern of the existing regulatory framework in Hong Kong which are as follows:

Lack of a sector specific regulator

In Hong Kong, there is a lack of sector specific regulator in the money lending industry to identify systemic risks and problems, provide regulatory guidance, timely intervention and prevention of problems. Comparing with the reviewed jurisdictions, relevant regulators, be they sector specific or integrated, are in place, being empowered to make binding rules from time to time when they see fit so that they can strengthen and enhance the supervision of the industry, carry out timely intervention and bring about effective enforcement where necessary to protect consumer rights.

Although the Commissioner of Police takes enforcement actions upon receiving complaints, in most cases, this would be too late to protect consumers as harm has already been inflicted upon them. Thus the current framework fails to provide sufficient protection for consumers and supervision of money lenders.

Inadequate vetting on licence applications

Currently, the low threshold for licence application and the inadequate vetting has led to the quality of the money lenders being vastly inconsistent across the sector. By comparison, most of the reviewed jurisdictions have clear and detailed guidelines on the fit and proper criteria, and a requirement that adequate financial resources be in place with some specifying a fixed capital amount. Despite there being a requirement in the MLO for the Licensing Court to consider whether the applicant is a fit and proper person to carry on money lending business, the existing guidelines are brief with no minimum specifications for work experience and education and do not impose a stringent enough threshold. Furthermore, there are no provisions for any prior approval for any subsequent changes in directors and management in the existing MLO.

The inadequate due diligence prior to the grant of licence could also give rise to problems such as “phoenixing” whereby money lenders whose licences had been previously revoked could easily continue their businesses under a different name. Vetting of on-going and concluded investigations and civil judgments and proceedings are also currently lacking.

Inadequate regulation on the conduct of money lenders

The outdated MLO and the licensing conditions resulted in inadequate regulation on the conduct of money lenders. Apart from the Licensing Court which can impose licensing conditions on money lenders, neither the Commissioner of Police nor the Registrar has power to make binding rules to regulate the industry. The pertinent problem of debt collectors is also not being dealt with.

In contrast to the reviewed jurisdictions, money lenders are required by the relevant regulators to comply with a wide range of obligations and restrictions when conducting their businesses, in particular in the areas of pre-contractual disclosure, credit assessment, responsible lending, consumer credit data sharing, advertising restrictions and regulatory reporting. In addition, the relevant regulators are also responsible for the supervision of the money lending business and sales practices.

Lack of prudent credit assessment

One of the factors leading to over-indebtedness is the fact that money lenders are not obliged to conduct prudent credit assessment of borrower's ability to make repayments.

Though blame rightly rests with the consumer who made the borrowing, equally a responsible money lender should try to make enquiries of the borrower to ensure that a loan is not granted without a prudent affordability check. Despite there being similar requirements in the LMLA's Code of Money Lending Practice ("COP"), its voluntary nature and limited membership mean that in reality, there is no obligation to pay heed to this requirement and the compliance rate is unknown.

Research reveals that in most of the reviewed jurisdictions, credit assessment of borrowers is mandatory and money lenders are required to comply with responsible lending conduct obligations. In some jurisdictions, consumer credit data is often stored in the database of the third-party agencies which are authorised by the regulatory body. For example, the Moneylenders Credit Bureau was established by the regulator in Singapore and designated to be the credit data repository. While they provide data and analytics that help money lenders make decisions about lending, they would not be involved in the lending decision making process of the credit providers.

Abuse of referee's personal data

Notwithstanding the recent tightening of the licensing conditions, referees' personal data can still be easily abused since their consent is currently not required for their personal data to be used for marketing or any other purposes and referees would receive marketing cold calls and nuisance calls from money lenders from time to time.

High interest cap

The MLO provides for a two-tier interest cap structure set at 48% per annum and 60% per annum, with interest rates over 60% being illegal and interest rates between 48% to 60% presumed extortionate, meaning that these loan transactions can be reopened and this fuels uncertainty.

By comparison, most of the reviewed jurisdictions have a lower interest cap than that in Hong Kong apart from the UK where there is no interest cap except for the high-cost short-term loans. The rate of interest that can be charged by money lenders in the studied jurisdictions are: 48% per annum in Australia; 4% per month in Singapore; 36% per annum in Mainland China; 20% per annum for unsecured consumer loans and 15% per annum for credit cards and cash cards in Taiwan.

Given the current market conditions and compared with other jurisdictions, the existing interest caps in Hong Kong are excessively high.

Excessive and misleading advertising

Under the MLO, there are minimal restrictions on money lenders' advertisements except that there is a requirement for a risk warning statement together with the money lenders' name and licence number to be displayed in the advertisements.

By comparison, detailed guidance on the contents of advertisement is found in most of the reviewed jurisdictions stipulating that there should not be any misleading representations which create unjustified expectations. For example, in Australia, it is important that the advertisement gives consumers a realistic impression of the overall costs where an advertisement refers to interest rates; in Singapore, money lenders can only advertise in designated places and on their own websites only; in the UK, money lenders are prohibited to trivialise the seriousness of taking out loans in their advertisements or be disproportionately light-hearted and whereas in Taiwan, the law specifically states that no marketing targeting students should be undertaken.

Limited enforcement tools and consumer redress

There are limited enforcement tools and consumer redress under the MLO. Although any contravention of the MLO and the licensing conditions constitutes an offence, the Registrar and Police currently have no power to impose sanctions such as imposing a fine, banning an individual from engaging in the money lender's business or issuing a remediation order to compel the money lender to take certain remedial actions, in the absence of a successful criminal conviction. This leads to inadequate protection for consumers.

In contrast, in the reviewed jurisdictions, non-compliance or breaches of the regulatory requirements will attract civil penalties (Australia and the UK), administrative sanctions (Australia, Taiwan and the UK), disciplinary actions (Australia, Singapore and the UK) and criminal prosecutions (Australia, Mainland China, Singapore, Taiwan and the UK).

Low market transparency

There is currently a shortage of credit data relating to the industry such as the total amount of new loans/outstanding loans, arrears, default rate, ratio of secured to unsecured loans and demographics of borrowers etc. Without this data, policy review could not be effectively carried out. In addition, there is also a lack of publicly available enforcement statistics and without this transparency, the public could not monitor the state and effectiveness of enforcement efforts.

In other jurisdictions, where there is mandatory credit data provision and collection requirements, this information is available to the money lenders (for credit assessment) and to relevant authorities to enable them to produce statistics, either for policy review or, where appropriate, for public information. As for enforcement statistics, these are published in reports or regular updates by the relevant authorities and available to the public. For example in Australia, the numbers of civil actions, prosecutions, court enforced undertakings or negotiated outcomes can be found in the Australian Securities & Investments Commission's ("ASIC") half yearly enforcement updates. In Singapore, enforcement figures on cases recorded, number of persons arrested etc. are regularly published by the Singapore Police Force. In the UK, enforcement statistics of cases opened and closed each year are issued in the enforcement annual performance report issued by the Financial Conduct Authority ("FCA").

Recommendations and Conclusions

With expansion and technological developments in the financial market and money lending business, some overseas jurisdictions have already introduced different regulations for the financial technology (“FinTech”) market to ensure fair markets and to protect consumers from malpractices. In stark contrast, in Hong Kong, the MLO has been enacted for 40 years with no major reform. To empower consumers to make fully informed money borrowing decisions and to ensure that money lenders practice responsible lending, new regulatory measures with a series of changes in the money lending industry are necessary.

Based on the findings in this report, the Council puts forward the following four recommendations:

- (1) Strengthen consumer education and the provision of advisory services
- (2) Amend existing legislation
- (3) Establish a new sector specific regulator
- (4) Improve market transparency

Strengthen consumer education and the provision of advisory services

As consumer education on responsible borrowing, easy access to loans information and comparison, and accessible financial advice on debt management could benefit consumers in the long run, the Council recommends that the Government should play a leading role to coordinate with NGOs and the industry players to formulate effective strategies and roll out a platform to deliver timely and practical consumer education, information and advice on debt management as well as explore alternatives for credit provision to consumers.

Amend existing legislation

Analysis in the report shows that there is a need for the MLO to be updated to impose more effective regulatory oversight to the money lending market. The Council therefore urges the Government to conduct a comprehensive review of the MLO with emphasis on the following areas:

i) Establish a sector specific regulator

The lack of a regulator for money lenders has been identified as the root of the problem for the sector. As Hong Kong has adopted a sector specific approach in the regulation of the financial market, the Council recommends that the Government should establish a sector specific regulator to work towards preventing consumer detriments on an ex-ante basis through licensing and positive conduct obligations in addition to providing remedies for dealing with misconduct.

ii) Impose a duty to carry out prudent credit assessment

To ensure responsible lending, the Council recommends that the MLO should oblige money lenders to conduct prudent credit assessments before granting a loan to determine whether the loan is suitable for the borrower, thereby enhancing consumer protection. Once the duty has been imposed, the regulator can issue guidelines on how the money lender should discharge its responsible lending obligations and comply with the requirements under the legislation.

iii) Adjust the interest cap

There has not been any revision of the interest cap since the MLO was enacted in 1980. Since then, interest rate has fallen dramatically and the current rates seem grossly disproportionate to reflect market conditions. In addition, reference to other jurisdictions shows that a universal cap rather than a 2-tier system is preferred.

Although 48% is still considered high, the Council proposes that there should be a maximum universal cap of no higher than 48% per annum in view of the current legislation and reference to other jurisdictions. The Government should consult the industry as to which is the most appropriate rate to apply.

iv) Additional requirements on advertising practices

As AIs are already subject to restrictions on advertising, in order to maintain parity between money lenders and AIs, measures proposed by the Council have taken these restrictions into account.

The Council is of the view that restrictions on advertising in the MLO should be introduced to prohibit misleading content and to ensure that the tone of the advertisements should not be disproportionately light-hearted, that there should not be implication that credit is available regardless of the borrower's financial status, nor should the advertisement trivialise the seriousness of taking out a loan. It is proposed that mandatory guidance notes be incorporated into regulations requiring a clear and easy to understand warning statement to be displayed throughout the entire advertisement irrespective of the duration, together with a clear read out for at least 3 seconds.

In addition, the Council recommends a common approach in relation to the calculation and presentation of interest rates across credit providers to facilitate consumers to make proper comparisons between the interest costs of credit/loan products offered by different credit providers. As consumers are already familiar with the AI's method of calculation and presentation, i.e. the use of Annualised Percentage Rate ("APR"), the Council proposes that money lenders should be required to follow suit.

Recommendations for the new sector specific regulator

i) Strengthen the vetting process of licence applications and to raise the bar for entry requirements and introduce a fit and proper criteria for money lenders

Guidelines set down by the regulator should include:-

- threshold requirements for a fit and proper person, with requisite professional standards and integrity requirements expected of a money lender; such as minimum requirements in terms of working experience and education level for the management of the licensee with no previous criminal records;
- capital requirements;
- extending background checks to the management of the licensee to include on-going or concluded investigations and civil judgments and proceedings;
- submission of a business plan by the applicant to detail information such as the source of funds, internal compliance monitoring, loan approval processes, credit assessment, etc.; and
- approval requirements when there are subsequent changes in directors and management.

ii) Lay down regulations/guidelines for prudent credit assessment

In order to promote responsible lending, the Council recommends that the regulator should make prudent credit assessment mandatory by incorporating this requirement into licensing conditions. A loan should only be granted if it is likely to be affordable by the borrower. The extent and scope of such an assessment should be dependent upon and proportionate to the type of credit and the size of the loan. In addition, the regulator should also issue practical guidelines on how the above requirements could be interpreted and complied with.

To enable money lenders in Hong Kong to more easily carry out this credit assessment exercise, the regulator could consider putting in place some guidelines to require mandatory collection of consumer credit data and for such data to be put into a central data repository which could then be shared amongst relevant stakeholders. The regulator could further consider as to whether this collection and sharing should be limited to money lenders or be extended to include AIs.

iii) Introduce best practices and eliminate unscrupulous trade practices through use of strengthened licensing conditions and introduce regulations

The Council recommends the regulator to consider incorporating LMLA's voluntary COP into the licensing conditions so that money lenders would be obliged to follow best practices and existing licencing conditions can be strengthened. Such best practices could include issues such as information disclosure requirements.

Alternatively or in addition, regulations should be introduced to address areas of concern in order to address specific unscrupulous practices such as the unchecked use of debt collectors, the abuse of referees' personal data and the sub-mortgage of the borrowers' properties in the absence of their knowledge and informed consent.

iv) Enhance enforcement and handle complaints

The Council proposes that the regulator should have power to implement enforcement actions and be given more enforcement tools such as

- public reprimands;
- enforcement notices;
- financial penalties on the licensee or their staff;
- imposition of a ban on an individual prohibiting him/her from engaging in money lending business;
- remediation orders compelling the money lender to take remedial action; and
- disciplinary actions against a director, a partner or the management of the money lender.

In addition, the Council also recommends that a special division should be set up by the regulator to deal with complaints.

Improve market transparency

For the purpose of policy formulation and review and to assist with the oversight of the level of indebtedness of the community, the Council is of the view that the regulator should collect credit statistics and loan profiles from money lenders on a regular basis. These statistics should include the total amount of new loans, outstanding loans, average tenure, general demographics of borrowers, arrears and default rates.

For the purpose of fostering good practice by money lenders, the Council also proposes that enforcement statistics be published regularly in order to enhance regulatory transparency, such statistics to include but not limited to the number of objections made, licences revoked/suspended and the reasons for so doing, the number of warnings/advisory letters issued and the number of complaints received etc.

Regulated Environment

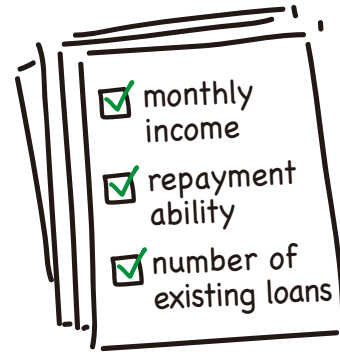
Regulator



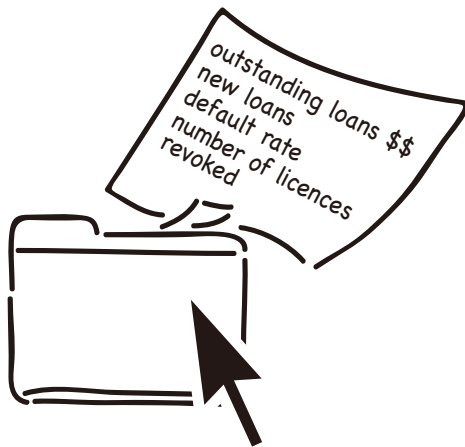
- Ongoing supervision



- Strengthened licence vetting process - money lenders are fit and proper persons



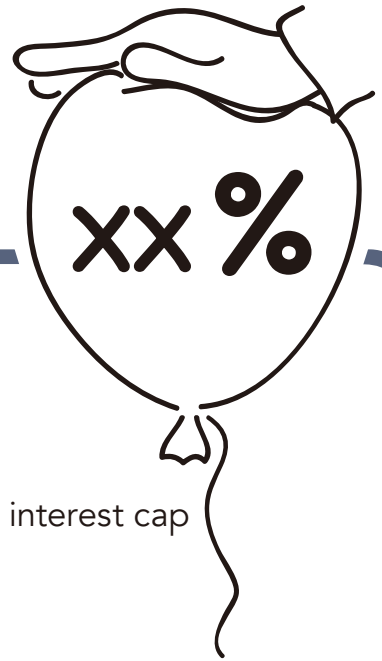
- Prudent credit assessment - responsible lending



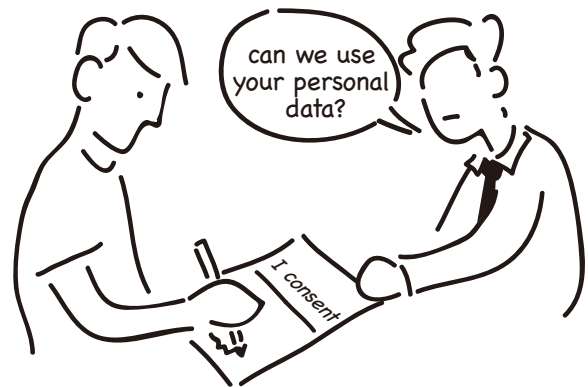
- Increased market transparency with more industry and enforcement statistics



- Newly added enforcement tools



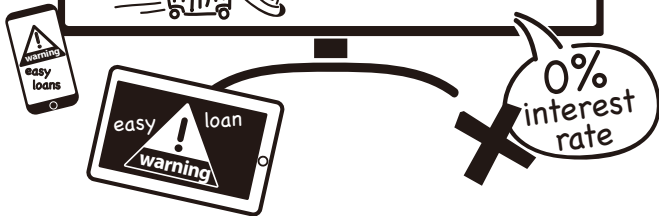
- Lowered interest cap



- Referee personal data protected - no unsolicited or nuisance calls



- Consumer education and advisory services on debt management broadened



- Misleading advertising prohibited – advert content not frivolous nor seriousness of borrowing trivialised, advert also contains warning statement
- A common approach presenting interest rates enables easy comparison



- Accessible and effective complaint handling

The Way Forward

The aim of this report is not to moralise on the rights and wrongs of consumer borrowing. Given that money lenders have a legitimate role and function in the society, the Council wants to ensure that they practice responsible lending and that borrowers are being treated fairly so that the money lending market in Hong Kong can operate in a sustainable manner.

As discussed, with the development of technology worldwide leading to the rapid evolvement of the financial market, there are already legislations in place in other jurisdictions to regulate the FinTech market. In order to keep abreast, the existing outdated MLO urgently needs revamping. Recognising that over regulation could give rise to negative impact on the access to credit for some borrowers, the Council advocates the importance of striking a balance to maintain reasonable access to credit from money lenders and enhancing consumer protection. It is hoped that the introduction of a sector specific regulator would lead to better governance of this industry, ensuring fairness between the money lenders and the borrowers, bringing with it strengthened consumer protection.

As shown by research, excessive spending in leisure activities is a main reason for borrowing for the younger generation. Therefore, consumer education on financial management and prudent access to credit is critical to developing a culture of healthy and responsible borrowing for Hong Kong.

The above recommendations are made to stimulate discussion among the different stakeholders in the community so that their views and concerns can be taken into account to accelerate the development of a sustainable, fair and transparent money lending market.

摘要

簡介

過度借貸是重要的全球性議題。在香港，一項針對年輕在職人士的本地調查顯示，超過 60% 的受訪者表示曾經入不敷支而當中有近三分之一曾經有負債。借貸市場如出現嚴重問題，無論是由放債人或借款者引致，都會對社會經濟帶來深遠影響。

借款者和放債人對借貸都負有責任。借款者必須自行評估其償還貸款的能力，並必須向放債人提供準確的資料，以便評估相關貸款是否合適。借款者還需要明白，一旦簽訂貸款合約便必須履行責任。放債人也須承擔責任，包括對借款者償還貸款的能力進行審慎評估、提供透明與公平的利率和合約條款、以負責任態度營銷、和管理客戶關係時要尊重消費者權利，例如建立適當的機制幫助陷入財困的債務人。

然而，本報告的調查結果顯示，消費者正面對甚為進取的營銷手法，在條款及細則毫不清晰的情況下，以貸款申請簡單方便，誘使消費者誤以為能以「“低”利率償還貸款」。但往往，具體還款條款及細則在簽訂合約後才被披露，又或是隱藏在合約（如有）的複雜條款當中，在消費者不理解其中的內容或有壓力的情況下迅速簽約，自然消費者難以掌握當中借貸的真實成本及其應履行的規定。

消費者委員會（“消委會”）的報告從消費者的角度深入檢視消費者的借貸行為和借貸市場相關的營商手法和香港現行的法律法規。如上所述，本報告揭示的是一個令人擔憂的情況，包括規管和監督存在不足、放債營商手法存疑，以及市場缺乏透明度的問題。本報告提出了一系列改善建議，供政府、放債人和借貸市場的持份者考慮，以加強行業的監管和消費者在有需要借貸服務時能有所保障。

迅速發展的市場和當前的監管架構

香港作為國際金融中心，擁有極活躍的信貸產業。良好的經濟發展和低失業率、長時期低利率水平、網上借貸平台的崛起、以及一些信貸業者的進取營銷手法，推動消費借貸市場得以蓬勃發展。數據顯示，過去十年，認可機構提供的信用卡透支和個人貸款增加 2.2 倍，持牌放債人的數目在 10 年內亦增加了 176%，從 2009 年的 779 個上升到 2018 年的 2,153 個（截至 2019 年 8 月為 2,260 個）。

認可機構受香港金融管理局（“金管局”）的監督和管理，他們必須遵守《銀行業條例》的規定和金管局認可的《銀行營運守則》中的各項措施，以及其不時發出的各項通告和指引。

反之，目前放債人的規管制度即《放債人條例》（第 163 章）於 1980 年制定，其最初目的是打擊“高利貸”問題。與認可機構不同，除了放債人的領牌事宜及放債交易外，持牌放債人的營運並沒有特設法定機構監管。

根據《放債人條例》，現時香港有三個機關負責處理放債人牌照事宜 - 放債人註冊處處長（“註冊處處長”）、警務處處長（“警方”）和牌照法庭。註冊處處長負責處理放債人牌照申請（新申請和續期），並備存放債人登記冊以供公眾查閱。警方負責審查牌照申請，並調查有關放債人的投訴。牌照法庭負責就放債人牌照申請作出裁定及發出牌照。註冊處處長和警方均可向牌照法庭申請撤銷或暫停放債人牌照。

2016 年前，財務中介對打算借貸的消費者使用欺詐手段的個案引起廣泛關注。在同期消委會也曾收到了許多關於一些放債人和財務中介使用不良手法或欺騙行為的投訴。

為應對問題，政府推行了四大措施，當中包括：加強警方的執法行動、改善公眾教育和宣傳活動、加強諮詢服務、以及施加更嚴格的放債人發牌條件。《放債人條例》與及有關的 14 個發牌條件就以下 5 大範疇規管信貸行業：

- (1) 放債人的發牌條件
- (2) 資料提供
- (3) 貸款利率
- (4) 廣告的限制
- (5) 禁止額外收費

改善措施實施後欺詐問題似乎有所改善，然而，消委會關注到隨著消費者借貸行為的迅速變化和放債人市場的顯著增長，以及出現有問題的營商手法，消委會認為有需要進行深入研究，以闡明放債市場中保護消費者權益方面的狀況，提出有效措施以促進一個更公平和透明的市場環境。

消費者行為和有關借貸的問題

從消費者的借貸行為中尋找消費信貸相關的問題是本研究的重點。在過去的一年中，消委會分析了所接獲的投訴個案，訪問了向消費者提供財務和債務諮詢服務的非政府組織（“非政府組織”），並與債務人及其家人進行會面，從而探究市場中負債和借貸層面的不同問題和關注。消委會亦檢視了破產管理署提供的統計數字和投資者及理財教育委員會（“投委會”）完成的調查結果，以瞭解有關於消費者借貸態度和行為的有用資料。綜合而言，消委會發現：

過度消費的習慣是破產和多次破產的主要原因

消費者借貸的主要原因是“購買自己喜歡的東西”、“支付消閒娛樂上的花費”和“旅遊”。從消委會的訪問個案和針對年輕在職人士的研究調查顯示超過 60% 的受訪者曾經入不敷支及佔三分之一曾經負債，而且多次破產的個案人數也有上升的趨勢。因此，這過度借貸問題對香港的未來是重要和關鍵的。根據破產管理署的資料，雖然香港破產數字有下跌的趨勢，但多次破產的個案從 2013 年的 151 宗上升至 2018 年的 617 宗（升幅達 309%），歷年來引致多次破產的三個最主要原因為“過度開支”、“失業”及“過度信貸”。

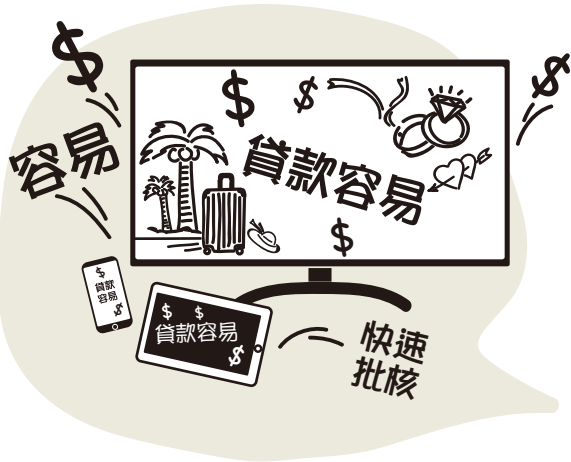
債務管理不善以及對信貸產品和借貸成本的認知不足

雖然大多數消費者準時償還貸款，但近五分之一（19%）的借貸人曾延遲還款，或甚 1% 的人士更經常延遲還款。只繳付信用卡賬單的部分或最低還款額的情況有上升趨勢，顯示出消費者對信貸產品、信用評級、貸款利率和未能償還貸款所帶來的後果欠缺瞭解。加上一些放債人的不良營銷手法，致使消費者對個人自願安排和破產所產生的個人影響產生誤解。

借貸諮詢服務不足

非政府組織和個案受訪者（債務人及其家人）均表示，財困人士無法獲得合適的幫助和建議，尤其是尋找貸款選擇和途徑。另外，還有一些案例，有放債人在未經借貸人的同意甚至在其不知情的情況下，將借貸人的抵押物業用作次按。如果放債人在次按中違約，借貸人可能會因此失去他們的物業，這種情況超出了借貸人可控制的範圍內。

消費者過度負債



- 受過度具誤導性廣告影響



- 過度消費



- 借貸容易

- 提供財務諮詢的途徑不足
- 較低理財能力



在沒有對還款能力進行審慎評估下，以簡約便捷作為招徠，導致更多消費者以高昂利率借貸

進取的營銷和科技發展大大增加了消費者的借貸選擇和靈活性。時至今日，由訪談個案可見貸款申請和簽訂合約可以通過網絡或社交媒體平台完成。

但是，在沒有對借款人的還款能力進行審慎評估的情況下，放債人提供輕鬆便捷的借貸背後的利率是十分高昂，甚至達不合理的程度。為了償還這些高息貸款，消費者可能需要再次借貸，付出更高利率或甚至接受更不利的條款，墮入惡性循環，最終導致過度負債。

放貸業務的營商手法

為瞭解市場上的營商手法以及其對消費者行為和決定的影響，消委會檢視了在不同渠道所發放的借貸廣告和營銷手法並與行業代表會面，包括消費者信貸資料服務機構（香港環聯資訊有限公司）、放債人協會（香港持牌放債人公會）和個別放債人公司（邦民日本財務（香港）有限公司及亞洲聯合財務有限公司），結果反映市場監管明顯出現落差，要通過修改法例加強規管。

負責任借貸的落差 - 具誤導性及混淆的廣告信息和聲稱

低利率和高回饋，簡易的借貸申請和批核，這些都是常見的營銷手法，旨在吸引需要快速解決財務壓力的潛在貸款申請人。此外，“毋須信貸報告”、“零或低利率”之類的宣傳聲稱進一步挑動一些被選定的目標群體，例如大學畢業生、自僱人士、兼職人士、家庭主婦和在黑名單或負債或破產的人士借貸，進一步拉緊他們的還款能力。儘管兩間受訪的放債人公司聲稱他們對貸款申請實施了嚴格的規定，但不同放債人的貸款政策往往會存在差異。我們與非政府組織、債務人和其家人的訪問，以及香港環聯資訊有限公司亦證實了這些廣告和宣傳傾向於吸引信用風險較高的貸款申請人。

缺乏同類利率的比較

除了不同的計算費用或收費方法外，不相同的利率表述方式也可能使貸款申請人在選擇放債人時感到困惑。如果沒有明確和可作比較的資訊，貸款申請人很容易被誤導並以較高利息借貸，最終承擔更高的借貸成本。

過度及誤導性廣告

眾所週之，過度的宣傳推廣會令消費行為構成不良影響，所以如社會上充斥著借貸廣告，會產生不良的效果。在香港，大多數企業可以自由使用不同的渠道向公眾宣傳他們的商品/服務，當中，電視、電台、互聯網、報紙/雜誌，社交媒體和電話營銷為放債人主要使用的廣告媒體。

這些借貸廣告往往令人覺得很容易獲得信貸，容易導致不理性消費的惡習。部分放債人和認可機構的廣告營造無憂無慮或快樂輕鬆，使觀眾忽視作出貸款決定的嚴重性和對財務的影響。此外，有些廣告也讓人誤以為借貸可以得到高回饋，或甚不收取利息。

不明的資訊和差劣的手法

消委會是在是次研究中發現了有廣告沒有列載放債人牌照號碼或資料有存疑，行業的透明度和相關審查制度必須改進。消委會的投訴個案亦顯示，導致消費者過度借貸問題的成因往往是由於錯誤資訊、隱藏成本、不當的文件或手法，例如放債人不當收集貸款諮詢人的資料或未經同意共享債務人的資料。

行業標準和管治的差距

非法放債人，通常被稱為高利貸者，不僅損害弱勢消費者，而且還影響了合法放債人的聲譽。不幸地，香港目前還沒有一個專責和有效監督的機構監管業界，並對申請放債人資格提出較嚴格的要求。受訪的放債人都認同有需要加強行業的標準，措施例如引進放債人資本要求、設定最低資格和管理經驗，及改善發牌機制和管治，以提升負責任借貸的行業標準。

香港現行規管架構值得關注之處

消委會對不同的司法管轄區的規管架構進行了研究調查，包括澳洲、中國內地、新加坡、台灣及英國（“其他司法管轄區”），結果顯示其他司法管轄區均實施嚴格的法例或指引以規管放債人或信貸提供者。相比香港仍然沿用 40 年來未有重大修訂的《放債人條例》以規管行業明顯是不合時宜，條例並不能與持續轉變的借貸營商環境及消費者的負債文化成功接軌。有鑑於此，就香港現行規管架構消委會提出 9 大關注：

沒有特定的行業監管機構

香港的借貸行業缺乏一個專責的監管機構，以識別系統性風險、提供監管指引、採取適時干預及防止問題衍生。相對而言，其他司法管轄區已自有行業特定或整合式的相關監管機構，獲賦予權力在其認為有需要時制定具有約束力的規條，以加強對行業的監督、及適時作出干預和必要時有效執法，以便維護消費者的權益。

雖然警方在收到借貸投訴後可採取執法行動，但往往消費者的權益已在事發後受到損害，因此，目前的規管架構根本未能有效為消費者提供足夠的保障及監管放債人。

牌照申請的審查不足

目前，放債人牌照申請的門檻過低以及審查不足，導致業界良莠不齊。相比之下，其他司法管轄區大多數都有明確和詳細的標準用作審視放債

人是否合適和恰當，並要求放債人要有足夠的財政資源，甚或訂明一定金額。儘管《放債人條例》列明牌照法庭須考慮申請人是否適合從事放貸業務，但現行的指引過於簡陋，對於申請人的最低工作經驗及教育程度都沒有嚴格的規定。而且，現有的《放債人條例》對放債人無資金要求，條文亦無列明放債人的任何後續董事及管理層變動須取得事先批准。

發牌前的調查不足也可能引起像「借屍還魂」的問題，即是指被撤銷牌照的放債人可以輕易地改以不同的名義繼續其業務。現時，審批過程未有要求放債人披露正在進行和已完成的調查以及民事判決和訴訟。

對放債人的行為監管不足

過時的《放債人條例》及發牌條件對放債人行為監管存在不足。除了牌照法庭可向放債人施加發牌條件外，警方及註冊處處長均無權訂立具約束力的規則來規管借貸行業。放債人聘用收債人的相關問題也未有處理。

對比其他司法管轄區，相關監管機構會要求放債人在進行業務時履行一連串的和受到一定的限制，特別是有關合約前披露、信貸評估、負責任貸款、消費者信貸數據共享、廣告上的限制及監管匯報。此外，相關監管機構還會負責監督借貸業務和營商手法。

缺乏審慎的信貸評估

導致借款人過度負債的其中一個主因是由於放債人毋須對借款人的還款能力進行審慎的信貸評估。

雖然責任應歸咎於借款的消費者，但同樣地，負責任的放債人應嘗試向借款人作出查詢，以確保沒有負擔能力的借款人不獲貸款。香港持牌放債人公會的放債人營運守則中雖有類似的的要求，但其屬於自願性質，意味實際上放債人並無責任履行規定，而且公會會員數量不多，遵守情況更難以掌控。

研究顯示，在大部份其他司法管轄區放債人進行信貸評估均為強制性，放債人亦必須遵守負責任貸款行為的要求。當中在某些司法管轄區，消費者信貸數據會被儲存在由監管機構授權的第三方機構的數據庫中。就如新加坡的監管機構設立及委任的另一機構 Moneylenders Credit Bureau 會負責提供數據和分析，以協助放債人是否決定貸款，但他們不會參與信貸提供者批核貸款的決策過程。

濫用諮詢人的個人資料

即使最近發牌條件收緊，但由於毋須取得諮詢人同意，諮詢人的個人資料仍很容易被濫用以達到營銷或其他目的，而他們亦不時收到放債人非邀約或滋擾的來電。

貸款利息上限過高

《放債人條例》述明一個兩級的利息上限結構，分別為年息 48%及 60%，年息超過 60%屬違法，而年息介乎於 48%至 60%之間的貸款交易則會被推定為屬敲詐性，意指這些貸款交易可作重新商議，增加該等交易的不明朗因素。

相比之下，除了英國只限短期高息貸款設有利息上限外，香港的利息上限普遍較其他司法管轄區高，包括澳洲每年 48%；新加坡每月 4%；中國內地每年 36%；台灣無抵押消費貸款每年 20%及信用卡和現金卡每年 15%。

鑑於目前的市場狀況並與其他司法管轄區相比，香港現行利息上限明顯處於高水平。

廣告過多及帶誤導性

《放債人條例》對貸款廣告的限制相當少，只單單要求放債人在廣告中顯示放債人的姓名、牌照號碼及風險警告字句。

相比之下，大多數其他司法管轄區對於廣告內容都有詳細指引，規定廣告內容不應有任何誤導性陳述，造成不合理的期望。例如，澳洲著重廣告須切實告知消費者包含利息的借貸總成本；在新加坡，放債人只能在指定地點以及其網站上宣傳廣告；在英國，放債人不能在廣告中淡化貸款的嚴重性或過份輕描淡寫；而在台灣，法律明確規定貸款廣告不能針對學生進行營銷。

執法工具及解決消費糾紛方法有限

《放債人條例》提供的執法工具和解決消費糾紛的方法有限。雖然違反《放債人條例》和發牌條件構成罪行，但註冊處處長和警方現時並無權在放債人未成功被刑事定罪的情況下實施制裁，例如判處罰款、禁止個人從事貸款業務或作出強制採取合適補救行動的命令，實對消費者的保障不足。

相對地，在其他司法管轄區，如放債人不遵守或違反監管要求，放債人將會面臨民事罰則（澳洲及英國）、行政制裁（澳洲、台灣及英國）、紀律處分（澳洲、新加坡及英國）及刑事檢控（澳洲、中國內地、新加坡、台灣及英國）。

市場透明度低

目前香港有關於貸款行業的信貸數據短缺，例如新批出貸款或未償還貸款的總額、拖欠率、擔保貸款與無擔保貸款的比率以及借款人的統計等。政策審查在數據欠奉的情況下自然難以有效進行。此外，公開的執法統計數據亦鮮有公佈，執法缺乏透明度令公眾難以監察其狀況及成效。

在其他有強制要求放債人提供或強制收集信貸數據的司法管轄區(新加坡、台灣及英國)，相關的監管機構也有數據的備份，以便它們提供相關數據用作政策審查或在適當情況下作公共使用。至於執法統計的數據則是由相關監管機構在報告或定期更新中向公眾發佈。例如，在澳洲，ASIC 每半年便會更新民事訴訟、檢控、法院強制執行案件等數字或談判結果；在新加坡，新加坡警隊負責定期公佈在案的執法數字及被捕人數等；而在英國，每年立案和結案的執法數字會在 FCA 的績效年報中發佈。

建議和總結

在金融和借貸市場的不斷擴張和科技發展下，其他司法管轄區已紛紛訂立不同的規定監管金融科技市場，以確保市場對消費者是公平和免受不良營商手法之損。在香港，《放債人條例》已經訂立逾 40 年，期間並沒有作出重大修訂。消委會建議改革現行法規和行業操守，讓消費者於借貸前可作出知情的決定，以及確保放債人作出負責任借貸。

根據研究結果，消委會提出以下四個建議：

- (1) 加強消費者教育和諮詢服務的規定
- (2) 修訂現行法例
- (3) 成立新的行業特定監管機構
- (4) 改善市場透明度

加強消費者教育和提供有效的諮詢服務

消費者在借貸市場中得以保障實有賴清晰和有利的教育，灌輸負責任借貸的概念。另一方面，消費者有需要方便取得和比較貸款資訊和債務管理的財務意見。因此，消委會建議政府應帶領協調非政府組織和業界人士，制定一套有效政策，並推出一個及時且務實的平台，為消費者提供教育、資訊、債務管理意見和尋找可行方法，解決財困。

修訂現行法例

此報告得出結論已清楚顯示《放債人條例》已不及時宜，所以消委會要求政府全面檢討條例，以施加更有效的法規和措施監管借貸市場：

i) 成立行業特定監管機構

借貸行業的問題根源在於缺乏獨立監管機構不時監察市場。鑑於香港以行業特定方式來監管金融市場，消委會建議政府首要成立行業特定監管機構，透過發牌、規管放債人借貸行為，以及要求放債人為其行為失當作出補償，以保障消費者的權益。

ii) 加入須進行謹慎信貸評估的責任

為確保負責任借貸，消委會建議《放債人條例》責成放債人在放債前向

借款人進行謹慎信貸評估，決定借款人是否有足夠能力償還貸款，以加強保障消費者的權益。在加入有關規定後，監管機構可就放債人應如何履行負責任借貸和遵守法例下的要求發出指引。

iii) 調整借貸利息上限

《放債人條例》於 1980 年訂立後，利息上限一直沒有作出任何調整。此後，銀行利息大幅下跌，現時借貸利息上限明顯不能反映市場狀況。此外，消委會參考其他司法管轄區情況後，認為以一個通用上限比兩級架構的方式更為合適。

雖然消委會認為年息 48% 仍屬高水平，但可暫時以此水平作為最高的通用上限。政府日後應諮詢業界，定出最合適的利率水平。

iv) 在廣告手法引入附加要求

消委會觀乎認可金融機構的廣告已受到的法律限制，認為放債人也應予以同等限制，使兩者看齊。

就《放債人條款》中對廣告的限制，消委會認為應加入規定，確保廣告不應具誤導性內容或以過份輕鬆的方式作演繹、不應暗示無論借款人的財務狀況如何也可以獲得貸款、也不應淡化借款人在獲取短期高息貸款的後果的嚴重性。另外，消委會建議訂立強制性的指引，要求在整個不論長短的廣告時段內顯示清晰易明的警告字句，同時清楚地讀出字句至少 3 秒鐘。

此外，消委會建議以統一方法計算由不同信貸機構所提供的信貸 / 貸款產品的利息成本，以協助消費者作出恰當的比較。由於消費者已熟悉認可金融機構的相關計算和表達方法，如使用百分比年利率的計算方法，消委會建議放債人也應跟隨使用。

有關成立專責行業監管機構的建議

i) 加強牌照審批、提高申請門檻及為放債人引進合適和恰當的準則

監管機構訂立的指引應包括：

- 列明合適和恰當人選的門檻要求，例如放債人須符合的工作經驗、持牌人管理學歷及無刑事犯罪紀錄等最低要求，以合符應有的專業及持正水平；
- 資金要求；
- 把持牌人的背景調查延伸至包括正在進行和已完成的調查及民事判決及訴訟；
- 申請人提交商業計劃並須附有詳述資料，如資金來源、內部合規監察、貸款審批程序、信貸評估等；及
- 其後更改董事及管理層時必先取得批准。

ii) 訂立審慎批核貸款的規則或指引

為推廣負責任借貸，消委會建議監管機構應把強制性的審慎貸款批核納入發牌條件，貸款應只批出予相當可能有還款能力的借款人。審核的程度和範圍應取決於信貸類別及貸款規模並與其相稱。此外，監管機構亦應就如何詮釋和遵從以上規定發出實務指引。

為使香港放債人能更容易進行貸款批核，監管機構可考慮實施一些指引要求強制性收集消費者貸款資料，並儲存於中央數據庫，以供相關持分者分享。監管機構亦可進一步考慮應否將此收集和分享機制限於放債人，還是延伸至包括認可機構。

iii) 透過加強牌照條件和推行規例引進良好作業模式和消除不良營商手法

消委會建議監管機構考慮將香港持牌放債人公會自願性的放債人營運守則納入發牌條件，促使放債人須遵從良好作業模式和加強現行的發牌條件。良好作業模式可包含披露資料要求等事宜。取而代之或在此之上，監管機構應推行規例以解決受關注事項，從而打擊不良營商手法，如胡亂聘用收債人、濫用諮詢人的個人資料及在借款人不知情及未經同意的情況下加按其物業。

iv) 加強執法及處理投訴

消委會建議監管機構應有實施執法行動的權力和獲賦予更多執法工具，例如：

- 公開譴責；
- 執行通知；
- 對持牌人或其員工實施的經濟罰則；
- 禁止個別人士從事任何貸款業務；
- 補救命令強令放債人採取補救行動；及
- 向董事、合夥人或放債人的管理層採取紀律制裁。

另外，消委會亦建議監管機構成立一個特別部門以處理投訴。

改善市場透明度

為擬定和檢討政策及協助監督社群的負債水平，消委會認為監管機構應定期向放債人收集信貸統計數據和貸款狀況。這些數據應包括但不限於新批貸款的總額、未償還的貸款總額、平均貸款年限、借款人的一般統計狀況、逾期的債款和拖欠率。

為促進放債人保持良好營商手法，消委會亦建議定期發佈執法數據以提高監管透明度，包括反對發牌、撤銷牌照/停牌的數據及其原因、發出的警告 / 勸喻信的次數和處理投訴數字。

監管環境



• 持續監察



• 牌照審批程序優化 — 適當人選成為放債人



• 審慎信貸評級 — 負責任借貸



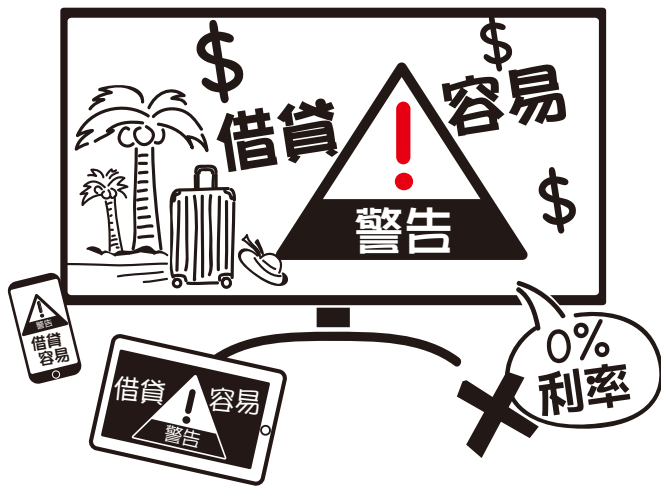
• 監管機構發放行業及執法數據
提升市場及監管透明度



• 新增執法工具



- 降低利息上限



- 廣告不具誤導性內容 — 切勿輕言或淡化借貸的嚴重性，並需加上警告字句
- 統一方法表述利率以便比較



- 諮詢人的個人資料受保護 — 杜絕未經邀約或滋擾的來電



- 方便有效的投訴處理



- 加強消費者教育及優化債務管理輔導服務

邁向未來

此報告並非旨在從道德層面討論消費者借貸的對與錯。由於放債人在社會上有合法的角色和職能，消委會希望確保他們實行負責任借貸，並確保借款人得到公平對待，以使香港的信貸市場得以持續發展。

如上所述，在全世界科技發展下迅速萬變的金融市場中，其他司法管轄區已有相關法例監管金融科技市場。為與時並進，現行已過時的《放債人條例》急需改革。然而，如市場受過度監管或會令某些有需要借款人仕難以獲取服務，消委會深明作出改革時要在保持信貸的合理途徑和保障消費者權益之間取得平衡。同時亦期望新成立的專責行業監管機構能改善業界的操守、確保放債人及借款人以公平原則履行合約，以加強消費者保障。

如研究所顯示，消遣活動上的過度消費為年輕一代借貸的主要原因。因此，與財務管理和審慎借貸相關的消費者教育對發展香港健康和負責任的借貸文化極為重要。

以上建議是為了促進社會上不同持分者的討論，讓他們的意見和憂慮能被納入規管審核當中，藉以加快提升借貸市場的可持續性、公平性及透明度。

1 Introduction

1.1 Background

Being an international finance hub, Hong Kong has an active money lending market with new players entering the market every year. Broadly speaking, banks and money lenders are the two major institutional providers of retail credit services, competing for different target segments in the market.

In the past, only persons who faced difficulties in obtaining bank loans or were in urgent need of a large sum of money, would borrow from money lenders. The prolonged period of low interest rates, the emergence of online lending platforms from non-bank money lenders, together with the aggressive practices of some financial intermediaries (“**intermediaries**”) encouraged greater borrowing in the market, as evidenced by the growth of the money lenders by 176% in 10 years. In particular, the younger generation nowadays would approach money lenders for credit service, with more and more of them wishing to borrow money to achieve short-term goals such as holidays and buying favourite items, or paying off credit card debts which usually carry a higher interest rate of over 30% per annum. The tightening of prudential measures in respect of mortgage loans provided by banks¹ has further increased the demand for property financing provided by money lenders.

Over the years, there has been a significant increase in the number of licensed money lenders, from approximately 779 in 2009 to 2,260 in August 2019². There is a dearth of statistics for this sector but a report quoted that the business receipts of this sector amounted to HK\$13.84 billion in 2016, accounting for 0.56% of gross domestic product (“**GDP**”) and 1.41% of the financial services market³ of which the scope of services included personal loans, residential mortgage loans and business loans. The scale and nature of money lenders are diverse with some offering a specific type of money lending service and others offering a mix of offers, depending on their lending capacity and liquidity and the loans they provide may be secured or unsecured. At the same time, the Consumer Council (“**the Council**”) noted from its complaint statistics and from media reports that the number of incidents related to unfavourable or even deceptive practices used by some money lenders and their intermediaries have correspondingly increased; creating an increasing public concern over money lending related malpractices and consumer indebtedness in Hong Kong.

Insofar as consumer lending is concerned, a major difference between banks and money lenders is the interest rates offered to borrowers. The interest rates charged by money lenders tend to be much higher than banks. It reflects the higher credit risk of the borrowers, who, for various reasons, usually have difficulties in borrowing money from banks. Another major difference is that the loan approval process of the money lenders tends to be shorter and simpler. Hence, it offers quick access to credit for persons who are in urgent need of money.

¹ Hong Kong Monetary Authority, Press Release ‘Prudential Measures for Property Mortgage Loans’, 19 May 2017

² Hong Kong Licensed Money Lenders Association, Market Data and Statistics. See https://www.lmla.com.hk/statistical_highlights.aspx

³ Financial Services and the Treasury Bureau, Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report, April 2018

As banks are already closely regulated by the Hong Kong Monetary Authority (“HKMA”)⁴, and there is not the similar concern of industry malpractices which needs to be addressed, the current report will focus on money lenders and their activities and regulation.

1.2 Terms of Reference and Rationale

The current regulatory regime for money lenders in Hong Kong is being governed by the Money Lenders Ordinance (Cap. 163) (“MLO”) enacted in 1980. The original aim of the MLO was to tackle the then problem of “loansharking” in Hong Kong. Some piecemeal amendments have been made to the MLO since its original enactment to deal with issues as they arose over the years.

Against the above background, and with the consumers’ borrowing behaviour and the landscape of the money lending market having changed dramatically over the past decades, the Council considers that there is a pressing need to carry out a comprehensive review of the regulatory regime for money lenders in order to modernise the law to better regulate the practices of the current industry and to enhance protection of consumers.

In the years running up to 2016, there was increasing public concern that fraudsters who claim to be intermediaries for money lenders employed different types of deceptive tactics to induce prospective borrowers to engage them to arrange loans with money lenders. These intermediaries tended to charge very high fees under different pretexts in the process, unscrupulously using different means to conceal their relationships with related money lenders so as to circumvent the statutory ban on separate fee charging under the MLO. In addition to charging high fees, some dishonest intermediaries would also abscond after receiving the fee.

In an effort to curb the abovementioned malpractices of intermediaries, the Government of the Hong Kong Special Administrative Region (“Government”) implemented a four-pronged approach (“Four-Pronged Approach”) in 2016, which included enhancement of enforcement by the Police, improvement of public education and publicity, strengthening advisory services to the public, and the imposition of more stringent licensing conditions on money lenders. Details of the implementations of the Four-Pronged Approach will be discussed in Chapter 2.

Although there has been positive outcome following on from the above measures, with money lending-related malpractices having abated, the Council considers that in addition to the concerns relating to intermediaries, other aspects of the regulatory framework need to be reviewed and addressed. Furthermore, the increasingly complex developments in the financial market, the potential risks accompanying such rapid development which are relevant to consumer borrowing and the problems faced by vulnerable consumers mean that a study on consumer indebtedness in conjunction with the review of the regulatory regime would be worthwhile and would help put any recommendations in context.

⁴ Banks, as authorised institutions (AIs), have to comply with the provisions of the Banking Ordinance which, among other things, require them to maintain adequate liquidity and capital, to submit periodic returns to the HKMA, to adhere to limitations on exposures to any single customer (or group of customers) or to directors and employees, and to seek approval for the appointment of directors and chief executives, and for controllers. The HKMA adopts a risk-based supervisory approach based on a policy of “continuous supervision”, through on-site examinations, off-site reviews, prudential meetings, co-operation with external auditors and sharing information with other supervisors, for purpose of detecting any problems at an early stage.

The study will therefore focus on the following:

- (1) understanding consumers' borrowing behaviour and experience so as to analyse the problems associated with the emerging trend of consumer indebtedness;
- (2) examining the marketing practices by money lenders so as to identify any undesirable business tactics affecting consumer interests;
- (3) reviewing the current state of regulatory framework of the money lending industry, research and compare that against regulatory regimes in comparable jurisdictions; and
- (4) proposing appropriate recommendations for enhancing consumer protection.

While the Council recognises the legitimate role and function of money lenders in the society and their business needs of earning a return that can compensate the risks they bear, this industry should be subject to a regulatory regime that ensures fairness between a money lender and a borrower.

At the same time, the Council is mindful of the potential undesirable effects that might come along with over-regulation such as adverse impacts on the access to credit for some borrowers, leaving them no choice but to borrow from illegal lenders. Above all, the Council sees the need to strike a balance between maintaining reasonable access to credit from money lenders and enhancing consumer protection. This is the underlying rationale of the present study.

1.3 Methodology and Structure

For this study, the Council carried out the following work:

- (1) Laws and regulations in Hong Kong were benchmarked by conducting research on the regulatory regimes for money lenders in other jurisdictions including Australia, Mainland China, Singapore, Taiwan and the United Kingdom ("UK").
- (2) An analysis was carried out on the Council's complaint cases to identify local market practices and consumers' needs.
- (3) In order to leverage the availability of comprehensive information which can provide a general picture on the use of credit products and the borrowing behaviour of Hong Kong consumers in recent years, the Council carried out consultations with 3 non-government organisations ("NGOs") which provide financial advice and debt counselling support services to consumers, namely Caritas Hong Kong (Caritas Family Crisis Line and Education Centre); Hong Kong Family Welfare Society (Financial Education Centre); and Tung Wah Group of Hospitals (Healthy Budgeting Family Debt Counselling Centre).
- (4) In-depth interviews were conducted with debtors and their families in order to obtain their views in respect of the issues in relation to consumer credit indebtedness.
- (5) Advertisements of financial institutions were reviewed and assessed to find out if there were any alleged malpractices or marketing tactics employed to the detriment of consumer interest.
- (6) Engagement meetings with key stakeholders were carried out at the beginning and during the course of the study for better defining of the scope of the report and improved understanding of the issues involved. For instance, the Police and the Official Receiver's Office ("ORO") were contacted for their relevant statistics. Meetings and engagement with trade participants including the Hong Kong Licensed Money Lenders Association ("LMLA"), TransUnion ("TU"), a consumer credit reporting agency, and two major money

lenders in Hong Kong, were also held to collect their views in respect of their concerns regarding the current money lending industry.

Based on the findings of this study, the Council identified weaknesses of the existing regulatory regime, made reference to international practices, and recommended measures to modernise and strengthen the regulations for money lenders.

The remainder of this report is structured as follows:

- (i) Chapter 2 analyses the Hong Kong consumer credit situation and the money lending market, setting out the current regulatory framework for money lenders, examining the differences between banks and money lenders in consumer lending and highlighting relevant complaint statistics.
- (ii) Chapter 3 explores the consumer borrowing experience with a view to identifying the problems associated with the emerging usage of consumer credit and loans, through analysis of complaints, consultations with consumer debt counselling service providers and in-depth interviews with debtors and their families.
- (iii) Chapter 4 presents the research findings in relation to the advertising and marketing tactics of financial service providers, and the views of different trade participants in respect of the perceived problems in the money lending market.
- (iv) Chapter 5 reviews the regulatory regimes for money lenders in Australia, Mainland China, Singapore, Taiwan and the UK.
- (v) Chapter 6 identifies the problems of the existing regulatory regime for money lenders in Hong Kong.
- (vi) Chapter 7 provides a number of recommendations to enhance protection for consumers in the money lending industry in Hong Kong.

2 Market Overview and Current Regulatory Framework

This chapter sets out in detail the consumer credit situation and position the money lending market by reference to the Hong Kong current economic environment. This chapter will also outline the current regulatory framework governing the money lenders.

2.1 The Macro-Economic Environment in Hong Kong

The consumer lending market in Hong Kong has developed rapidly in the last ten years; this may be reflective of Hong Kong's performance in the macro-economic environment. Following the 2008 global financial crisis, Hong Kong's GDP grew from HK\$1,659 billion in 2009 to HK\$2,845 billion in 2018, representing a 71.5% growth. Economic development has been supported by low inflation hovering around 2.4%, delivering rising prosperity and a record 97% employment, underpinning robust growth in consumer spending. Private consumption expenditure increased from HK\$1,014 billion in 2009 to HK\$1,945 billion in 2018, indicating an increase of 91.8% over the past decade. Households are in a strong position to borrow, and median monthly household income has increased from HK\$21,000 in 2009 to HK\$35,000 in 2018 (Table 1).

Table 1: Key macro-economic indicators of Hong Kong, 2009 - 2018

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Gross Domestic Product										
• value in HK\$ billion	1,659	1,776	1,934	2,037	2,138	2,260	2,398	2,490	2,663	2,845
• year-on-year % change	-2.8	+7.1	+8.9	+5.3	+5.0	+5.7	+6.1	+3.9	+6.9	+6.9
Composite Consumer Price Index										
• year-on-year % change	+0.5	+2.4	+5.3	+4.1	+4.3	+4.4	+3.0	+2.4	+1.5	+2.4
Unemployment										
• % rate	5.3	4.3	3.4	3.3	3.4	3.3	3.3	3.4	3.1	2.8
Private Consumption Expenditure										
• value in HK\$ billion	1,014	1,090	1,224	1,315	1,413	1,503	1,593	1,650	1,785	1,945
• year-on-year % change	-1.3	+7.6	+12.3	+7.4	+7.5	+6.3	+6.0	+3.6	+8.2	+8.9
Median Monthly Household Income										
• value in HK\$ thousand	21.0	21.8	23.5	25.2	27.0	28.5	30.0	31.2	32.7	35.0
• year-on-year % change	-2.8	+3.8	+7.8	+7.2	+7.1	+5.6	+5.3	+4.0	+4.8	+7.0

Source: Census and Statistics Department

Interest rates have also been considerably low for a prolonged period of time. From 2009 to 2018, the three-month average of Hong Kong Dollar Interest Settlement Rates remained around 0.7%, a much lower rate than the 3.45%⁵ rate of 2007, before the 2008 global financial crisis. As a result, households could enjoy more affordable debt with less interest payment.

⁵ Census and Statistics Department. See <https://www.censtatd.gov.hk/showtablenewexcel.jsp?tableID=123&charsetID=1>

2.2 Consumer Credit Situation

Generally speaking, consumer credit is a debt that a consumer incurs when purchasing goods or services with credit cards, lines of credit or loans.

Consumer credit is indispensable to Hong Kong as the population enjoys the services offered by its well-developed financial market. Amid the low interest and favourable economic environment mentioned above, the total amount of consumer loans in Hong Kong is increasing rapidly. According to the HKMA, the largest proportion of the loans borne by households are mortgage loans⁶. These aside, the total amount of credit card advances and personal loans (loans for other private purposes) provided by authorised institutions (“AIs”) has been up by 2.2 folds over the last decade, from HK\$211.7 billion in 2009 to HK\$673.9 billion in 2018.

As for the debt mix, the share of personal loans has also been expanding from 19.9% in 2013 to 26.6% in 2018, and now accounts for more than a quarter of the total consumer loans offered by AIs in Hong Kong. Conversely, despite a continuous boom in the property market and its prices, the share of mortgage loans and credit card advances as well, are in a downward trend (Table 2)⁷.

Table 2: Share by types of consumer loans of AIs in Hong Kong, 2013 - 2018

	2013	2014	2015	2016	2017	2018
Mortgage loans	71.8%	70.2%	70.2%	69.7%	67.3%	67.1%
Personal loans	19.9%	21.8%	22.4%	23.1%	26.1%	26.6%
Credit card advances	8.3%	8.0%	7.4%	7.2%	6.6%	6.3%

Source: HKMA

As shown from Figure 1, whilst there has been an 89.8% increase in the credit card advances from HK\$68.5 billion in 2009 to HK\$130.0 billion in 2018, the rise in personal loans has been even more substantial with a 279.8% growth from HK\$143.2 billion in 2009 to HK\$543.9 billion in 2018.

It should be noted that apart from AIs, licensed money lenders are the other major type of financial service providers which offer loans and advances in Hong Kong. The actual amount of credit card advances and personal loans are therefore expected to be higher than those presented in Figure 1.

At the time of the preparation of this report, the Council contacted the Financial Services and the Treasury Bureau (“FSTB”) and the LMLA for statistics on the amount of loans and advances offered by all licensed money lenders. The FSTB’s response was that the requested statistics were not available. While the LMLA as an independent industry representative provided information, it was partial data only. The Council also consulted TU, the sole consumer credit reporting company in Hong Kong with 140 members covering both AIs and some licensed money lenders⁸.

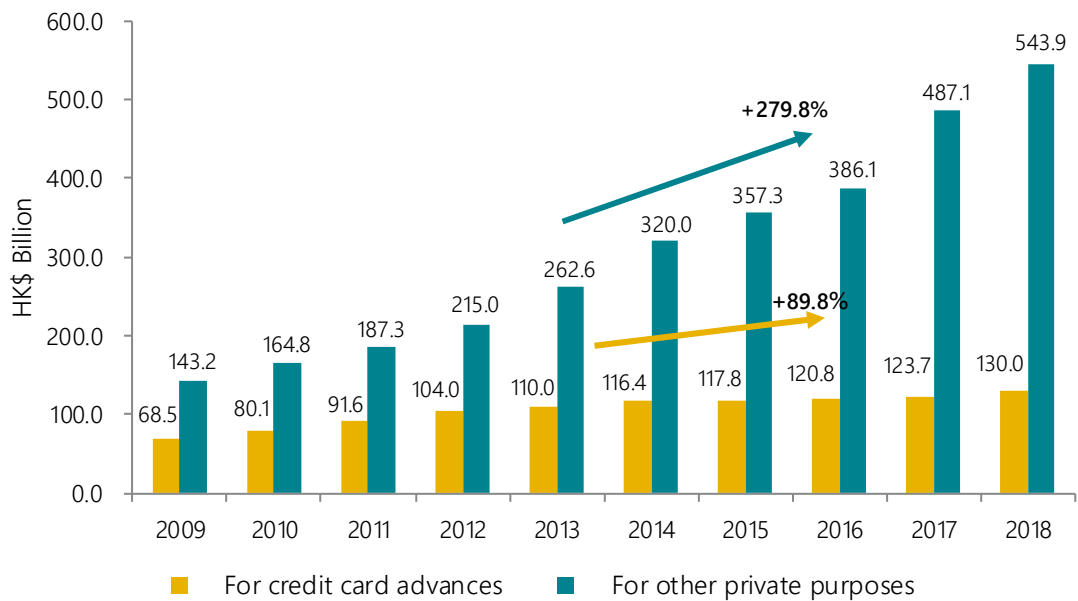
⁶ HKMA, Loans and advances for use in Hong Kong by economic sector – Authorised Institutions.

See <http://www.hkma.gov.hk/eng/market-data-and-statistics/monthly-statistical-bulletin/table.shtml#section3>

⁷ HKMA has introduced a series of measures for property mortgage loans in view of the keen competition for mortgage business which has heightened the risk of overheating in the property market.

⁸ According to its website, TU has approximately 140 member companies. See <https://www.transunion.hk/about-us/who-we-are>

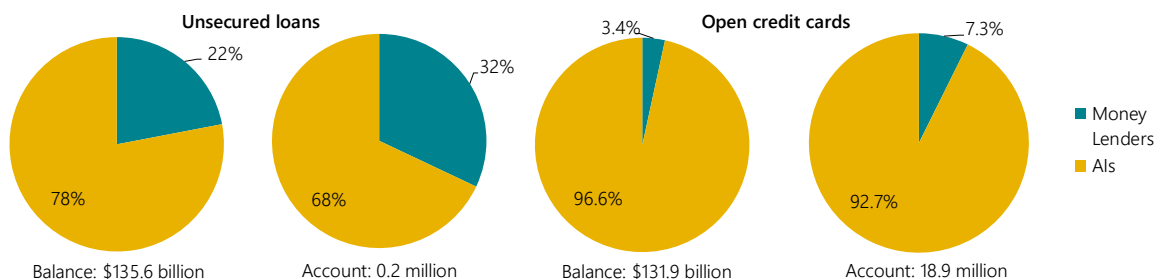
Figure 1: Credit card advances and loans for other private purposes by AIs, 2009 - 2018



Source: HKMA Statistical Bulletins, Loans and advances for use in Hong Kong by economic sector

Total credit card balances from TU members stood at HK\$131.9 billion in Q1 2018 (Figure 2), up by 5.2% year-over-year. Of the 18.9 million open credit card accounts, 7.3% were managed by licensed money lenders, whereas in terms of balances, licensed money lenders managed approximately 3.4% of all credit card balances. For unsecured loans which included instalment and revolving loans, licensed money lenders managed 32% of all 0.2 million accounts and 22% of all HK\$135.6 billion balances; total instalment loans balance in Q1 2018 stood at HK\$103 billion with 3.1% year-over-year growth; and a total revolving loans balance at HK\$32 billion with 6.3% growth (recent update from TU shows in Q1 2019, money lenders shared 27.6% of unsecured loan balances). Overall, according to TU, the Hong Kong consumer credit environment is strong with a growth momentum.

Figure 2: Share of AIs and licensed money lenders with data based on TU members, Q1 2018



Source: TU

2.3 Money Lending Market

In Hong Kong, there are two main channels for obtaining lawful consumer credit. They are loans from AIs and loans from licensed money lenders. They are subject to different regulatory frameworks (Table 3).

AIs

Hong Kong maintains a three-tier system of deposit-taking institutions, namely, licensed banks⁹, restricted licence banks¹⁰ and deposit-taking companies¹¹. Under the Banking Ordinance (Cap. 155), they are collectively known as AIs. As of July 2019, there are 194 AIs in Hong Kong¹².

AIs are supervised by the HKMA. One of the key statutory functions of the HKMA is to promote and encourage proper standards of conduct and sound and prudent business practices amongst AIs.

In April 2010, the HKMA established a Banking Conduct Department to provide greater focus to its work in this area. The guiding principle adopted by the HKMA is that AIs are encouraged to treat their customers fairly. This is mainly achieved through AIs' compliance with both the recommended practices currently embodied in the Code of Banking Practice issued jointly by the Hong Kong Association of Banks and the DTC Association and endorsed by the HKMA, and the various circulars and guidelines issued by the HKMA.

In August 2015, in view of the increasing public concern about malpractices of intermediaries, the HKMA issued a circular to all AIs requiring them to cease the use of intermediaries for the purpose of sourcing retail consumer financial products or services such as personal loans, tax loans and credit cards¹³.

Money lenders

Money lenders in Hong Kong must obtain a money lender's licence, which has to be renewed yearly. The licensing of money lenders and the regulation of money lending transactions are governed by the MLO and the Money Lenders Regulations (Cap. 163A).

According to the MLO, a money lender is any person whose business is that of making loans or who advertises or announces himself or holds himself out in any way as carrying on that business, but do not include those exempted under Schedule 1 of the MLO¹⁴. AIs are exempted under Schedule 1.

⁹ Only licensed banks may operate current and savings accounts, and accept deposits of any size and maturity from the public and pay or collect cheques drawn by or paid in by customers.

¹⁰ Restricted licence banks are principally engaged in merchant banking and capital market activities. They may take deposits of any maturity of HK\$500,000 and above.

¹¹ Deposit-taking companies are mostly owned by, or otherwise associated with, banks. These companies engage in a range of specialised activities, including consumer finance and securities business. They may take deposits of HK\$100,000 or above with an original term of maturity of at least three months.




¹² HKMA, Monthly Statistical Bulletin. See <https://www.hkma.gov.hk/eng/market-data-and-statistics/monthly-statistical-bulletin/>

¹³ See <https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2015/20150807e1.pdf>

¹⁴ Section 3, MLO shall not apply to an authorised institution within the meaning of the Banking Ordinance (Cap. 155). Other exempted bodies include co-operative society (Co-operative Societies Ordinance Cap. 33), credit union (Credit Unions Ordinance Cap. 119), trade union (Trade Unions Ordinance Cap. 332), etc.

Unlike AIs, apart from the licensing and regulation of money lending transaction, money lenders in Hong Kong are not supervised by any government authorities. At present, the Code of Money Lending Practice (“COP”) issued by the LMLA in 2002 and revised in September 2018 is the only code of practice regulating members’ money lending activities. The COP is a non-statutory code issued on a voluntary basis. Members of LMLA are obliged to observe it and failure to comply may result in disciplinary action on members. As of August 2019, LMLA has 42 members¹⁵ and they represent the key industry players in Hong Kong, the majority of money lenders are not members of LMLA. In other words, the majority of the money lenders are not obliged to follow the COP. Moreover, despite the complaints about malpractices of intermediaries such as unscrupulous intermediaries concealing their relationship with related money lenders so as to circumvent the statutory ban on separate fee charging under the MLO, the Council could not find any guidelines issued by LMLA to tackle the problems.

Table 3: Different regulatory frameworks of AIs and licensed money lenders

	Authorised Institutions (AIs)	Licensed Money Lenders
Number	194 AIs in July 2019	2,260 licensed money lenders in August 2019
Regulation	Banking Ordinance (Cap.155)	Money Lenders Ordinance (Cap.163)
Regulatory Requirement	HKMA to grant or refuse permission to an institution seeking to operate banking business or the business of taking deposits in Hong Kong. Stringent authorisation criteria such as: fit and proper person; adequacy of system control, financial resources and information disclosure; integrity, prudence and professional competence, etc.	A person carrying on business as a money lender in Hong Kong must obtain a money lenders licence and renew it annually
Governing body	Hong Kong Monetary Authority (HKMA) 	<ul style="list-style-type: none"> Registrar of Money Lenders – application and endorsement  公司註冊處 Companies Registry Commissioner of Police – investigation and enforcement  Licensing Court – determination

Consumer credit data

Under the COP, same as with the AIs, members of the LMLA are required to take into account a borrower’s ability to repay during the loan approval process. In doing so, the members may

¹⁵ See <https://www.lmla.com.hk/Membership.aspx?id=124>

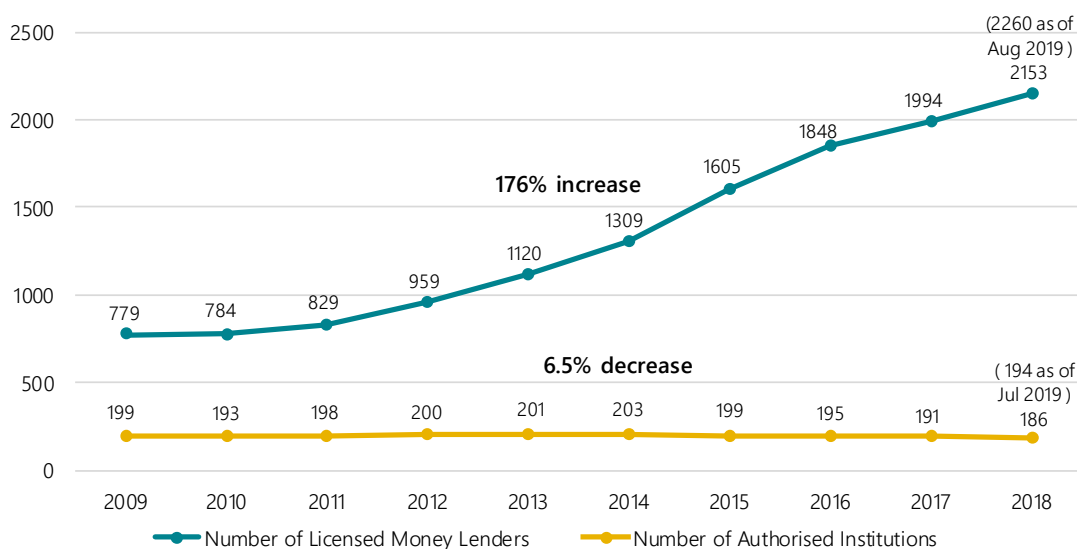
have regard to various factors which include information obtained from credit reference agencies. However, there are only several privately owned credit reference agencies that handle consumer and/or commercial credit information in Hong Kong¹⁶. Among these credit reference agencies, as mentioned above, only one, namely TU, handles consumer credit information¹⁷.

Growth of money lenders

Over the years, the growth of the consumer credit market has been matched by the development of non-bank money lenders. At present there are about 2,260 licensed money lenders in contrast to 194 AIs in Hong Kong. For a same period comparison between 2009 and 2018, the number of licensed money lenders increased from 779 in 2009 to 2,153 in 2018, by over 176%. Whereas, the number of AIs in Hong Kong declined 6.5% from 199 in 2009 to 186 in 2018 (Figure 3), despite a 2.2 fold increase in credit card advances and personal loans.

The composition of financial service providers offering loans and advances in Hong Kong has changed, as the operations of money lending activities in recent years advanced with development in technology. Certain money lenders' business models now focus on online lending without the need to have a brick-and-mortar store. The fast and convenient borrowing process offered by these money lenders substantially reduces the procedures required for borrowers to apply for loans and appeals particularly to the younger, more tech-savvy demographic. The emergence of peer-to-peer lending platforms also offers consumers a new credit source – individuals vetted by the platforms who have the disposable income can now also lend money for interest.

Figure 3: Number of AIs and licensed money lenders, 2009 - 2018



Source: HKMA, Companies Registry, LMLA

¹⁶ See https://www.hkma.gov.hk/gdbook/eng/c/credit_refer_agency.shtml

¹⁷ At the time of preparation of this report, an NGO informed the Council that currently there is a new credit reference system shared by some money lenders, namely TE Credit Reference System. According to its website, the purpose of the system is to provide customers with the historical records and related activities of their borrowers, it is claimed that it is complying with the Personal Data (Privacy) Ordinance (Cap. 486). See <https://softmedia.hk/en/te-credit-ref-sys/>

2.4 Regulatory Framework

Government's Four-Pronged Approach

As mentioned in Chapter 1, in the years running up to 2016, there were concerns over the use of fraudulent and deceitful tactics used by intermediaries causing detriment to consumers who were prospective borrowers. Examples of some of the deceptive tactics used are as follows:

- (i) impersonating as staff members or representatives of a licensed bank, well-known money lenders or Government departments, or presenting themselves as a professional service provider, to reduce the prospective borrowers' alertness;
- (ii) making false or misleading offers such as "exceedingly low interest loan" and "no fee for unsuccessful loan applications" to induce prospective borrowers to engage them for arranging loans and to sign contracts with them which might contain terms for charging a high fee under different pretexts;
- (iii) using different excuses to induce prospective borrowers to obtain short-term loans from money lenders recommended by them for which they would charge a high fee;
- (iv) inducing prospective borrowers to mortgage or re-mortgage their properties as collateral. Borrowers would then be coerced to settle the high intermediary fees by selling the properties; and
- (v) withholding the loan amount obtained by borrowers by making up different excuses and then abscond¹⁸.

In April 2016, in response to these complaints, the Government implemented the Four-Pronged Approach and enhanced Police's enforcement actions against malpractices of such intermediaries; improved public education and publicity activities¹⁹; strengthened advisory services to the public; and imposed more stringent licensing conditions on all money lender licences to address the problems.

The more stringent licensing conditions include:

1. requiring all money lenders to undertake due diligence checks before entering into loan agreement with a borrower to ensure that, where a third party is involved in the process, that third party is an appointed intermediary of the relevant money lender and does not charge the borrower any fees;
2. requiring all money lenders to take steps to ensure that when collecting or receiving personal data from another person, the money lender will not take part in any unlawful disclosure or use of personal data;
3. requiring all money lenders to explain to their prospective borrowers all the terms of the repayment in a loan agreement (including interest rate, the amount(s) of repayment, and

¹⁸ Legislative Council Panel on Financial Affairs, Review of the effectiveness of the new regulatory measures to tackle money lending-related malpractices, LC Paper No. CB(1)530/17-18(05).

See <https://www.legco.gov.hk/yr17-18/english/panels/fa/papers/fa20180205cb1-530-5-e.pdf>

¹⁹ Ibid. In relation to enhanced public education and publicity, the Council has collaborated with the FSTB in an online publicity campaign targeting young people as well as featuring articles on the Choice magazine.

possible consequences for any default in repayment, etc.), and keep written, video or audio records which show that this requirement has been complied with; and

4. requiring all money lenders to include a risk warning statement in their advertisements, namely “Warning: You have to repay your loans. Don’t pay any intermediaries” (“忠告：借錢梗要還，咪俾錢中介”), to alert the public of the risk of over-borrowing and to remind them not to pay intermediaries.

By the end of 2017, the Government had completed the review of the effectiveness of the Four-Pronged Approach. The results were reported to the Legislative Council Panel on Financial Affairs in February 2018. In the main, it was revealed that the Four-Pronged Approach had been effective in addressing the unscrupulous practices of intermediaries associated with money lenders.

In October 2018, two more licensing conditions were added under which a money lender is required to (i) comply with specific anti-money laundering and counter-terrorist financing requirements; and (ii) where a referee is involved in a loan application, obtain written consent signed by the referee confirming his/her agreement to act as a referee for the intending borrower.

As shown in the table below, the number of complaints against unscrupulous intermediaries received by the Police has significantly dropped since the implementation of the Four-Pronged Approach in 2016.

Table 4: Police complaints statistics relating to intermediaries

	2016	2017	2018
Number of complaints suspected to have involved unscrupulous intermediaries	597	144	177

Similarly, as shown in the following table, the number of complaints received by the Council in respect of the financial services sector has also decreased after implementation of the Four-Pronged Approach. Although the Council does not maintain information on the number of complaints received against money lenders, it can be observed that the number of complaints in relation to personal loans (which covers money lenders, banks and intermediaries) has significantly decreased since 2016 (Table 5).

Table 5: Consumer Council complaints statistics relating to financial services

	2015	2016	2017	2018	2019 (Jan – Jul)
Personal Loans	114	39	37	32	16
Financial Intermediaries	51	37	12	7	7
Total	165	76	49	39	23

Money Lenders Ordinance (Cap. 163) (“MLO”)

The current regulatory regime for money lenders in Hong Kong is not complicated. It is governed by the MLO which was enacted in 1980. The MLO superseded the Money-lenders

Ordinance 1911 which mainly followed the Money-lenders Act 1900 in the UK²⁰. As mentioned, the object of the MLO was to provide a legal framework to tackle the then problem of 'loansharking' in Hong Kong. Although there had been some amendments to the MLO over the years, the licensing system remains largely unchanged. By contrast, consumers' borrowing behaviour and the money lending market landscape have changed enormously over the past decades.

Under the MLO, there are three authorities governing the money lending industry in Hong Kong, namely the Registrar of Money Lenders ("**Registrar**"), the Commissioner of Police and the Licensing Court. The MLO empowers the Registrar²¹, whose role is presently performed by the Registrar of Companies, to process new and renewal applications for money lender licences, to endorse licences and maintain a register of money lenders for public inspection²². The Commissioner of Police scrutinises licence applications²³ and investigates complaints against money lenders. The Licensing Court, which is presided by a magistrate alone, hears and determines applications for money lender licences²⁴. Both the Registrar and the Commissioner of Police may apply to the Licensing Court who may make an order revoking or suspending a licence²⁵.

With the more stringent licensing conditions implemented in 2016 and 2018, the MLO regulates the money lending industry in the following 5 main aspects. Any person who commits an offence under the MLO shall be liable to a fine up to HK\$100,000 and imprisonment up to 2 years. The licence held by that person may be revoked and he/she may be disqualified from holding a licence for up to 5 years²⁶.

(1) Licensing of Money Lenders

To carry on business as a money lender, a person must apply to the Registrar for a licence. A person who carries on business as a money lender without a licence, at any place other than the premises specified in his licence, or contravening the conditions of his licence commits an offence²⁷.

When submitting an application to the Registrar, the applicant must at the same time send a copy of the application to the Commissioner of Police, who may carry out an investigation to determine whether there are grounds for objection. For the purpose of investigation, the Police may require the applicant to provide further information and documents. The Police will assess the application based on the information and documents provided by the applicant, the track record and overall circumstances on a case-by-case basis.

As explained above, applications for and renewal of money lenders' licences are subject to approval by the Licensing Court. The Licensing Court has the authority to grant licences and impose conditions, if necessary. Where the Police or the Registrar objects to the application, the Licensing Court will not grant a licence unless it is satisfied, *inter alia*, that the applicant is a fit-and-proper person to carry on a money-lending business and that the grant of such

²⁰ Introduction of the MLO

²¹ Section 4 of the MLO

²² Section 6 of the MLO

²³ Section 9 of the MLO

²⁴ Section 10 of the MLO

²⁵ Section 14 of the MLO

²⁶ Section 32 of the MLO

²⁷ Section 29 of the MLO

licence is not contrary to public interest.

Below is a summary of the statistics obtained from the Police on money lenders licence applications, objections and revocations from 2012 to 2018 (Table 6). The figures reveal that during the said period, the Licensing Court refused to grant/renew 8 money lenders licences due to the objection raised by the Police and revoked 1 licence upon application by the Police.

Table 6: Statistics on money lenders licence applications, objections and revocations

	2012	2013	2014	2015	2016	2017	2018
Total no. of applications	1,124	1,313	1,570	1,928	2,152	2,379	2,601
a. New licence	190	252	337	453	344	362	421
b. Renewal of licence	817	941	1,091	1,280	1,519	1,694	1,889
c. Endorsement of change/addition of business address	117	120	142	195	289	323	291
No. of applications dismissed by Licensing Court upon objection raised by Police	0	5	1	0	1	1	0
No. of licences revoked by Licensing Court upon application by Police	0	0	1	0	0	0	0

Source: The Police

(2) Supply of Information

The main provisions contained in Part III of the MLO relate to the supply of information by money lenders.

Under Section 18 of the MLO, no agreement for the repayment of money shall be enforceable unless a memorandum or note conforming with the stipulated requirements is made in writing by the money lender and signed personally by the borrower before the money is lent. The memorandum or note should contain all the terms of the loan agreement and, in particular, should set out the contact information of the money lender, the borrower and the surety; the dates and places of the making of the agreement and the loan; the amount of the principal; the terms of repayment; and the rate of interest charged. A failure to comply with Section 18 constitutes an offence under the MLO.

Pursuant to Section 20, a surety will also be entitled to a copy of the note or memorandum, a copy of the security instrument and a statement showing the total sum payable under the loan agreement and the various amounts comprised in that total sum with their due dates. A failure to comply with Section 20 constitutes an offence under the MLO.

Pursuant to Section 19, upon a written demand made by the borrower, the money lender is obliged to supply him with a statement showing the latest status of the loan.

Licensing Condition 5 stipulates that 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. The money lender must also keep written or video or audio records which show that he has complied with the requirements under this condition.

(3) Interest Rates

Part IV of the MLO prohibits excessive interest rates. The MLO provides a two-tier structure to prohibit the charging of excessive interest. The interest rate cap has remained unchanged at 60% per annum since the enactment of the MLO in 1980. In gist, any interest rate exceeding 60% per annum is strictly prohibited²⁸ and any person charging an effective interest rate higher than 60% per annum commits an offence and is liable to a fine up to HK\$5 million and imprisonment up to 10 years²⁹. If the interest rate exceeds 48% per annum, the loan transaction shall be presumed to be extortionate, and the Court may reopen the transaction so as to do justice between the parties³⁰. However, the Court may declare that such transaction is not extortionate, having regard to all the relevant circumstances of the case and that the interest rate stands.

(4) Restrictions on Advertisements

The restrictions focus on the contents of the advertisements issued or published by money lenders. Currently, there are no restrictions on other aspects such as the advertising media, number, location and frequency of the advertisements nor is there stipulation that advertisements must not be misleading.

Section 26 of the MLO stipulates that the money lender's name must be shown in the advertisement in such manner as to be not less conspicuous than any other name; the money lender's licence number must be clearly shown; and where the terms of interest is indicated, the interest proposed to be charged must be shown as a rate per cent per annum and in such manner as to be not less conspicuous than any other matter mentioned.

Licensing Condition 8 requires that the Chinese version of advertisement must clearly show the Chinese characters “放債人牌照號碼” immediately followed by the number of the money lender's licence. Licensing Condition 9 stipulates that the advertisement must contain (i) the money lender's telephone hotline for complaints; and (ii) a risk warning statement, namely “Warning: You have to repay your loans. Don't pay any intermediaries” (“忠告: 借錢梗要還, 咪俾錢中介”), in the same language as that of the advertisement. Contravention of the statutory provision and/or licensing conditions amounts to an offence under the MLO.

In November 2016, the Registrar issued the Guidelines on Additional Licensing Conditions of Money Lenders Licence (“**CR Guidelines**”), with guidance notes annexed, which provided practical guidance on how the risk warning statement should be displayed or broadcast³¹. For instance, for audio advertisements with no visual display (e.g. radio broadcast), the warning

²⁸ Section 24 of the MLO

²⁹ Section 24 of the MLO

³⁰ Section 25 of the MLO

³¹ CR Guidelines (November 2016), Annex 4 – Guidance for meeting the requirements on the display/broadcast of risk warning statement for different types of advertisements

statement should be audibly and clearly read out in a voice-over at the end of each broadcast and in the same pace as other contents of the advertisement. For audio-visual advertisements (e.g. television advertisement), the warning statement should appear either in an independent screenshot for at least 3 seconds together with a clear read-out or at the bottom of the screen throughout the entire advertisement in the prescribed size and colour together with a clear read-out in the same pace as other contents of the advertisement. As for printed advertisements, the warning statement should be not less than 50% of the font size, in the same font type and colour as the other contents of the advertisement that bear the largest font size. These guidance notes are only meant to provide guidance on how the licensing conditions should be fulfilled and are not compulsory in nature.

(5) Statutory Ban on Separate Fee Charging

Section 27 of the MLO prohibits the following:-

- i) Any agreement for payment of costs, charges or expenses (other than stamp duties or similar duties) to the money lender;
- ii) The charging, recovering or receipt of any costs, charges or expenses (other than stamp duties or similar duties) by a money lender or his partner, employer, employee, principal or agent or any person acting for or in collusion with any money lender; and
- iii) Any demand or receipt of remuneration or reward by a money lender or his partner, employer, employee, principal or agent or any person acting for or in collusion with any money lender.

Under Licensing Condition 4, a money lender should 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. Licensing Condition 2 specifically requires that where an appointed third party is involved, the money lender shall not grant any loan to an intending borrower unless, inter alia, the appointed third party has confirmed in writing that (a) he did not 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; and (b) he has not otherwise agreed with the intending borrower for any payment to any other party.

Contravention of items (ii) or (iii) or the licensing conditions above constitutes an offence under the MLO³². Separately, any money or money's worth received in contravention of Section 27 may be recovered by the borrower or may be set off against the amount actually lent³³.

Risk-based supervisory measures are adopted by the Registrar to monitor money lenders' compliance with the MLO and the licensing conditions³⁴. Further, the Registrar conducts

³² Section 29(10) of the MLO

³³ Section 27(4) of the MLO

³⁴ See <https://www.info.gov.hk/gia/general/201906/19/P2019061800628p.htm>

ongoing site inspections and warning letters will be issued to money lenders for rectification of non-compliance. As revealed in a paper for discussion in May 2019 by the Legislative Council Panel on Financial Affairs³⁵, regular liaison meetings were held between the Police and the Registrar to exchange information and intelligence on their respective enforcement efforts. In addition, a joint operation by the Police and the Registrar was conducted to tackle money lending-related malpractices collaboratively.

As can be seen above, whilst the outcome of the Four-Pronged Approach is generally positive, and the situation in relation to the malpractices of the financial intermediaries has abated for now, there are other aspects in respect of the existing regulatory framework of money lenders which cannot be ignored. These areas of concern will be elaborated upon in Chapter 6. A review of the regulatory framework for money lenders in other jurisdictions will be carried out in Chapter 5.

³⁵ Legislative Council Panel on Financial Affairs, Measures to tackle money lending- related malpractices, LC Paper No. CB(1)954/18-19(05)

3 Consumer Behaviour and Issues

This chapter focuses on the consumer borrowing experience to identify the problems associated with the emerging usage of consumer credit and loans. Given that there has been research studies conducted on this matter previously, without duplicating its efforts, the Council decided to focus on other aspects, such as analysing its complaint cases, consulting NGOs which provide financial advice and debt counselling support services to consumers, and conducting in-depth interviews with debtors and their families, to supplement the gaps in the Council's desk research on consumers' behaviour, attitudes, cognitive understanding and experiences.

3.1 Consumer Indebtedness

As shown in Chapter 2, consumer debts by credit card advances and personal loans have risen rapidly in recent years. In general, consumer debts can be classified into two types: good or bad debt.

Good debt is when a consumer takes out a loan, and is able to repay it on time. This builds a good credit record and could lead the consumer to being able to borrow more money and negotiate cheaper rates. A bad debt is one when a consumer takes out a loan, but is unable to meet the repayments on time, and does not have enough money to live on. If a consumer's credit record shows that he or she did not pay his or her debts on time, this will make it more difficult for the consumer to buy on credit or borrow money from financial service providers in the future. In such instances, the debt becomes a major burden for the consumer, which contributes to the consumer's social and financial exclusion, and poverty.

Incidence, forms and reasons of consumer borrowing

In understanding consumers' attitudes and behaviour towards borrowing and debts, the Council drew reference to the surveys conducted in 2014, 2015 and 2017 by the Investor Education Centre, which is now renamed as the Investor and Financial Education Council ("IFEC").

The IFEC 2014 survey³⁶ showed that almost 1 in 5 (19%) Hong Kong people aged 18 – 64 had borrowed money (excluding first mortgage and credit card instalment) over the past 12 months prior to the survey. Credit card (6% by minimum payment or partial repayments, 6% by overdraft/cash out) was the most common credit instruments used by borrowers, followed by unsecured personal loans from banks (4%) and borrowing from family (4%) and friends (3%). Approximately 1% of the respondents borrowed personal loans from financial institutions (Table 7).

³⁶ IFEC, Knowledge, Attitude, and Behaviour towards Money and Debt Management, 2014. See <https://www.ifec.org.hk/en/research>. According to another survey conducted by the Democratic Alliance for the Betterment and Progress of Hong Kong in August 2018, about 17% of respondents replied that they or their family members had borrowed money from financial institutions.

Table 7: Incidence and forms of consumer borrowing in 2014

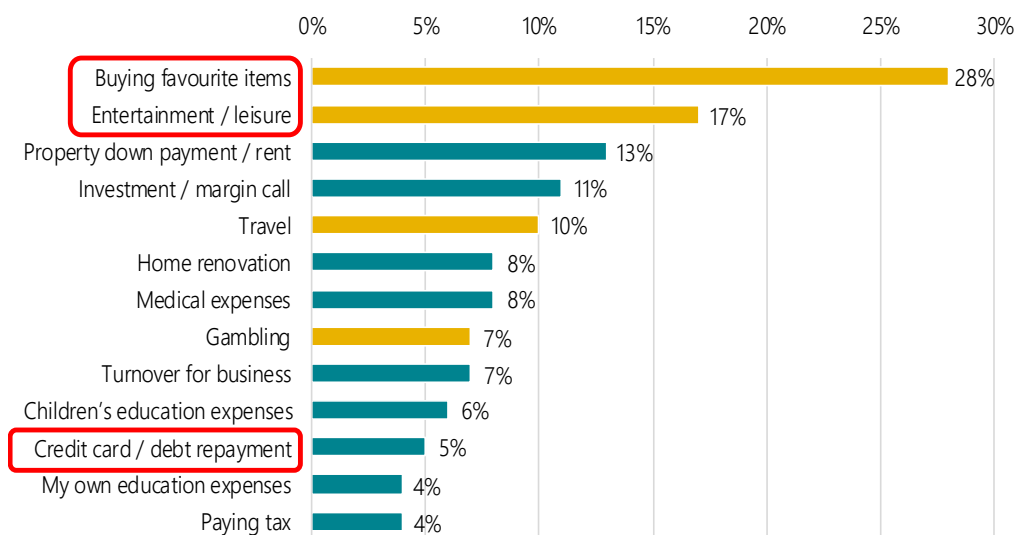
Incidence of Borrowing Money (First mortgage and credit card instalment excluded)	19%*
• Credit card minimum payment or partial repayment	6%
• Credit card overdraft/cash out	6%
• Personal loan from banks (unsecured)	4%
• Borrowed from family	4%
• Borrowed from friends	3%
• Tax loan (unsecured)	2%
• Personal loan from financial institutions	1%
• Second mortgage	<0.5%

*Multi-options were allowed.

Source: IFEC

“Buying favourite items” (28%), “Entertainment/leisure” (17%), “Travel” (10%) and “Gambling” (7%) were some of the main reasons for borrowing (Figure 4). It is of great concern to the Council as these reasons connected more with personal enjoyment rather than necessary spending. Even worse, 5% of the respondents indicated that they borrowed money for repaying other debts.

Figure 4: Reasons for borrowing in 2014



Source: IFEC

Borrowers' profile and size of loans

From the same IFEC 2014 survey, the incidence of borrowing was higher among males and those aged 30-49 (Table 8). At the other end of the spectrum, the incidence of borrowing money was lower among females and those who were aged 50-64. Regarding loan size (Table 9), 28% of the respondents borrowed more than HK\$50,000 over the past 12 months prior to the survey, and over 25% of them admitted to their loan size having increased from 2012.

Table 8: Money borrowers in 2014

Male	25%
Female	14%
Aged 18 - 29	15%
Aged 30 - 49	24%
Aged 50 - 64	14%

Table 9: Size of loan in 2014

HK\$ 2,000 or below	3%
HK\$ 2,001 – 5,000	16%
HK\$ 5,001 – 10,000	18%
HK\$ 10,001 – 25,000	19%
HK\$ 25,001 – 50,000	15%
HK\$ 50,001 – 100K	15%
More than HK\$100K	13%

Source: IFEC

Knowledge on borrowing

The 2014 IFEC survey also indicated that consumers had inadequate knowledge of credit products. One-fifth of the Hong Kong population was not aware that there was no interest-free repayment period for credit card overdrafts and cash advances and there was an increasing trend of settling credit bills with partial or minimum payment from 6% in 2014 to 10% in 2015³⁷. The results of another IFEC survey carried out in 2017³⁸ showed a significant rise in numbers of young working adults aged 18 – 29, not settling their bills in full each month, increasing from 5% in 2014, to 20% in 2017.

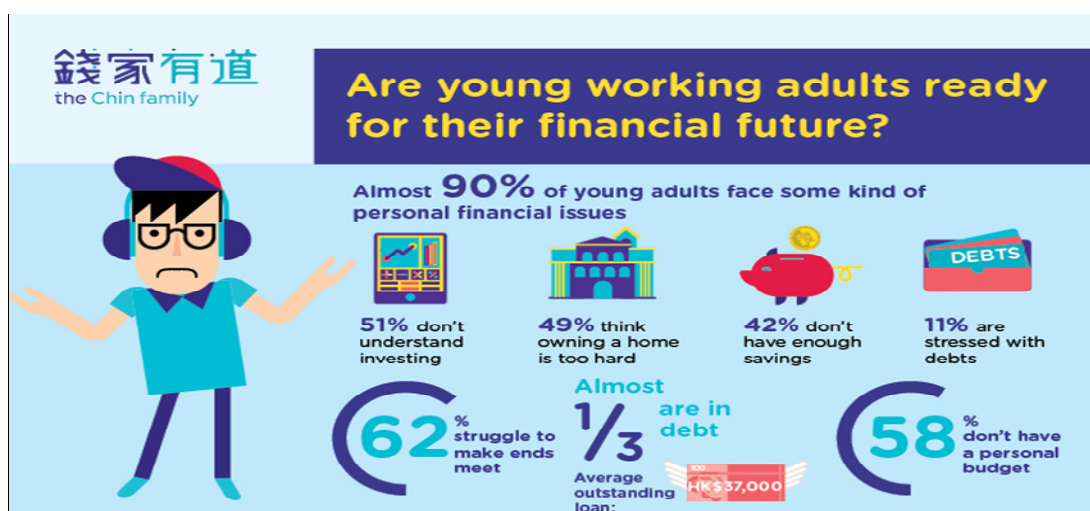
Young working adults facing financial struggles

The above-mentioned IFEC 2017 survey was a survey of 500 working adults aged 18-29 years in April 2017. The survey revealed that the vast majority (86%) of young working adults in Hong Kong faced problems involving their personal finances. More than 60% of the respondents had trouble covering their expenses and almost one-third were in debt. About one-third (31%) of the young people surveyed carried outstanding loans averaging HK\$37,000, with 7% owing HK\$50,000 or more. The majority (88%) owned a credit card, but about one-fifth (20%) of them did not settle card bills in full each month. The average credit card debt was about HK\$20,000 (Figure 5).

³⁷ IFEC, OECD/INFE International Survey of Adult Financial Literacy Competencies - Hong Kong, 2015
See <https://www.ifec.org.hk/en/research/>

³⁸ IFEC, Survey Reveals Young Adults' Financial Struggles, 2017. See <https://www.ifec.org.hk/en/press-release/pr-20170531.html>

Figure 5: IFEC's survey on young working adults in 2017



Source: IFEC

Delayed repayments of debt

According to the IFEC 2014 survey, delayed payments were also a growing concern. Of the 19% of people who had borrowed money over the past 12 months prior to the survey, only 79% were able to always repay their debts on time. Nearly one-fifth (19%) of borrowers had experience of not being able to clear their debts on time and had to delay debt repayments and 1% claimed they always delayed payments. These borrowers would be at the risk of incurring heavy debts.

3.2 Bankruptcy and Over-indebtedness

Table 10 shows the number of bankruptcy cases recorded by the ORO from 1997 to 2018³⁹. After the bankruptcy peaks in 2002 and 2003 (period of severe acute respiratory syndrome ("SARS") with changes in macro-economic conditions) and 2009 (financial crisis in 2008), the number of bankruptcy cases has remained stable at 8,000 to 10,000 cases per year from 2010 to 2018.

³⁹ As at 30 July 2019

Table 10 : Statistics on bankruptcy, 1997- 2018

Year	Bankruptcy	
	Petitions presented	Receiving/Bankruptcy Orders made
1997	829	639
1998	1,362	893
1999	3,876	3,071
2000	5,487	4,606
2001	13,186	9,151
2002	26,922	25,328
2003	22,092	24,922
2004	12,489	13,593
2005	9,933	9,810
2006	10,685	10,324
2007	10,918	11,063
2008	11,620	10,779
2009	15,784	16,157
2010	9,102	9,163
2011	8,077	7,981
2012	8,685	8,178
2013	9,449	9,371
2014	10,027	9,674
2015	9,875	9,750
2016	9,051	8,919
2017	7,855	7,627
2018	7,480	7,146

Source: ORO

Table 11 and Figure 6 show that of these recent bankruptcy cases, there is an increasing trend of multi-time bankruptcy cases in recent years. According to the ORO, the top three causes of bankruptcy and multi-time bankruptcy over these years were “Overspending”, “Lack of gainful employment”, and “Excessive use of credit facilities” (Table 12 and Figure 7), which echoed the findings of the IFEC 2014 survey where “Buying favourite items” (28%), “Entertainment/leisure” (17%) and “Travel” (10%) were the main reasons for borrowing, and revealed that a number of bankrupts or multi-time bankrupts had levels of credit use associated with excessive and irresponsible consumption that led to over-indebtedness as a result.

Table 11 : Number of multi-time bankruptcy cases, 2013 - 2018

Year	All bankruptcy cases	Multi-time bankruptcy cases
2013	9,371	151
2014	9,674	244
2015	9,750	392
2016	8,919	506
2017	7,627	551
2018	7,146	617

Source: ORO

Figure 6: Trend of bankruptcy and multi-time bankruptcy cases, 2013 – 2018

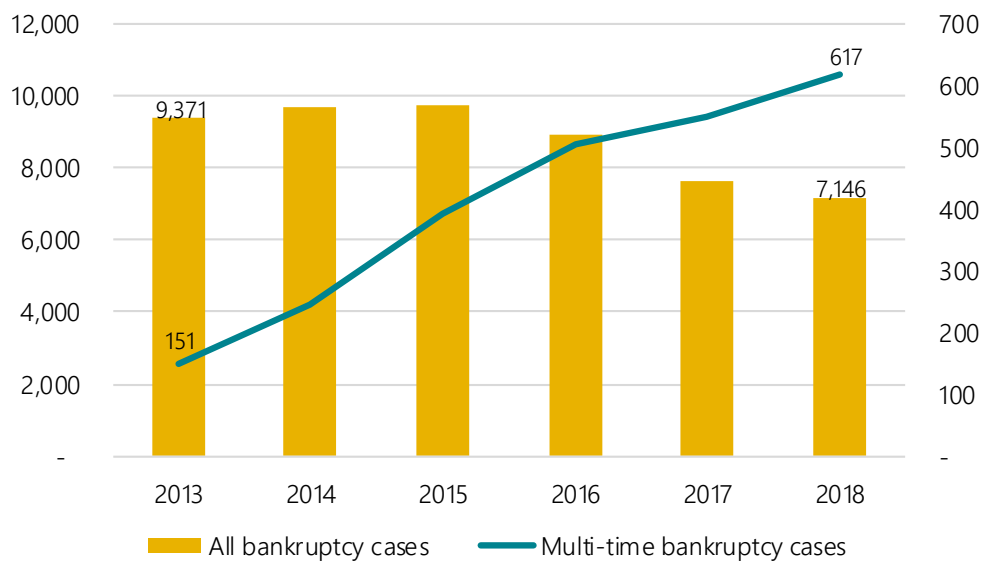


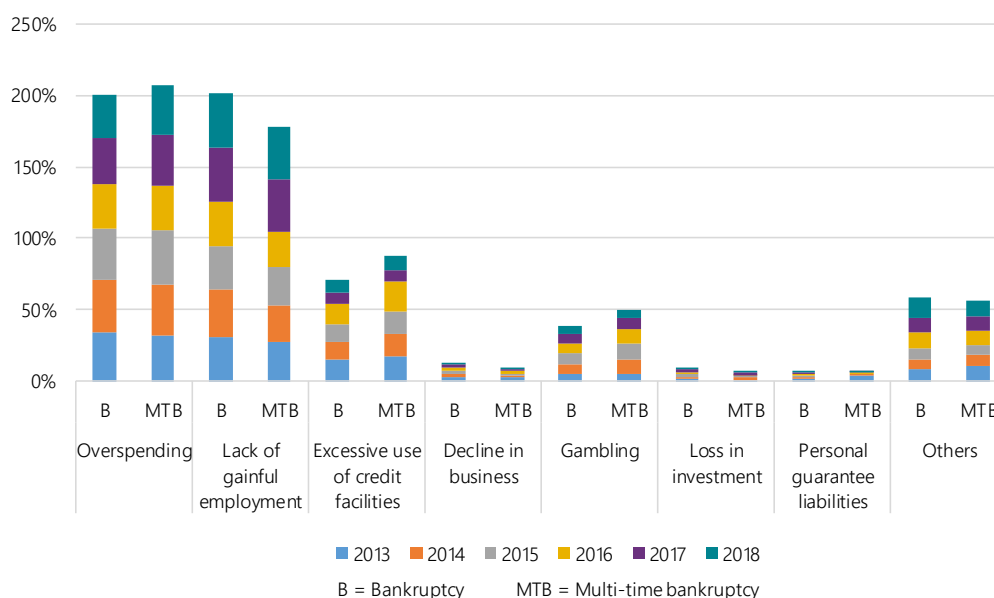
Table 12: Causes of bankruptcy and multi - time bankruptcy, 2013 - 2018

Causes of bankruptcy/ multi-time bankruptcy	2013	2014	2015	2016	2017	2018
Overspending	34.29%	36.55%	36.13%	31.28%	31.54%	30.67%
	32.41%	35.60%	37.64%	31.21%	35.95%	33.74%
Lack of gainful Employment	31.07%	33.04%	30.12%	31.28%	38.29%	37.06%
	27.78%	25.43%	26.89%	24.53%	36.46%	36.70%
Excessive use of credit facilities	14.83%	12.41%	12.79%	13.86%	7.65%	9.68%
	17.59%	15.82%	15.41%	21.33%	7.59%	9.36%
Loss in business	2.47%	2.22%	2.94%	2.45%	2.11%	1.07%
	2.78%	1.13%	1.43%	1.60%	1.01%	0.25%
Gambling	5.58%	6.54%	7.14%	7.34%	6.66%	5.47%
	4.63%	10.73%	10.39%	10.13%	7.85%	6.40%
Loss in investment	1.39%	1.54%	1.77%	1.92%	1.58%	1.23%
	0.93%	2.26%	0.72%	0.53%	1.27%	1.23%
Personal guarantee liabilities	2.24%	0.99%	1.05%	1.11%	1.35%	1.03%
	3.70%	1.13%	0.00%	1.07%	0.25%	0.25%
Others*	8.13%	6.71%	8.06%	10.76%	10.82%	13.79%
	10.18%	7.90%	7.52%	9.60%	9.62%	12.07%
Total	100%	100%	100%	100%	100%	100%
	100%	100%	100%	100%	100%	100%

*Others mainly include high operating costs / interest rates, cash flow problem, fraud, speculation, poor management, unspecified, etc.

Source: ORO

Figure 7: Causes of bankruptcy and multi-time bankruptcy, 2013 - 2018



Source: ORO

3.3 Consumer Complaints

While the IFEC surveys and ORO statistics shed light on some of the consumers' borrowing behaviour and attitude towards debts, the complaints received by the Council on personal loans and financial intermediary services suggest that consumer indebtedness has been exacerbated by bad or unscrupulous sales or trade practices of the money lenders. In 2016, they were mitigated by the Government's Four-Pronged Approach resulting in a substantial decline in consumer complaints received by the Council on personal loans and financial intermediary services, from 165 cases in 2015 down to 39 cases in 2018 (Table 13).

Table 13: Complaint statistics on personal loans and financial intermediary services

	2015	2016	2017	2018	2019 (Jan - Jul)
Price disputes	84	28	25	19	9
Sales practices	59	38	13	11	8
Service quality	18	8	4	4	3
Contract alterations / termination	3	0	6	2	2
Others	1	2	1	3	1
Total	165	76	49	39	23
Total in value	HK\$20,630,688	HK\$9,039,346	HK\$4,828,989	HK\$3,882,835	HK\$3,659,858

Source: Consumer Council

Analysis of the complaints found that most of the complaints related to price disputes and sales practices. Unfortunately most of these cases were not pursuable due to insufficient information provided by the complainants or the complainant did not want to pursue the matter. Box 1 shows examples of these complaint cases with specific problems faced by consumers.

Box 1: Consumer complaint cases in personal loans and financial intermediary services

Case 1: Substantial service fee for loan

The complainant received a call from a man who claimed to be “bank staff” and was introduced to another intermediary for individual voluntary arrangement (IVA) of debts. The intermediary requested the complainant to sign an agreement for arranging loans with money lenders. Later, the intermediary informed the complainant that a loan of HK\$250K had been arranged but a service fee of HK\$180K would be charged, leaving behind only HK\$70K (or 28% of the loan) for the complainant’s own use. The complainant refused and was threatened by the “bank staff” and the intermediary.

Case 2: Repayment of total loan regardless of contract termination

The complainant signed an agreement with a financial intermediary, allowing it to arrange a HK\$130K loan from another money lender to pay off debts and filing fees for a bankruptcy petition. The complainant later wanted to terminate the petition filing and therefore the loan agreement, but was informed by the intermediary that HK\$70K had been used up for lawyer and processing fees and the remaining HK\$60K of the loan used for debt repayments. There would be no refund for contract termination and the complainant was also required to repay the HK\$130K loan.

Case 3: Custody of borrowed loan by unscrupulous intermediary

The complainant borrowed HK\$1.8 million from a money lender through an intermediary consultancy company. Upon the consultancy company’s request, the complainant deposited the borrowed loan with the consultancy company for custody, allegedly for securing another loan at much lower interest rate in 90 days. Subsequently, the complainant could not find or contact the consultancy company and the borrowed loan was not recovered. The complainant had reported the case to the Police.

Case 4: Failure to repay loan money by intermediary

The complainant was requested by an intermediary to deposit a borrowed loan of HK\$130K with it for custody, supposedly to ration the loan money to the complainant in phases to repay the complainant’s debts. However, after HK\$14K was given to the complainant for debt repayment, the intermediary refused to give the remainder of the loan money to the complainant.

3.4 Debt Counselling Services by NGOs

In a financial dispute between a consumer and a trader, the Council will act as a conciliator to bring about settlement. When the 2003 SARS outbreak caused an economic downturn in Hong Kong, some NGOs started to provide financial advice and debt counselling support services to consumers. Of these NGOs, the Council met with Caritas Hong Kong (Caritas Family Crisis Line and Education Centre), Hong Kong Family Welfare Society (Financial Education Centre) and Tung Wah Group of Hospitals (Healthy Budgeting Family Debt Counselling Centre) in early 2018 to further understanding of the consumer issues in relation to credit indebtedness. Box 2 provides a summary of the issues drawn from these NGOs’ debt counselling experiences which warrant attention.

Box 2: Consumer issues in relation to consumer indebtedness raised by NGOs

Issue 1: Increasing trend of money borrowing from small money lenders

The NGOs noticed an increasing trend in money borrowing by consumers, with the majority of the encountered cases connected to small and medium money lenders (termed as second and third-tier money lenders). Overspending, mismanagement of debts and gambling were common reasons for consumer indebtedness. In terms of demographics, there was a surge of youth indebtedness cases in recent years. An NGO pointed out that online gaming or support of KOL (Key Opinion Leader) had become one of the common spending patterns among students which had even spread to primary schools.

Issue 2: Small loans from multiple money lenders

The loan amount offered by small money lenders were generally small, typically below HK\$10K with a relatively short tenure ranging from a few months to one year. Given the low amount of credit offered by each money lender, it was common for consumers to borrow from a number of different small and medium money lenders through arrangements by “intermediaries”. As recalled by the NGOs, cases of accumulated loans from more than 10 money lenders were common. In an extreme case, a debtor had loans from over 120 different money lenders.

Issue 3: Simple loan application and assessment by some money lenders

Consumers who were considered to have higher credit risks due to an unstable source of income, lack of income proof or low credit score could not access mainstream credit sources. Only small money lenders who market and offer loans with easy and simple application and assessment procedures were available to them. In many cases encountered by the NGOs, consumers value speed and ease of access to loans over factors such as higher long-term loan cost, which could drive consumers into problematic debt.

Generally speaking, the younger generation was previously only susceptible to credit card debt. Currently, the advent of the internet allows for online money lenders to be easily found through a simple search, exposing the younger generation to different sources of debt.

Issue 4: Provision of loan referee information without knowledge or consent

Instead of identity or income proof usually required by AIs in loan applications, the NGOs told the Council that some money lenders required the borrower to provide personal information of his/her social network such as a friend’s, relative’s or even colleague’s telephone number or work place address when applying for a loan. In some cases, these people were deemed to act as referees by the money lenders without their knowledge or consent⁴⁰.

In cases where the borrower was unable to make repayments on time or could not be reached, the Council was told that the referee would receive intimidating telephone calls or short messages from the money lenders urging him or her to repay loans on behalf of the borrower. As advised by the NGOs, since most loan referees were usually the parents or close relatives of the borrower, they tended to succumb to the money lender’s demands and would repay the debt.

⁴⁰ With effect from 11 October 2018, there has been an additional licensing condition that a licensed money lender should seek consent from the referees through the borrower.

Issue 5: Rise of bankruptcy by youths and multi-time bankruptcies

Bankruptcy provides a last resort for consumers who have an insurmountable debt and are unable to repay their debts. Under the Bankruptcy Ordinance (BO), a bankrupt consumer will automatically be discharged from bankruptcy in four years after the date of the bankruptcy order. For repeat bankrupts, the period will be extended to five years. During the bankruptcy period, the bankrupt will be bound to certain spending restrictions so as to enable them to repay as much of their debts as they can. After that, the bankrupt will be released from most of his/her bankruptcy debts except those incurred by fraud or fine imposed for an offence.

However, even after the bankruptcy order is discharged, the consumer's ability to access credit continues to be affected. As a result, when bankruptcy-discharged consumers need a loan, they are only able to access high-cost and alternative sources of loans from money lenders or "intermediaries". Many of them tend to encounter debt repayment problems again and have to declare bankruptcy multiple times, as evidenced by the increasing trend of multi-time bankruptcy cases in recent years.

According to the NGOs, there was a tendency for young consumers to declare bankruptcy in recent years without proper knowledge of the financial and or social repercussions of entering into bankruptcy. As some money lenders would be more than ready to offer loans to enable them to file their bankruptcy petition⁴¹, this trivialised the seriousness of bankruptcy and its consequences.

3.5 In-depth Interviews about Consumer Over-indebtedness

With the help of Caritas Hong Kong, two anonymous in-depth interviews with a debtor and a family member suffering from consumer over-indebtedness were arranged in late 2018. In one interview, the case involved a debtor with severe debt problems due to overspending and his issue was intensified by taking out other loans to pay off the original loans. In another interview, the interviewee told the Council how her slow learner sister had accumulated a total of 37 debts in one and a half years. Box 3 and 4 are the case summaries of these two interviews and Figure 8 illustrates samples of loan contracts, application forms, record cards and receipts from money lenders as provided by the interviewees.

Box 3: Case interview with a debtor suffering from severe debt due to overspending, his over-indebtedness intensified by taking out other loans to pay off existing loans

Mr A, now 37 years old, has been in debt since he graduated from post-secondary school 11 years ago. He is currently working full-time in the building engineering and service industry with a monthly income of HK\$28,000. With the addition of his wife's income, the household income amounts to HK\$70,000 per month.

Mr A has an overspending habit and borrowed money for luxuries such as regular purchase of brand name products and a costly wedding ceremony. He began by making minimum credit card payment to extend his ability to borrow more, but soon he reached his maximum borrowing limit on his credit card. He next tried to reach some of the AIs but was refused and had to turn to money lenders due to their easier and simpler loan procedures. He proceeded to first-tier money lenders, followed by entering into an individual voluntary arrangement (IVA) at the age of 27 for 4 years and subsequently reached out to second and third-tier money

⁴¹ For filing a debtor's petition for bankruptcy, a deposit of HK\$8,000 with the Official Receiver to cover the fees and expenses to be incurred by the Official Receiver is needed. There are also other fees such as a Court fee of HK\$1,045.

lenders. At the peak of his indebtedness, he was engaged with seven financial service providers for loans totaling HK\$300,000. At present, he has approximately HK\$200,000 of personal loans and another HK\$200,000 in mortgage loan where his father acts as borrower.

Being bombarded by voluminous advertisement of the financial service providers, such as television advertisements, street marketing and cold calls, Mr A found borrowing money easy, especially when TU credit score checks were exempted. Mr A opined that money lenders portrayed a professional image and promoted a simple and lenient loan approval procedure to attract consumers. Mr A shared that it only took a very short process and he was able to collect his loan from an automated machine.

Noting that Mr A has a stable income and would be able to repay before the deadline, money lenders would offer to extend his loan period or intentionally delayed processing his repayment so as to increase the interest return from his debt. From time to time, other money lenders would ask Mr A if he needed to borrow money to repay current debt, thus further intensifying his over-indebtedness problem. As these money lenders contacted Mr A at very timely moments, Mr A thought that his credit information and loan history must have been shared among some money lenders. Mr A also acknowledged that some money lenders would require him to provide personal information, such as the telephone number of his family members and friends when applying for a loan. These people were deemed as loan referees, but this was often without their knowledge nor their consent sought.

During the loan contract signings, money lenders did not provide Mr A with sufficient time to read and understand the contract terms or to enquire about the interest rate. Mr A hoped to understand interest rate calculations and thus suggested the interest rate be prominently displayed on advertisements and that the actual amount to be repaid be clearly stipulated in the contract.

In addition, intermediaries charged informal service fees which were separated out from the money lenders' calculation of loan costs. They were exorbitant before the implementation of the new licensing conditions of money lenders. As an example, Mr A was charged a HK\$4,000 service fee after signing up for a HK\$20,000 loan. He was unsure about the identity of intermediaries and money lenders; those were deliberately left unclear. Threat-making was also a common practice among second- and third-tier money lenders. Mr A was also of the view that despite the new licensing conditions, some money lenders or intermediaries would continue to impose fees and charges on ignorant targets.

Box 4: Case interview with family member of a slow learner who accumulated a total of 37 debts in one and a half years

Mrs B is a middle-aged housewife. She is now working part-time and earns HK\$4,000-5,000 per month. Described by her sister, Ms C, as a "slow learner", Mrs B is poor at financial management.

As Mrs B does not manage her finance well but pays for insurance, beauty products and medical expenses of her children, she started to borrow money from different money lenders and had accumulated 37 loans in a year and a half worth HK\$300,000, each debt ranging from a few thousand dollars to HK\$70,000. One of these debts was a loan taken out to repay an existing one from another money lender. Threatened by debt collectors to repay her debts close to the due date, Ms C helped to repay part of Mrs B's debts and narrated her experience.

To apply for a loan, Mrs B was required to provide information, including her name, age, number of family members, school addresses of her children, telephone numbers of her children and two relatives, photos of herself, her ID card, bank statements and address proof via WhatsApp. The money lender then reverted with the repayment amounts and terms. Repayment was to be made by bank transfer and a photo of the bank-in slip, being treated as a receipt of the repayment, had to be sent via WhatsApp as proof of payment. Some of the money lenders did not accept direct repayment, so Mrs B had to repay her debts through a third party.

As indicated by one money lender to Ms C, a network of money lenders would share information about the repayment situation of their debtors. When one of the debts was settled before the due date, Mrs B would receive new money lending advertisements via SMS and Facebook. Ms C also noted that the application forms of a few money lenders appeared to be identical.

Most of the money lenders did not provide an official contract, instead showing a paper card with the number of instalments. The card offered no information in relation to the interest to be paid or the money lender's licence number, so the debtors could not verify the money lender's identity.

Money lenders charged substantial interest rates. For example, Mrs B received only HK\$2,000 for a HK\$4,000 loan that had a penalty of HK\$25,000 if the repayment was late for an hour. Conversely, even if Mrs B could repay early, the interest to be charged on the remaining instalments could not be waived.

Ms C was also of the view that many money lenders did not conduct prudent credit assessment on one's repayment ability, only making verbal inquiries about the loan one has incurred. Ms C strongly suggested the establishment of a database on debtors' credit history and the promotion of responsible lending among money lenders. She further suggested that financial education and guidance should also be offered to debtors to enable them to review their financial situation and enhance knowledge how to improve their TU credit score so as to increase access to credible sources.

Figure 8: Samples of loan contract, application form, record card and receipt



Source: The interviewees

3.6 Other Issues

Lack of transparency about sub-mortgage loans

As mentioned in Chapter 1, in light of the various restrictions on AIs and the limitations of the size of the mortgage loans that could be made to consumers purchasing first-hand residential properties, consumers become desperate to borrow the balance from the money lenders and this contributed to one of the causes of the increased borrowings. However, there has been reports that money lenders without the informed consent of the borrowers have been bundling some of their customers' mortgaged properties as collaterals for borrowing from other money lenders or AIs (sub-mortgage)⁴².

Despite the fact that such sub-mortgage loans might not be as prevalent⁴³ as stated, it is a moral issue that the money lenders could sub-mortgage the properties of the consumers to other financial institutions without the informed consent or prior knowledge of the consumers. If the regulations were revised, this issue could be addressed immediately.

Many migrant domestic helpers are heavily indebted

Migrant domestic helpers play a vital role in the current and future provision of domestic services in Hong Kong. The number of migrant domestic helpers in Hong Kong has steadily grown, reaching 385,000 in 2018 and this number is expected to reach 460,000 by 2030, according to the Labour Department of Hong Kong⁴⁴. The strong demand on their services could be due to the ageing population for home-based care services.

⁴² See Apple Daily 20 Nov 2018, [港式次按]財仔抵押業主物業「借財仔」埋樓市新炸彈

⁴³ According to Hong Kong Monetary Authority's inSight article in March 2016, during 2014 and the first three quarters of 2015 when property transactions were relatively buoyant, the number of sub-mortgage cases was a mere 120 or so, less than 0.1% of a total of over 140,000 mortgage cases recorded in the same period by the Land Registry.

⁴⁴ From the report of "The Value of Care". See <http://www.enrichhk.org/thevalueofcare/>

A report "The Value of Care" jointly presented by Enrich and Experian in 2019 provided the money lending situation faced by migrant domestic helpers in Hong Kong. Amongst other findings, the report showed that there was a high level of debt amongst migrant domestic helpers, with 83% reporting being in debt in Hong Kong. Most of them borrowed money with interest rate at 60% and their indebtedness in some cases affect their employers as well. The situation is alarming especially they are not familiar with the laws in Hong Kong and are therefore vulnerable and open to abuse.

3.7 Summary

Over the last year, the Council has reviewed the findings from the IFEC surveys and ORO statistics to understand consumer attitudes and behaviour towards borrowing and debt. The analysis of the Council's complaint cases, consultations with the NGOs and meetings with debtors and their families have also revealed a number of issues and concerns regarding consumer indebtedness and money lending, which this study aims to address. In summary, the following consumer issues are identified:

- Overspending as a habit is a primary cause for bankruptcy and multiple-time bankruptcies;
- Consumers suffer from poor debt management as well as there being a lack of knowledge of credit products and the consequence of not making ends meet;
- There is inadequate advice on indebtedness for those in financial difficulty, especially regarding the availability of and access to credit;
- Marketing and advertising of the ease and convenience of borrowing money, in the absence of prudent assessment on repayment ability, attract more consumer borrowing at high or even exorbitant interest rates; and
- Illegal money lenders and malpractices by delinquent traders, not only affect vulnerable consumers but also bring disrepute to legitimate money lenders.

4 Trade Practices on Marketing and Advertisement

Fair treatment in a marketplace is a fundamental consumer right but in reality, different players in a market perform differently in their governance for fairness and transparency in business conduct. To understand what the practices are and how they affect consumer behaviour and decision-making, this chapter details the research carried out by the Council in relation to the advertising and marketing tactics of some financial service providers. Meetings and engagement with different trade participants, including a consumer credit reporting agency, the money lenders association, and money lenders, have also revealed certain problems in the money lending market.

4.1 Regulatory Requirements for Money Lending Advertisements

According to the MLO, money lending advertisements are obliged to show the money lender's licence number and name as specified in the corresponding licence, in a manner as conspicuous as any other matter on the advertisement. If the money lending advertisement shows the rate of interest, it must be shown as a rate per cent per annum as conspicuously as any other matter on the advertisement. With effect from 1 December 2016, a risk warning statement "Warning: You have to repay your loans. Don't pay any intermediaries." ("忠告: 借錢梗要還, 咪俾錢中介") must also be included in all money lending related advertisements, whether in textual, audio or visual form.

For AIs, the Code of Banking Practice requires all their advertising and promotional materials to be fair and reasonable, not to contain misleading information and comply with all relevant legislation, codes and rules. In any promotional material for a banking service, AIs should indicate the interest rate and relevant fees and charges normally incurred in a clear and prominent manner, with full details of relevant terms and conditions available on request. Where reference is made to an interest rate, AIs should also indicate the APR. To the extent practicable, the advertising and promotional materials should provide a description of the APR, e.g. an APR is a reference rate which includes the basic interest rate and other fees and charges of a product expressed as an annualised rate. Where the interest rate of a banking product is commonly quoted in terms of an annualised floating rate, AIs are not obliged to quote the corresponding APR but should show any relevant fees and charges normally incurred, such as annual fees, in a clear and prominent manner. From 30 November 2016 onwards, the HKMA also required all advertisements in relation to AIs' lending businesses to retail customers, whether in textual, audio or visual form, to contain the educational message "To borrow or not to borrow? Borrow only if you can repay!" ("借定唔借? 還得到先好借!").

4.2 Review of Money Lending Advertisements

TV advertisements

A local television broadcasting company reported that finance companies' spending on Hong Kong broadcasters channel TV advertisements had increased by 40% in the first half of 2017⁴⁵. In order to gauge the frequency and prevalence of these TV advertisements by AIs and money lenders, the Council conducted a review with details as follows (Table 14):

⁴⁵ TVB 2017 Interim Report. See http://img.tvb.com/corporate/_upload_/article/en/1791df98865e688507358541bfd13504.pdf

Table 14 : Review of TV advertisements

Covering period	27 May 2018 (Sunday), 28 May 2018 (Monday) 31 May 2018 (Thursday) and 1 June 2018 (Friday)
Time	From 5:00 pm to 1:00 am (8 hours per day)
Channel	TVB - Jade

Over this period, out of the 1,085 TV advertisements recorded and reviewed by the Council, approximately 48 TV advertisements⁴⁶ were run by AIs (5) and money lenders (43) on money lending (4.4%)⁴⁷. In terms of overall time duration, 5.8% were run by AIs and money lenders.

The following summarises the key findings of these TV advertisements:

- **At least one TV advertisement on money lending in each hour** - The Council has no historical information on money lending TV advertisements and therefore cannot ascertain whether there are more or less than before. However, from the review conducted by the Council, generally speaking there was at least one money lending TV advertisement per hour during the covering period.
- **Advertisement without risk warning message** - There was one TV advertisement by an intermediary⁴⁸ with no risk warning message “Don’t pay any intermediaries.” (“忠告：借錢梗要還，咪俾錢中介”).
- **Young working adults as advertising target** - About one-third of the money lending TV advertisements targeted young working adults ranging from 18 to 40 years old, with a 3:1 ratio of male to female actors (Figure 9).

Figure 9: Sample TV advertisements with young working adults as advertising target



- **Message of “simple loan application and assessment”** - The following verbal scripts were quoted from the money lending TV advertisements (Figure 10):
 - UA 亞洲聯合財務
“UA No Show 私人貸款，不用證明文件，一個電話就有專人搞掂晒”
(Small visual reminder: “客戶須符合相關信貸條件，否則或需親臨分行提供有關文件”)

⁴⁶ Not included sponsored advertisements by AIs and money lenders.

⁴⁷ Based on the counting and classification by the Council.

⁴⁸ The concerned intermediary is Intell Finance and Mortgage Company 英利按揭財務公司.

- 靄華押業
“各類型物業，1 按、2 按，最快 5 小時批核，無需入息證明及財務報表”
(Small visual reminder: “所有申請文件需於上午 11 時前提交”)
- 康業信貸快遞
“上網申請或在任何一個 K Cash 據點的智能提款機即可撇錢”
(Actor demonstrating the case of application by showing the “身份証掃描器 I.D. Card Scanner” and “電子簽名 Digital Signature”)
(Small visual reminder: “批核時間需視乎個別情況而定，確認及提款須於營業時間內辦理”)
- 匯駿財務
“10 分鐘特快批核，免信貸報告審查”

Figure 10 : Sample TV advertisements carrying messages of “simple loan application and assessment



- **Perception of low interest rate** - The following are some examples:
 - 英利按揭財務公司 “年息低至 6%起”
 - 康業信貸快遞 “年息可低至 5 厘”
 - 靄華押業 “年息可低至 10 厘起”
- **Perception of high reward** - The following TV advertisement attracted consumers with high reward offerings:
 - 邦民日本財務
“新客戶成功貸款有現金獎高達\$2000”
(Small visual reminder: “須貸款滿指定金額。推廣須受條款及細則約束”)

Printed advertisements

The Council also reviewed money lending advertisements in newspapers and magazines, with details in Table 15 and the key findings are shown as follows:

Table 15: Review of printed advertisements

Covering period	25 May 2018 (Friday) to 1 June 2018 (Friday)
Newspapers	Paid - Apple Daily, Ming Pao, Oriental Daily and HK01 Free - AM730, Headline Daily and Metro Daily
Magazines	East Week, Oriental Sunday and TVB Weekly

- **A few printed advertisements did not meet the statutory requirements** - Generally speaking, these reviewed advertisements have met the statutory requirements on money lending. However, there were some, as illustrated in Figure 11, which did not show the money lender’s licence or specify the interest rates.

Figure 11 : Samples of printed advertisements without money lender licence number or with interest rates not a rate per cent per annum

The figure displays two printed advertisements. The left advertisement is for Intel Finance, promoting mortgage and owner loans. It features a man in a suit and lists terms such as '\$500,000' and '年息6%起'. The right advertisement is for Elephant Club, featuring a QR code, contact information, and a red box highlighting '現有貸款利息八折' (Current loan interest 80% off).

- **Specific target groups in some printed advertisements** - Some printed advertisements specifically targeted university graduates, young working adults, employees in retail industry, self-employed, part-time employees, housewives, drivers, or civil service workers. Others targeted those on the black list due to bad debt or bankruptcy (Figure 12).

Figure 12: Specific targets in some printed advertisements



- **Perception of easy and convenient lending services** - The following money lenders provide 24 hours lending services through convenient mobile messaging or telephone hotlines (Figure 13).
 - 萬力亞洲財務 "24小時 SMS 專線"
 - 匯裕(遠東)有限公司 "24小時 WhatsApp 申請"
 - 信邦財務 "24小時短訊申請"
 - 順億物業按揭 "24小時熱線"

Figure 13: Easy lending – 24 hours lending services in some printed advertisements



- **Perception of easy and no checking lending services** - Some of the printed advertisements stated that they would not check a consumer’s credit record, often shown in the first few captions as a selling point. See Figure 14 for some examples.

Figure 14: No need to check credit record in some printed advertisements



- **Message of “simple loan application and assessment”** - The following provides some examples quoted from the advertisements (Figure 15):

- 邦民日本財務

“貸款只需身份證+手提電話#，全程無需現身*，申請至過數網上全辦妥。”

(Fine print: “#在職人士只需提供身份證及手提電話資料即可申請。*只適用於選擇網上簽署貸款合約之客戶，惟客戶須符合本公司「網上簽約」服務的相關貸款條件。”)

- 安信信貸有限公司

“貸款\$50,000 或以下，免申請文件，即批即攞現金”

(Fine print: “只適用於總貸款額(包括現有貸款餘額)HK\$50,000 或以下之指定私人貸款並須親臨分行提取貸款。”)

- 快易得

“申請簡單 特快批核 月供還款 15 分鐘現金到手”

Figure 15 : Sampled printed advertisements carrying message of “simple loan application and assessment”



- **Perception of low interest rate** - The following are some examples (Figure 16):

- 大眾銀行(香港) “0”息私人貸款
- 英利按揭財務公司 年息 6%起
- 大新銀行 實際年利率低至 2.08%

Figure 16: Low interest rate in printed advertisements



- **Perception of high reward** - The following provides some examples that attract people with high reward (Figure 17):
 - 安信
 - “成功申請送\$1,800 現金獎”
 - (In small font: “只適用於推廣期內申請及提取指定私人貸款之客戶，其淨貸款額須達HK\$100,000 及還款期達 12 期。”)
 - 永豐信貸
 - “成功申請及提取貸款，可獲高達貸款額 1%現金回贈及 HK\$300 超市禮券!”
 - (in small font: “優惠須受條款及細則約束，詳情請致電永豐信貸客戶服務熱線查詢。”)
 - 匯裕(遠東)有限公司
 - “新客戶如成功贖押 即送\$100 超市現金券”

Figure 17: Perception of high reward by some printed advertisements



Online websites and marketing

As mentioned in Chapter 2, online websites have become popular as they offer consumers easy and convenient access to market information and money borrowing. The Council reviewed popular search results on a search engine and identified 27 websites of financial service providers which formed the subjects of the review (Table 16), with details as in Appendix 1.

Table 16: Review of online websites of financial service providers

Covering period	1 June 2018 (Friday) to 31 August 2018 (Friday)
Search engine	Google
Websites	27 (7 AIs and 18 licensed money lenders, 2 unknown)

The Council's key observations of these websites are summarised as follows:

Interest Rate Issues

- **Locating interest rates in websites** – Some financial service providers tend to show interest rates in small print or inconspicuously, e.g. 2-3 scrolls below the main content in websites (Figure 18).

Figure 18: Interest rates shown in small print or inconspicuous parts on websites of financial service providers



- **Wide range of interest rates displayed** - Financial service providers tend to indicate a wide range of interest rates for consumer reference, with vast disparities between the minimum and maximum interest rates, as well as the terms for repayment. Figure 19 shows examples with wide range of difference between the minimum and maximum interest rates.

Figure 19 : Range of interest rates displayed on websites of financial service providers

貸款利率

最低月平息0.8% (即實際年利率由最低9.6%至最高59.5%)

[Ego Finance Limited: https://www.ego-finance.com/hk/loan/personal_loan/]

適用之實際年利率由2.01% – 44.72%，而還款期為6至72個月。

[Citibank: <https://www.citibank.com.hk/chinese/loans/card-debt-consolidation-loan.htm>]

以上計算結果僅作參考用途，一切均以正式貸款申請
所批核之結果而定。

實際年利率由最低3.271%至最高48%

[Easy One Finance Limited: <https://www.221.com.hk/tc/>]

***備註：**Formax提供6-60個月還款期的私人貸款。根據放債人條例，貸款法定年利率不可高於60厘。而客戶最終可享的年利率將基於客人的信貸狀況及風險程度決定。例如以貸款額HK\$10,000，12個月還款期及年利率15.94%計算，總利息支出為HK\$884。除利息外，本公司絕不收取任何費用。

[Formax Finance Limited: <https://finance.formax.hk/tc/activity/index/1>]

- **Minimum interest rates often taken as example** - The Council observed that money lenders' websites generally cite examples using the minimum interest rate to illustrate the cost of repayment. Figure 20 shows the repayment amount which took the lowest interest rate for calculation.

Figure 20: Examples quoted from the websites

靈活還款

靈活還款期由3個月至84個月，客戶可以隨時額外還款。邦民的還款方案以日息計算，利息只會計算至全數清還當日，亦不會收取提早清還手續費及罰息，減省不必要的利息開支。

低年利率

實際年利率最低4.49%至最高59.26%。以貸款HK\$200,000、月平息0.2% (以實際年利率4.49%計)，按36個月還款期計算，手續費全免，每月還款金額為HK\$5,940。所有示例資訊只作參考，最終批核按個別申請人之實際情況而定。

[Promise: <https://www.promise.com.hk/approval-test>]

貸款產品	Express
貸款額	港幣\$5,000 - 港幣\$50,000
年利率	由29.2%至最高58.0%

financeone私人貸款常見還款例子：**年利率為29.20%**的情況下貸款HK\$30,000, 還款期數18期, 每期還款額為HK\$2,082, 還款總額為HK\$37,476。

[Finance One Limited: <https://financeone.com.hk/>]

- **Different presentations of interest rates** - Monthly, yearly flat rates or APRs were used in advertising. The monthly/yearly flat rate exhibits the monthly interest for a loan (Figure 21) but gives the impression of a substantially lower rate than the APR which covers both interest and other related fees and charges of a loan. For instance, for a personal loan with a 0.2% monthly flat rate, an annual handling fee of 1% deducted from the loan amount, and a 60-month tenure will give an APR of 6.89%⁴⁹.

Figure 21: Monthly flat rate adopted by a money lender

其他特點:
<ul style="list-style-type: none"> • 月平息低至0.2%⁷(百分比年利率: 4.48%)+ • 貸款額高達HK\$800,000或月薪8倍# • 靈活還款期由6個月至最長48個月 • 全期免手續費
[Aeon Credit Service (Asia) Company Limited: https://www.aeon.com.hk/tc/html/loan/loan-personal.html]

There is also a third type of interest rate, the True Annual Percentage Rate of Interest (“**Effective Rate**”), which is a rate percent per annum calculated in accordance with Schedule 2 of the MLO⁵⁰. Money lenders are required to show the Effective Rate in their advertisements if they purport to indicate the terms of interest. The Effective Rate and the APR on a same loan are different as the APR is the annualised percentage rate and includes fees and charges of the loan. For example, the Effective Rate and the APR for a loan of HKD\$10,000 with a total interest of HKD\$576 and a 1-year tenure are 5.76% and 10.98%, respectively. Therefore, the number value of interest rate alone does not reflect the relative borrowing cost. Cost comparison is feasible if the same method of interest calculation is used. As observed, representation by APR is also used by money lenders in advertisements (Figure 22).

⁴⁹ HKMA, Consumer Education Programme - Personal Loans. See <http://www.hkma.gov.hk/eng/key-functions/banking-stability/consumer-corner/strengthening-financial-consumer-protection/consumer-education-programme/personal-loans.shtml>

⁵⁰ See schedule 2 of the MLO for calculation of true annual percentage rate of interest.

Figure 22: APR adopted by a money lender

低息令你「零」包袱

一按實際年利率低至9% · 二按實際年利率低至12%

[Zero Finance: <https://www.zerofinance.hk/zh/x-large-personal-loan/>]

Different practices in calculation

- **Inclusion of service charges in the calculation of interests** – The MLO stipulates that any fees in excess of the principal should be included in the calculation of a loan's interest rate. In other words, service charges should be reflected in the interest rate, but money lenders often advertise their loans with claims that their "handling fee is waived" to attract borrowers and have them believe that the cost of borrowing is lower (Figure 23). Conversely, AIs are exempted from the MLO⁵¹ and are entitled to charge any fees on a loan separately (Figure 24).

Figure 23: Claim of waiving handling fee by a money lender

\$0

零手續費

› 豁免任何貸款手續費 · 讓客戶可取得全數貸款。

立即申請

[Promise: <http://www.promise.com.hk/why-promise#product-features>]

Figure 24: Handling fee claimed by an AI

貸款手續費

總貸款額的0.75%-1.5%(每年)
(實際手續費請參閱貸款通知書)

[Bank of China: <https://www.bochk.com/tc/loan/personal/instalment.html>]

⁵¹ Section 3 of the MLO

- **Penalties on default or early repayment** - Like the service charges, the practices of money lenders and AIs for default repayment are also different. If a borrower is not able to make a repayment on time to money lenders, the money lenders are prohibited from increasing a loan's rate or amount of interest in accordance with the Money Lenders Ordinance. Instead, they are only allowed to charge borrowers a simple interest on the overdue amount at a rate not exceeding the original interest rate of the loan (Figure 25). In the same scenario, AIs are free to charge borrowers extra on the default repayment. Figure 26 presents an example of a late repayment surcharge of an AI which consists of a monthly penalty of 3% of the total monthly repayment amount overdue and an additional \$300 administration fee per month upon default.

Figure 25: Illustration on default repayment by a money lender

- 如逾期供款，利息如何計算？

逾期供款按既定逾期利息計算，以逾期結欠計算逾期時之日息，利率不會因逾期而提升

[Ego Finance Limited: <https://www.ego-finance.com/hk/faq/>]

Figure 26: Charges on default repayment by an AI

7. 逾期還款費用

就本人未能在到期時全數繳交每月還款額的每一個月，銀行會徵收：

(甲) 逾期未償還的每月還款額總額的百分之三的逾期還款利息；及

(乙) 港幣三百元的逾期還款手續費。

[DBS Bank (Hong Kong) Limited: <https://www.dbs.com.hk/personal-zh/loans/personal-tnc.page>]

Similarly, the MLO specifies that borrowers are entitled to repay the loan at any time, including the interest accrued up to the date of repayment. Figure 27 shows the claims made by one money lender, which made use of the requirements of the Ordinance in its favor. However, some money lenders did not clearly indicate whether they would charge borrowers in case of early repayment. Conversely, AIs usually impose penalties in the form of penalty interest or administration fee if the borrower repays early (Figure 28).

Figure 27: Description on early repayment by a money lender

若提早清還貸款，銀行一般會收取貸款期未付的利息。對 MoneySQ.com來說，這種做法過於嚴苛，我們認為提早還款不應被懲罰。
申請MoneySQ.com的貸款，**不會收取提早還款手續費**。閣下能夠提早清還，便可減少利息支出。

[MoneySQ: <https://www.moneysq.com/faq#>]

還款須知 3

提早清還部份 / 所有欠款

你可於任何時候提早清還部份/所有貸款。如欲查詢清還所有貸款之所需金額，請與客戶服務主任聯絡確認還款金額歡迎致電：3798-8000

[Finance One Limited: <https://financeone.com.hk/ca/repayment.html>]

3. 借款人可於給予放債人三天書面通知後提前償還全部貸款。借款人需於還款日向放債人償還未支付的本金、累積利息，以及任何其他逾期待付及應付之欠款。利息為逐日累計，並按實際用款日數以每年365日為基礎計算。

[Aeon Credit Service (Asia) Company Limited]: <https://www.aeon.com.hk/tc/html/index.html>]

Figure 28: Charges on early repayment by an AI

提前還款 / 提前清償
/ 贖回的收費

本金結欠的 2% 及退回任何適用的推廣優惠

於提前清還私人分期貸款前請參閱滙豐網頁（借貸 > 貸款 > 分期「萬應錢」> 常見問題）

[The Hongkong and Shanghai Banking Corporation Limited:
<https://www.hsbc.com.hk/content/dam/hsbc/hk/docs/loans/personal-instalment-loan/key-facts-statement.pdf>]

- **The claim of “no financial assessment”** - The websites of most financial service providers state that borrowers have to agree to their personal data being used by the provider to check their credit history upon entering their personal information for preliminary assessment or enquiry. However, there are some websites that claim no credit record will be assessed, or applicants with low credit score will be accepted (Figure 29). There are also some websites which target students by using low interest rate (Figure 30), or with the message that no income proof is needed (Figure 31).

Figure 29: Websites claiming no assessment on credit history is required for loan application

不查TU
不用查詢信貸紀錄即可申請

TU 更快

[Thousand FCS Ltd.: <http://cashfinance.hk/loan.php>]

信貸評級 tu i 照樣借到錢 | 銀富財務 | rsfinance.com.hk
廣告 www.rsfinance.com.hk/ ▾
免睇信貸報告 · 信貸評級 tu i 都可以借到錢 · 最高可貸20萬 · 30分鐘過數 ;

通寶信貸 - 唔查舊債 貸款
 7. 財務 - 額大

www.turbocredithk.com
 期長，手續簡單，WTS申請專線 66963839

Figure 30: Credit product designated for university students by a money lender

基本資料

貸款金額	HKD\$5,000 – \$100,000
還款期數	6 – 48 個月
月平息	一律 0.84%*
手續費	\$0

同學可隨時取消申請或提早清還貸款
*以12個月還款期計算

申請條件：

1. 18歲或以上

2. 香港大專院校學生

3. 香港永久性居民

[uFinance: <https://www.ufinance.co/student-loan>]

Figure 31: Claim of no income proof required for loan application by a money lender

『爽·快·錢』貸款 | 私人貸款

服務對象
需要小額貸款人士

貸款手續
填寫簡易申請表, 只需香港身份證和住址證明

入息證明
免入息證明

居住證明
水費單或電費單

附加證明
視乎貸款金額

貸款年期
還款期由3星期至12個月

貸款金額
最高可達港幣五萬 (HK\$50,000-)

貸款利率
最低月平息0.8% (即實際年利率由最低9.6%至最高59.5%)

審批時間
文件齊備, 最快15分鐘批核, 30分鐘現金到手

還款方法
自動轉帳、繳費靈(PPS)、銀行入帳

申請方法
親臨分行、電話申請、網上申請皆可

[Ego Finance Limited: https://www.ego-finance.com/hk/loan/personal_loan/]

- **Identity of financial service provider** - Any money lending related advertisement must contain the money lender’s licence number. However, some websites promoting personal loans or related services failed to do so (Figure 32). Similar findings have been observed in printed advertisements under study. Moreover, the licence number shown on some money lender websites did not match with the number shown in the website of the Companies Registry (“CR”) (Figure 33). Borrowers would find it difficult to determine whether a money lender is licensed or not.

Figure 32: Website without money lender licence number displayed

聯絡方法

☎ 查詢及投訴熱線:
旺角:2469 0688
灣仔:2469 0988

☎ WHATSAPP : 6797 7081

✉ 電郵 : johnston20171104@gmail.com

☎ 傳真 : 2764 7288

注意事項

註: 根據《放債人條例》年利率最高不超過60厘。
供款期由4個月至96個月
常見還款例子: 年利率為18%情況下的貸款HK\$10,000, 還款期數12期, 每期還款額為 HK\$917

“Warning: You have to repay your loans. Don't pay any intermediaries.”
「忠告: 借錢梗要還, 俾錢中介」

[Johnston Finance Limited: www.johnstonfinance.hk]

Figure 33: Money lenders with licence number not in the CR's list, or corresponds to a different name

a)

**Top Profit Finance Ltd | Room 401-403,
Far East Consortium Building, 204-206 Nathan Road, Jordan,
Kowloon, Hong Kong**

**Tel: (852) 2375 1021 | Fax: (852) 2375 1020 | Email: cs@tpfhk.com |
Money Lenders Licence: 0582/2018**

b)

4370	Perfect Finance Company Limited	臻美財務有限公司	26-Jan-19	R
4371	Honour Credit Limited	洪華信貸有限公司	26-Jan-19	R
4372	Bear Bright Limited	曜熊有限公司	26-Jan-19	R
4374	Hong Kong Mortgage Services Limited	香港按揭服務有限公司	2-Feb-19	R
4375	Top Profit Finance Limited	高盈財務有限公司	26-Jan-19	R

Figure 33a: Top Profit Finance Limited showed 0582 as its money lender licence number on its website. However, when the Council looked up the "List of Existing Money Lenders Licensees" (Figure 33b) provided by the CR, the number appeared to be 4375 instead.

c) MoneySQ.com

放債人牌照號碼: 0828/2018

本網站所列之資訊謹供參考並會不時更新。

欲了解詳情，請電郵至本公司

info@moneysq.com 查詢。

d)

828	Foo Shing Loan And Mortgage Company Limited trading as Shing Lung Pawnshop	富成按揭有限公司經營成隆押	12-Nov-18	R
831	Foo Shing Loan And Mortgage Company Limited trading as Tak Hing Pawnshop	富成按揭有限公司經營德興押	12-Nov-18	R

Figure 33c: MoneySQ showed 0828 as its money lender licence number on its website. However, when the Council searched through the "List of Existing Money Lenders Licensees" (Figure 33d), the number corresponded to another company.

According to the explanation given by the CR during the meeting with the Council, the number shown in its website is not money lender's licence number. In other words, it would be difficult for a borrower to check and determine whether the licence number shown or provided is a valid one or not.

4.3 Engagement with the Trade

In Chapter 2, it is noted that official statistics on loans and advances offered by licensed money lenders in Hong Kong are not available; information on their business nature and operations are also rarely found. For a better understanding of the money lending market, the Council interviewed TU and two licensed money lenders to find out their views on the lending market and possible improvement areas for consumer protection. The Council also received a written response from the LMLA on the questions posed by the Council.

Views of TU

Collection of consumer credit information by TU

TU members are major financial institutions in Hong Kong, and include all banks and major money lenders. TU collects data from its members every month. Generally speaking, enquiry information is immediately reflected on the credit report and account information is current up to the last calendar month.

As for TU's membership, HKMA requires all banks to be members of the TU as there is a statutory guideline by the HKMA of the Sharing and Use of Consumer Credit Data through a Credit Reference Agency and TU is the only consumer credit bureau in Hong Kong. As money lenders are not supervised by the HKMA, this is not a mandatory requirement but they are welcome to do so.

According to TU, only some of the larger money lenders join as members. TU shared with the Council that some money lenders may not be able to meet its data security standards and policy requirements while others may have their own strategy in assessing their own customers. During the Council's meeting with TU, it offered to provide the Council with a list of its members and information on the money lenders' market situation. However, at the time of preparation of this report, the Council has not yet received this information.

Trends of consumer credit

According to TU, money lenders' involvement in personal loans has been growing rapidly over the last two years, and banks have been shifting away from personal loans for prime and subprime groups and moving towards loans for prime plus and super prime groups.

TU explained that it is difficult for money lenders to compete with the low interest rates that banks offer to prime plus and super prime groups. As a result, money lenders tend to provide personal loans to prime to subprime groups, which have relatively higher credit risks. Moreover, as banks are more conservative and subject to the HKMA's supervision, money lenders may be the first choice for prime to subprime groups to turn to for quick funding. TU further pointed out that there was a growth among the younger generation in personal loans and the most common product used by the younger generation was credit card.

Consumer credit scores

Financial service providers will usually take the credit score of an individual applicant and other factors as reference to make a determination on a lending decision. According to TU, the credit score in Hong Kong is based on the past 24 month's data, mainly on the consistency of balance, timeliness of repayment and usage of credit limit, but a good credit score does not

guarantee a successful application; salary and the job of the applicant will also be taken into account.

TU also advised that credit cardholders should not terminate their credit cards hastily as credit limit utilisation of each credit card counts towards their level of risks. If one does not use up all his/her credit limits, his/her credit score will be higher. It was also noted that the length of time one holds a credit card relates positively to one's credit score.

TU further advised that credit score can further be improved if one repays the financial service provider on time. However, as no records can be obtained if the money is borrowed from another financial service provider other than those who are on the TU's members list, this method to improve credit score is limited.

In Hong Kong, TU examines one's balance, performance and rate of delinquency only up to the last 24 months.

Consumer credit checks

To clarify the consumer perception that the shopping around and seeking credit score checks by the financial service providers may lower one's credit score, TU stated that a soft enquiry at a financial service provider will not affect the score until one to two written loan application form(s) is/are submitted.

Claims such as "no credit report required" and "free credit assessment"

As to the prevalent practice of "no credit record check", TU said that if there is no credit data, money lenders would review the age, residence and education level of the loan applicant to make an independent assessment on their risk and return. In TU's view, this claim tended to attract applicants of higher credit risk who have limited access to low cost borrowing. Therefore in negotiating the interest rates and fees, the money lenders would be able to charge higher amounts and make a good return.

Overall views with regard to consumer credit in Hong Kong

According to TU, consumer credit business in Hong Kong involves less risk as its delinquency rate is relatively low. TU advised that consumers should be aware of their credit score as a high credit score could possibly bring the benefit of a lower interest rate from financial service providers.

Views of the LMLA

In its correspondence with the Council, the LMLA explained that its objective was to create and administer a self-regulatory business environment through an established Code of Money Lending Practice to increase professional ethics and therefore the status of its members. Apparently, there are regular liaison meetings between the LMLA and the CR, the Police, and the FSTB.

The LMLA is of the view that licensed money lenders are usually exposed to loan applicants with a diverse range of credit scores and offer interest rates and loan size corresponding to the credit risks. To raise the competitiveness of licensed money lenders in the market, the LMLA suggested the usage of big data so that money lenders could improve the efficiency of their money lending end-to-end process, from targeted marketing to credit approval decision.

The Council also directed queries to the LMLA regarding some money lending advertisements that promote spending without paying due regard to prudent borrowing as well as phony intermediaries using deceptive tactics to entice borrowers, engaging them for loan arrangements from money lenders, and charging them high fees. The LMLA referred to the Government's Four-Pronged Approach in 2016.

The LMLA also indicated that part of their work was to provide channels for money lenders including its members and the public to make enquiries or complaints. Nevertheless, the number of complaint cases received by the LMLA was low (no statistics provided) and the cases were usually referred directly to a member company's senior management for handling as the LMLA has no statutory power granted to it and therefore would not usually be involved in the resolution of any disputes.

Views by licensed money lenders

Referred by the LMLA, the Council interviewed two major licensed money lenders in February 2019 to collect information on their market practices and views of the current regulatory framework. Box 5 and 6 give summaries of these two interview meetings.

Box 5: Interview meeting with United Asia Finance Limited ("UAF")

Background of UAF

UAF has been providing loans to the local market for 25 years. According to UAF, it is one of the five biggest money lenders/deposit taking companies in Hong Kong (the other four mentioned were: Aeon, Prime Credit, Promise (Hong Kong) Co., Limited ("**Promise**") and Public Finance [sic]). Employing about 600 full-time staff in the company, 70% of UAF business is operated in physical stores while 30% of its business is online.

UAF estimated that of the total consumer loans market in Hong Kong, only 20% of the loans were from money lenders while 80% were from banks. Despite a substantial growth in the number of licensed money lenders in Hong Kong, only about 300 money lenders are active in the market.

UAF considered TU to be an effective channel to obtain information to assess client creditworthiness, though not their ability to repay a debt.

UAF also viewed advertising as a way to attract customers in a competitive market and to increase its market share, targeting individuals in financial need.

Customer features

UAF told that it has a wide customer base, from grassroots to professionals, with lending amounts ranging from a few thousand to two million Hong Kong Dollars. Reasons for loans are typically consumption and investment with most of the loan applicants using loans to settle credit card bills, especially for those who do not want to pay the high interest rate or cannot manage their finances well. As loan applicants can repay their loans in instalments, this effectively enhances their financial management.

Youth (familiar with online services) and females (more likely to complete application forms) tend to apply for loans through UAF's online platform. Given that the physical stores and online application procedures are the same, applicants have sufficient time to read the details of the terms and conditions when applying for loans online.

Loan requirements

UAF said that it would give loans to as many customers as possible, with smaller loan amounts instead of a large sum to the same individual. It would accept most of the loan applications unless the applicant exhibits a disproportionate ratio of income to expenditure. Loan applicants are encouraged to convey their financial situation to their family members and, if needed, apply for a joint loan in order to possibly acquire a larger loan amount.

UAF explained that it has applied strict rules on certain loan applications due to the limited capital of the company. For instance, when an individual is a “No Show” applicant, i.e. does not make a personal appearance for a loan application, the standard of requiring other supporting information would be higher.

Views and recommendations

To enhance industry development, UAF recommended that requirements on capital, experience and professionalism of money lenders should be included in the licensing criteria. To increase information transparency and understanding of the industry, UAF also suggested that money lenders should provide as much information as possible to the public.

UAF acknowledged the role that intermediaries play in the industry, but was of the view that consumers need not necessarily approach an intermediary. To eliminate malpractice, UAF suggested appropriate regulations be imposed on intermediaries and recommended establishing a register for debt collection companies.

To mitigate the over-indebtedness issue, UAF suggested that the Government and NGOs step up efforts in consumer education so that loan applicants have better concept in choosing trustworthy money lenders. Moreover, UAF supported the idea of the LMLA organising talks on the right attitude on lending, when necessary.

Box 6: Interview meeting with Promise

Background

Promise, owned by a Japanese consumer finance institution, has been providing personal loan to the local market since 1992. It is one of the five biggest money lenders/deposit taking companies in the personal loan market in Hong Kong. At present, Promise employs more than 200 full-time staff and operates 26 branches.

Promise viewed television advertising as a very effective method to attract customers and was the first company to advertise on TV in the 1990s. At present, its advertising covers a broad range of channels including television, newspapers and online advertising.

Customer features

As told, the majority of Promise’s customers are between 18-35 years old and more than 60% are male. Those who find it difficult to borrow money from banks also tend to apply for loans from Promise. With an upward trend in online lending, the proportion of online and branch lending is now 50-50.

Loan requirements

Promise claimed that it has applied strict rules to loan applications. Before applying for a loan, customers must join its membership. During the loan application, Promise would conduct credit score checking on customers. In regard to its claim in the advertisements that no income statement is needed for loan application, Promise said other valid supporting information would still be required. As for the advertisement of “Get your loan, all online” (全程無需現身), checking and confirmation of customer identity would also be conducted, and if the information provided by the customer is not enough or the amount of applied loan is too large, the customer would still be required to apply loan in person at a branch.

Promise explained that it does not require referee information. Its bad debt rate is low, which is likely due to the appropriate amount of loans granted and ways to follow-up with customers.

Promise said that customers would be provided with a contract containing details of all the loan information, but found that customers normally focused only on the amount of repayment and when they would receive the money.

Views and recommendations

Promise considered its current method of using “daily” interest rates to be the simplest for consumers to understand the amount they have to repay at any time. Promise claimed that it does not use any intermediaries. As for debt collection agents, Promise agreed that a registration system may be useful. At present, Promise said that it would conduct background checks, regular monitoring and supervision of its debt collection agents.

Promise told that it has a complaint mechanism to handle customer complaints. The number of complaint cases in recent years is decreasing, which, according to Promise, may be due to its existing appointment and review mechanism on debt collection agencies.

Regarding promoting a healthy development of the money lending industry, Promise is of the view that the threshold for licensed money lender should be increased, in particular the financial threshold and the requirement for more information on the owner/shareholder’s background.

4.4 Summary

In reviewing the marketing practices of the money lending industry, there are obvious gaps that will have to be closed to provide a fairer and more informed marketplace for loan applicants.

The message of “simple loan application and assessment”, the perception of easy and convenient borrowing as well as low interest rates and high rewards are popular marketing tactics to attract the potential loan applicants who are in need of quick money to offload their financial pressure. Claims such as “no credit report required” further impel some chosen targets such as university graduates, self-employed, part-time employees, housewives and blacklisted, indebted or bankrupt individuals to attempt to borrow more which further strains their ability to repay. Despite the two interviewed money lenders explaining they have applied strict rules to their loan applications, the lending policy of different money lenders could be varied substantially. Meetings with NGOs, debtors and families confirmed TU’s assertion that these advertisements and claims are intended to attract those loan applicants of higher credit risk.

Furthermore, apart from the different presentations of interest rate by financial service providers, the different practices in the calculation of fees or charges, could also confuse the loan applicants when they are in the process of selecting a money lender. Without clear and comparable information, the loan applicant could easily be led into taking on a loan with higher interest which will result in a higher cost of borrowing. As evidenced by the lack of information on the licence number of money lenders the Council found in this study, the transparency of and scrutiny over money lenders have to be improved.

To improve the standard of the industry, the qualification of the money lenders, the licensing mechanism and governance inevitably will have to be strengthened to offer a fairer and more responsible money lending market in Hong Kong.

5 Regulatory Regimes in Other Jurisdictions

This chapter gives an overview of the regulatory framework for money lenders in 5 other jurisdictions:- Australia, Mainland China, Singapore, Taiwan and the UK. These jurisdictions are selected either for their geographical proximity or their similarities to Hong Kong in terms of their state of economic development, business environment, or legal background.

Key areas reviewed are the regulatory bodies overseeing the industry, the licensing requirements, disclosure requirements, interest rates, requirements for responsible lending or prudent credit assessment, consumer credit data providers, advertising restrictions, and enforcement. By referencing these aspects in the different jurisdictions, areas of weaknesses in the local regulatory regime are identified and analysis can be made, providing a foundation to formulate the recommendations listed in Chapter 7 of this Report.

5.1 Australia

Overview and Regulatory Body

According to the central source of Australian open government data, there are upwards of 1,050 licensed credit providers out of a total of 5,204 credit licensees in Australia as at 1 July 2019⁵² and the loan size is AUD 2,294.8 billion (roughly equivalent to HKD 12.5 trillion) as at March 2019⁵³.

The main legislation that governs the industry is the National Consumer Credit Protection Act (“**National Credit Act**”) and the National Credit Code. ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator. It regulates Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, pension, insurance, deposit taking and credit. As a consumer credit regulator, it administers the National Credit Act and regulates people and businesses engaging in consumer credit activities including banks, credit union, finance companies, along with others⁵⁴. In administering the legislation, ASIC issues a number of Regulatory Guides and Information Sheets to serve the purpose. Regulatory Guides give guidance to regulated entities by explaining when and how ASIC will exercise specific powers under legislation, how it interprets the law, principles underlying ASIC's approach and give practical guidance. Information Sheets provide concise guidance on a specific process or compliance issues or an overview of detailed guidance⁵⁵.

According to ASIC annual report 2017-18, specific emphasis was placed, *inter alia*, on the enforcement of compliance with responsible lending laws, misleading advertising and poor debt collection practices. ASIC had success in taking the credit providers to court for delinquent conducts to include, *inter alia*, breaches of responsible lending provisions, failure to make adequate inquiries, making misleading advertising and poor debt collection practices.

⁵² List of credit licensees as at 1 July 2019 as shown in the website “data.gov.au” which is the central source of Australian open government data.

⁵³ Australian Bureau of Statistics, “Australian National Accounts: Finance and Wealth, Mar 2019”.

See <https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/5232.0Main%20Features3Mar%202019?opendocument&tabname=Summary&prodno=5232.0&issue=Mar%202019&num=&view=>

⁵⁴ See <https://asic.gov.au/about-asic/what-we-do/our-role>

⁵⁵ Regulatory Guide 207, page 2

Based on the above, it can be seen that ASIC is taking an active approach towards enforcement⁵⁶.

Licensing

Anyone who wants to engage in credit activities (such as money lenders and financial intermediaries) must be licensed with ASIC⁵⁷. In assessing a license application, ASIC will consider⁵⁸:

- (1) whether the applicant is a fit and proper person to engage in credit activities; and
- (2) whether the applicant can comply with the general conduct obligations, which aim to ensure that the credit business is properly operated.

Fit and proper person

In determining whether the applicant meets this requirement, ASIC will have regard to whether each of the people involved in managing the credit business are fit and proper people to perform that role⁵⁹. In case of a body corporate, ASIC will consider whether certain people who are responsible for the management of credit businesses, including directors, company secretaries and senior managers who will perform duties for credit activities under the licence, are fit and proper people to perform that role⁶⁰.

To be a fit and proper person to engage in credit activities means that the person⁶¹:

- (1) is competent to operate a credit business (as demonstrated by the person's knowledge, skills and experience);
- (2) has the attributes of good character, diligence, honesty, integrity and judgement;
- (3) is not disqualified by law from performing their role in the credit business; and
- (4) either has no conflict of interest in performing their role, or any conflict that exists will not create a material risk that the person will fail to properly perform their role in the credit business.

To demonstrate that an applicant has these attributes, the applicant will need to⁶²:

- (1) identify the people involved in the management of the business (called "fit and proper people");
- (2) specify which of those people will the applicant rely on to demonstrate that the applicant is competent to engage in credit activities (called "responsible managers"). Each applicant needs to identify at least one person as responsible manager; and
- (3) provide ASIC with information about each of those people, their role in the credit business and their past conduct, and, if they will be responsible managers, their knowledge and experience.

⁵⁶ ASIC annual report 2017-2018, pages 58-62

⁵⁷ Regulatory Guide 203.31

⁵⁸ Regulatory Guide 204.35

⁵⁹ Regulatory Guide 204.176

⁶⁰ Regulatory Guide 204.184

⁶¹ Regulatory Guide 204.177

⁶² Regulatory Guide 204.178

For each “fit and proper people”, ASIC requires the applicant to certify whether the person has not been subject to certain events within the last 10 years, whether in Australia or overseas⁶³. These events include, *inter alia*:

- (1) refusal or restriction of authorisations required by law for a trade, business or profession; disciplinary action or investigations that may result in disciplinary action; licence cancellations;
- (2) reprimand or disqualification or removal by a professional or regulatory body in matters relating to the person’s honesty, integrity or business conduct;
- (3) use of different names to those in the application;
- (4) administrative, civil or criminal proceedings or enforcement actions, which were determined adversely to the person; and
- (5) declaration of bankruptcy or insolvency; involvement in the management of any companies or businesses that have had an external administrator appointed, or entered a compromise or scheme of arrangement with creditors, or been declared insolvent.

For each responsible manager, additional information including educational qualifications and details of previous employment are required to demonstrate that he has adequate knowledge and experience to engage in the credit activities to be authorised by the applicant’s credit licence⁶⁴.

Capital requirement

Under the National Credit Act⁶⁵, credit licensees are obliged to have adequate financial resources to engage in credit activities authorised by the licence and to carry out supervisory arrangements. The aim of the legislation in imposing financial requirements is to minimise the likelihood that insufficient resources will put compliance with the National Credit Act and a credit licensees’ obligations at risk⁶⁶.

Notwithstanding the above requirement for adequate financial resources, there is no fixed capital requirement as it is not possible to prescribe a level of resources⁶⁷ for each credit licensee as this varies according to the nature, scale and complexity of the credit activities the credit licensee engages in⁶⁸. When determining whether an applicant has adequate resources⁶⁹, ASIC will make enquiries during the licensing process and if there is reason to believe that the applicant will not be able to comply with the financial resources requirement⁷⁰, a licence will not be granted.

⁶³ Regulatory Guide 204.277

⁶⁴ Regulatory Guide 204.280

⁶⁵ Section 47(1)(l) of the National Credit Act

⁶⁶ Regulatory Guide 207.14

⁶⁷ ASIC, “FAQ-Getting a credit licence”, 20 October 2014. See <https://asic.gov.au/for-finance-professionals/credit-licensees/applying-for-and-managing-your-credit-licence/faqs-getting-a-credit-licence/#resources>

⁶⁸ Regulatory Guide 207.8

⁶⁹ Regulatory Guide 207.45 (note)

⁷⁰ Section 37(1)(b) of the National Credit Act; Regulatory Guide 207.45

As a minimum, credit licensees would be expected to⁷¹:

- (1) meet all the debts as and when they become due and payable;
- (2) plan and monitor cash flows to make sure they are sufficient to adequately meet the obligations as a credit licensee under the National Credit Act; and
- (3) document the process for determining whether they have adequate financial resources.

The credit licensee has an ongoing obligation to maintain the adequacy of resources and this will form part of the annual compliance certificate⁷².

Compliance with the General Conduct Obligations

Before ASIC grants a licence, the applicant must demonstrate that it is able to comply with the general obligations under the National Credit Act from the time the licence is granted and on an ongoing basis. The licensee is required to lodge an annual compliance certificate with the ASIC, in which it must certify whether it has complied with the obligations as a licensee⁷³. In the broadest sense, these obligations can be divided into several aspects, including compliance obligations, internal systems relating to risk and conflicts management, monitoring and supervision of people, maintaining adequate financial, technological and human resources to engage in the credit activities. Below is a brief summary of the relevant requirements applicable to businesses engaging in money lending activities.

Pre-contractual information disclosure

A money lender must give a credit guide to a borrower as soon as practicable after it becomes apparent to the money lender that it is likely to enter a loan agreement with a borrower⁷⁴. The credit guide is a brief document containing certain preliminary information for borrowers, for example:

- (1) lender's name and contact details;
- (2) lender's Australian credit licence number;
- (3) information about the lender's procedure for resolving disputes with a borrower; and
- (4) information about the lender's responsible lending obligations under the National Credit Act, namely, giving the borrower the assessment⁷⁵ and prohibition on entering or increasing the credit limit of unsuitable credit contracts⁷⁶.

Before entering into a loan agreement, a money lender must give to a borrower a quote which gives the estimated cost of the credit assistance and the borrower can accept the quote by signing and dating the quote⁷⁷. The money lender must provide a copy of the accepted quote to the borrower⁷⁸. A money lender must also ensure that certain key information such as the amount of credit, interest rate, total amount of interest payable, details of repayments and other incidental

⁷¹ Regulatory Guide 207.9

⁷² Section 53 of the National Credit Act; Regulatory Guide 207.47

⁷³ Regulatory Guide 205.35; section 53 of the National Credit Act

⁷⁴ Section 126 of the National Credit Act

⁷⁵ Section 132 of the National Credit Act

⁷⁶ Section 133 of the National Credit Act

⁷⁷ Section 114 of the National Credit Act

⁷⁸ Section 114 of the National Credit Act

charges for example credit fees and charges, default rate etc. are included in the loan agreement⁷⁹.

In addition, the money lender must give the borrower an information statement which is in a prescribed form, containing some statutory rights and obligations of the borrower, terms and conditions of the loan contract, which the borrower should know before entering into a loan agreement⁸⁰.

For loans of AUD2,000 or less which are to be repaid between 16 days and 1 year, money lenders can only charge the following fees⁸¹:

- (1) A one-off establishment fee of not more than 20% of the loan amount;
- (2) A monthly fee of not more than 4% of the loan amount;
- (3) A government fee or charge;
- (4) Default fees or charges; and
- (5) Enforcement expenses.

For loans which are for amounts between AUD2,000 and 5,000 to be repaid between 16 days and 2 years, fees are limited to⁸²:

- (1) A one-off establishment fee of AUD400; and
- (2) A maximum annual interest rate of 48%, including all other fees and charges.

For loans of more than AUD5,000 or with terms longer than 2 years and all continuing credit contracts, the fees and charges allowable must not be more than 48% (including any establishment or other fixed fees)⁸³.

Responsible lending/credit assessment

Money lenders must comply with the responsible lending conduct obligations in the National Credit Act. They are intended to (i) introduce standards of conduct to encourage prudent lending; and (ii) curtail undesirable market practices⁸⁴. The responsible lending obligations enhance consumer protection by ensuring that money lenders do not provide credit to borrowers who do not have the capacity to repay the loan, or the type of loan which does not suit the need of the borrower⁸⁵. The key concept is that lender must not enter into a loan agreement with a borrower if it is unsuitable for the borrower.

To comply with the responsible lending obligations, the lender is required to take 3 steps⁸⁶:

- (1) make reasonable inquiries into the borrower's financial situation, and his requirements and objectives;
- (2) take reasonable steps to verify the borrower's financial situation; and

⁷⁹ Section 17 of National Credit Code

⁸⁰ Section 16 of National Credit Code and Form 5 of the National Credit Regulations

⁸¹ See <https://www.moneysmart.gov.au/borrowing-and-credit/consumer-credit-regulation>

⁸² See <https://www.moneysmart.gov.au/borrowing-and-credit/other-types-of-credit/personal-loans>

⁸³ Ibid

⁸⁴ Regulatory Guide 209.12

⁸⁵ Section 133 of the National Credit Act

⁸⁶ Regulatory Guide 209.2 & 209.4

- (3) make an assessment of whether the loan agreement is “not unsuitable” for the borrower⁸⁷ (based on the inquiries and information obtained in the first two steps).

A loan agreement must be assessed as “unsuitable” where at the time of the assessment, it is likely that⁸⁸:

- (1) the agreement does not meet the borrower’s requirements and objectives;
- (2) the borrower will be unable to meet his payment obligations, either at all or only with substantial hardship; or
- (3) other prescribed circumstances are applicable to the agreement. For example, a reverse mortgage is presumed to be unsuitable in some circumstances unless proved to the contrary⁸⁹.

Advertising practices

The National Credit Act prohibits the making of false or misleading representations in relation to a matter that is material to enter into a loan agreement⁹⁰. ASIC has issued a good practice guide for advertising financial products and services (including credit) which helps promoter comply with their legal obligations in relation to advertising practices. One key requirement applicable to credit advertisements is the reference to an interest rate. Under the National Credit Code, it is not mandatory for money lenders to disclose the interest rate in an advertisement. But where it does so, it is important that the advertisement gives borrowers a realistic impression of the overall costs⁹¹. Furthermore, it is a legal requirement that if an advertisement contains an interest rate, it must also contain a comparison rate so that they can make an informed decision as to whether to take out that particular loan or not. A comparison rate is a tool to help consumers identify the true cost of a loan and includes both the annual interest rate plus main fees and charges relating to a loan, reduced to a single percentage figure⁹² enabling easier comparison by the consumers as to how much the loans from different money lenders will cost them.

Apart from the contents of the advertisement, the guide also covers media-specific issues of different advertising channels for advertising financial products, financial advice services, credit products and credit services. These include mass media, audio advertisements, film and video advertisements, internet and outdoor advertising. To take film and video advertisements as an example, promoters should ensure that the information about risks and any warnings be easily understood by an average viewer on the first viewing of an advertisement and the message should not be undermined by distracting sounds or images⁹³.

Consumer Credit Data Sharing

Currently, sharing consumer credit data is a voluntary practice in Australia. If the licensee operates its credit business by adopting data sharing, it is subject to the Privacy (Credit Reporting) Code. This code protects consumer credit data through various ways, such as, restricting the types of credit information and the circumstances under which such credit

⁸⁷ Regulatory Guide 209.2; section 133 of the National Credit Act

⁸⁸ Regulatory Guide 209.3; Section 133(2) of the National Credit Act

⁸⁹ Regulatory Guide 209.127

⁹⁰ Section 154 of the National Credit Code

⁹¹ Regulatory Guide 234.61

⁹² Regulatory Guide 234.65. It is similar to the APR in Hong Kong and the UK.

⁹³ Part C of the Regulatory Guide 234

information can be shared.

Supervision and Enforcement

ASIC supervises the credit market both reactively and proactively. Potential breaches of the law are brought to its attention in a number of ways, including reports of misconduct from members of the public; referrals from other regulators; and through surveillance work. Surveillances are particularly useful because they allow ASIC to engage with industry, often involving direct interaction with a credit provider, usually on a face-to-face basis, to actively monitor their activities by exercising ASIC's information-gathering powers to inspect books and records, or to compel the production of documents or the disclosure of information⁹⁴.

In terms of enforcement, ASIC has different tools to tackle non-compliance or breaches of the regulatory requirements, including (i) bringing prosecutions; (ii) imposing financial penalty; (iii) seeking injunctions; (iv) seeking correction orders to correct misleading advertisement; (v) accepting undertakings in lieu of other actions; (vi) bringing administrative actions such as issuing infringement notices and public warning notices, disqualifying a person from managing a corporation or a ban on engaging in credit activities, or revocation, suspension of licence or variation of conditions of a licence etc.⁹⁵.

An individual convicted of a serious criminal offence involving dishonesty could be imprisoned for up to five years and in the case of serious market offences, the term of imprisonment is up to ten years. As for criminal fines, the lowest maximum penalty is AUD850 and more serious offences attract significant fines, for example, it can be up to three times the value of the benefit obtained by the conduct. For civil financial penalties, the pecuniary penalty can be up to AUD 200,000 for individuals⁹⁶.

Although ASIC would usually refer most cases to the Commonwealth Director of Public Prosecutions, ASIC is in fact authorised to prosecute some minor regulatory offences on its behalf⁹⁷.

Infringement notices are intended to facilitate payment of relatively small financial penalties in relation to relatively minor contraventions of the law. There are a number of different infringement notice regimes with differing levels of potential penalty. If an infringement notice is complied with, e.g. the penalty is paid, no further regulatory action will be taken against the recipient for that breach. However, if the infringement notice is not complied with, ASIC is entitled to bring a civil penalty action against the notice recipient⁹⁸. Apart from taking enforcement actions, other regulatory tools that ASIC use are engagement with industry and stakeholders, surveillance, guidance, education, and policy advice⁹⁹.

With regard to market transparency, ASIC's enforcement statistics such as numbers of prosecutions, bans, infringement notices, compensation and court enforcement undertakings, and also number of investigations are published half yearly in the ASIC Enforcement Update¹⁰⁰.

⁹⁴ See <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/asic-s-compulsory-information-gathering-powers/#surveillances>

⁹⁵ Information Sheet 151 on "ASIC's approach to enforcement" issued by ASIC

⁹⁶ Information Sheet 151 on "ASIC's approach to enforcement" issued by ASIC, page 6

⁹⁷ Information Sheet 151 on "ASIC's approach to enforcement" issued by ASIC, page 5

⁹⁸ Information Sheet 151 on "ASIC's approach to enforcement" issued by ASIC, page 7 (Infringement notices)

⁹⁹ Information Sheet 151 on "ASIC's approach to enforcement" issued by ASIC, page 1

¹⁰⁰ ASIC Enforcement Update, January to June 2019, page 5

5.2 Mainland China

Overview and Regulatory Body

At present, there is no regulatory authority for money lenders (usually referred to as small-sum loan companies or microfinance companies) on a national level in Mainland China. In 2008, the Guiding Opinions of China Banking Regulatory Commission and the People's Bank of China on the Pilot Operation of Small-sum Loan Companies¹⁰¹ ("**Guiding Opinions**") was promulgated, which sets out the fundamental requirements for establishing, registering and operating a small-sum loan company at the national level.

Pursuant to the Guiding Opinions, the relevant competent government authority at the provincial level, such as a finance office¹⁰² specifically designated by the provincial government for supervising small-sum loan companies, is responsible for the administration and supervision of these companies¹⁰³. In addition, some relevant regulations are also set out in the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Private Lending Cases¹⁰⁴. As at March 2019, there are 7,967 small loans companies in Mainland China and the total outstanding loan for these companies stands at RMB 927.2 billion (roughly equivalent to HKD 1.05 trillion)¹⁰⁵.

Getting Authorised

Any applicant must apply to the competent authority of the provincial government and, upon approval, comply with the registration formalities to obtain all necessary business licences, approvals and certificates for the establishment of a small-sum loan company¹⁰⁶.

Capital requirement

If a small-sum loan company is a limited liability company, its registered capital must be at least RMB 5 million, and if it is a company limited by shares, its registered capital must be at least RMB 10 million¹⁰⁷.

Source of funds

The major source of funds for a small-sum loan company is limited to capital contributed and funds donated by shareholders as well as funds raised from, at most, two banking institutions. Subject to the relevant laws and regulations, funds obtained by a small-sum loan company from banking institutions may not exceed 50% of its net capital¹⁰⁸.

¹⁰¹ 中國銀行業監督管理委員會、中國人民銀行關於小額貸款公司試點的指導意見

¹⁰² 主管部門 – 金融辦或相關機構

¹⁰³ Guiding Opinions, Article 5

¹⁰⁴ 最高人民法院關於審理民間借貸案件適用法律若干問題的規定

¹⁰⁵ 中國人民銀行於 2019 年一季度小額貸款公司統計數據報告

¹⁰⁶ Guiding Opinions, Article 2

¹⁰⁷ Guiding Opinions, Article 2

¹⁰⁸ Guiding Opinions, Article 3

Fit and proper person

Any founder being a natural person, an enterprise or other social organisations of the small-sum loan companies and any natural person as a director, supervisor, or senior management of small-sum loan companies should not have any criminal or bad credit record¹⁰⁹.

Interest Rates

The interest rate charged by a small-sum loan company cannot exceed the maximum loan interest rate set by the PRC Supreme People's Court in the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Private Lending Cases¹¹⁰ issued by the Supreme People's Court, which provides that (i) annual interest rates up to 24% per annum are valid and enforceable¹¹¹; (ii) for annual interest rates ranging from 24% to 36%, if the interest has already been paid to the lender, and so long as such payment does not conflict with the interests of the state, the community or any third parties, the courts will likely reject the borrower's request to demand the return of the interest payment above 24%¹¹²; and (iii) where the annual interest rate is higher than 36%, the agreement on that portion of the interest exceeding the maximum interest rate is invalid¹¹³.

In addition, the Notice of the Supreme People's Court on Issuing the Several Opinions on Further Strengthening Financial Trials¹¹⁴ issued by the PRC Supreme People's Court in August 2017 further emphasises that if the total amount of interest, compound interest, default interest and other fees charged by a lender under a loan contract substantially exceeds the actual loss of such lender, then the request by the debtor under such loan contract to reduce or to adjust the part of the aforementioned fees exceeding the amount accrued at an annual rate of 24% will be upheld¹¹⁵.

Compliance with the General Conduct Obligations

A small-sum loan company is required to establish prudent financial accounting systems, asset classification systems and provision systems for accurate asset classification, and make adequate provision for losses¹¹⁶. In addition, a sound corporate governance structure and loan management system, and strengthened internal control¹¹⁷ should also be put in place.

Pre-contractual Information Disclosure

Regarding pre-contractual disclosure to borrowers, it is the duty of the lenders to provide information on the type of the loans, repayment terms and interest to the borrowers according to the General Rules for Loans as adopted by the People's Bank of China¹¹⁸.

¹⁰⁹ Guiding Opinions, Article 2

¹¹⁰ 最高人民法院關於審理民間借貸案件適用法律若干問題的規定

¹¹¹ Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Private Lending Cases, Article 26

¹¹² Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Private Lending Cases, Article 31

¹¹³ Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Private Lending Cases, Article 26

¹¹⁴ 最高人民法院印發《關於進一步加強金融審判工作的若干意見》的通知

¹¹⁵ Notice of the Supreme People's Court on Issuing the Several Opinions on Further Strengthening Financial Trials, Article 2(2)

¹¹⁶ Guiding Opinions, Article 5

¹¹⁷ Guiding Opinions, Article 5

¹¹⁸ General Rules for Loans as adopted by the People's Bank of China in accordance with the Laws of People's Republic of China on People's Bank of China, Article 23(2)

Consumer Credit Data

With respect to consumer credit data, the Credit Reference Center under the People's Bank of China, with the approval of the State Commission Office of Public Sectors Reform, operates and maintains the national centralised commercial and consumer reporting system¹¹⁹. It is noted that the Credit Reference Center also collects a comprehensive array of credit information from both enterprises and individuals¹²⁰ and this information is collated into credit reports which are accessible by banks, rural credit operatives and micro-finance institutions for risk management and other purposes and by individuals¹²¹.

Enforcement

According to the Guiding Opinions, small-sum loan companies must not raise funds by illegal means. Companies involved in such activities shall be handled by the provincial government in accordance with the relevant legislations issued by the State Council. For cross-provincial illegal activities, the provincial government may request determination of the matter at the Inter-ministerial Joint Conference for the Disposal of Illegal Fund Raising¹²². For other matters contravening national legislations and regulations, they shall be determined by the relevant department of the provincial government¹²³ and be penalised according to the law¹²⁴. The Credit Reference Center also collects, inter alia, court judgments and bureaucratic actions.

5.3 Singapore

Overview and Regulatory Body

According to the website of the Registry of Moneylenders, there are 158 money lenders as at 1st July 2019¹²⁵ and the amount of outstanding loan is SG\$416 million (roughly equivalent to HKD 2.4 billion) in 2018¹²⁶.

The regulatory regime for money lenders in Singapore is primarily governed by the Moneylenders Act and the Moneylenders Rules, supplemented with various binding directions issued by the Registrar of Moneylenders ("RML"). It is noted that the Moneylenders Act was recently amended and these amendments were put into force either on 30th November 2018 or 29th March 2019¹²⁷.

Licensing Requirements

Money lenders are required to obtain licences from the RML in order to carry on money lending business and they are valid for twelve months. They must meet several criteria before their licences are granted. Those criteria are¹²⁸:

¹¹⁹ Consumer Credit Center, "Overview". See http://www.pbccrc.org.cn/crc/zxgk/index_list_list.shtml

¹²⁰ Consumer Credit Center, Report 625 "Overview". See http://www.pbccrc.org.cn/crc/zxgk/index_list_list.shtml

¹²¹ Consumer Credit Center, "Get my Consumer Credit Report".

See <http://www.pbccrc.org.cn/crc/kffw/201412/1f3503d61cf64587bcd1edce707516b4.shtml>

¹²² 處置非法集資部際聯席會議

¹²³ 當地主管部門

¹²⁴ Guiding Opinions, Article 5

¹²⁵ Registry of Moneylender, "List of Licensed Moneylenders in Singapore".

See <https://www.mlaw.gov.sg/content/rom/en/information-for-borrowers/list-of-licensed-moneylenders-in-singapore.html>

¹²⁶ Registry of Moneylenders, "Amount of outstanding loans".

See <https://www.mlaw.gov.sg/content/dam/minlaw/rom/Moneylenders/ROM%20Stats.pdf>

¹²⁷ Legislative History of Moneylenders Act, paragraph 26

¹²⁸ Information for Moneylenders. See <https://www.mlaw.gov.sg/content/rom/en/information-for-moneylenders.html>

- (1) the applicant and every person who is or will be responsible for the management of the business must:
 - (a) be ordinarily resident in Singapore;
 - (b) be of good character;
 - (c) be a fit and proper person to carry on money lending business;
 - (d) be at least 21 years old; and
 - (e) be familiar with the provisions of the Moneylenders Act and the Moneylenders Rules;
- (2) the proposed business premise has been deemed suitable by the RML for the conduct of the money lending business;
- (3) a security deposit of SG\$20,000 for every place of business; and
- (4) the applicant must be incorporated as a company limited by shares with a minimum paid-up capital of SG\$100,000¹²⁹.

In order to make sure that a person who is responsible for money lending business is familiar with the relevant laws and regulations, he is required to sit and pass a written test administered by the RML (a department under the Ministry of Law)¹³⁰. The duties of the test-qualified manager include ensuring that staff are given adequate training on laws relating to the money lending industry; and to review the loan documents and money lending business procedures to ensure that all relevant laws are complied with¹³¹.

The grant of a licence is subject to various conditions. Some of them are relevant to consumer protection and will be discussed below. The RML may at any time, by notice in writing to the licensee, vary or revoke any of the existing conditions or impose new conditions¹³². In addition, the RML is empowered to issue binding "directions" for money lenders to comply with¹³³. Prior approval from the RML is also required for the admission of any person who will be responsible for the management of the money lending business and the appointment of directors¹³⁴ of the money lender.

General Lenders' Obligations

The Moneylenders Act, Moneylenders Rules and licensing conditions provide a wide range of regulatory requirements on money lenders. Some key requirements are set out below. Failure to comply with these obligations constitute a criminal offence under the Moneylenders Act.

Disclosure requirements and interest rates

It is a licensing condition that every money lender shall display the latest edition of the "Notes To Borrowers When Obtaining Loans From Moneylenders" ("**Notes to Borrowers**") in a conspicuous position in each of its place of business¹³⁵. The Notes to Borrowers is basically a document containing important information that a borrower should know before entering into

¹²⁹ Section 6A(1)(a) of the Moneylenders Act; Section 3A of the Moneylenders Rules 2009

¹³⁰ Information for Moneylenders. See <https://www.mlaw.gov.sg/content/rom/en/information-for-moneylenders.html>; Condition 4 of the Registrar's Conditions for the Grant of Moneylender's Licence

¹³¹ Condition 5 of the Registrar's Conditions for the Grant of Moneylender's Licence

¹³² Section 5(7) of the Moneylenders Act

¹³³ Section 26 of the Moneylenders Act

¹³⁴ Section 11B of the Moneylenders Act

¹³⁵ Condition 2 of the Registrar's Conditions for the Grant of Moneylender's Licence

a loan agreement, such as the maximum loan amount, the permitted interest rate and fees, and the computation of interest etc.

Before granting any loan to a borrower, the money lender must inform the borrower in writing of the following information¹³⁶:

- (1) the nominal interest rate (capped at 4% per month¹³⁷) for the loan;
- (2) the interest will be computed on the monthly outstanding balance of the principal¹³⁸;
- (3) the date or day when the interest on the principal will be credited to the loan account as payable;
- (4) the nominal interest rate for the interest (if any) to be charged on late payment of the principal and interest (capped at 4% per month¹³⁹);
- (5) the late interest (if any) will be computed on the monthly outstanding balance of the amount of principal or interest or both that is overdue;
- (6) whether any permitted fees will be charged and if so, what the permitted fees are, how they are or will be computed and the circumstances under which they will be charged. At present, moneylenders are only permitted to impose the following charges and expenses¹⁴⁰:
 - (a) a fee not exceeding SG\$60 for each month of late repayment;
 - (b) a fee not exceeding 10% of the principal of the loan when a loan is granted; and
 - (c) legal costs ordered by the court for a successful claim by the moneylender for the recovery of the loan¹⁴¹.
- (7) in the case of a term loan:
 - (a) the frequency of the instalment payments if the borrower does not default on any payment;
 - (b) the amount of each such instalment payment;
 - (c) the portions of each such instalment payment that will be appropriated to repayment of the principal and payment of the interest (excluding late interest); and
 - (d) the total number of instalments and the total amount the borrower will pay over the entire term of the loan if he does not default on any payment.

The lender shall cause the above written information to be signed by the borrower acknowledging that he has been informed by the lender of the terms and conditions of the loan. In addition, a note of contract, in a prescribed form, containing the most important particulars of the loan such as the principal, nominal interest rate per month and the repayment schedule, must also be signed by the parties. The note of contract serves as a key term sheet which can facilitate borrowers to understand the important terms of the loan. It also functions as a written confirmation for the borrower to acknowledge receipt of the principal sum from the money lender without any unauthorised deduction. The Act provides that no contract for

¹³⁶ Section 8 of the Moneylenders Rules

¹³⁷ Section 11 of the Moneylenders Rules

¹³⁸ Also called reducing balance method

¹³⁹ Section 11 of the Moneylenders Rules

¹⁴⁰ Section 12 of the Moneylenders Rules

¹⁴¹ See the Notes to Borrowers

a loan is enforceable and no money granted is recoverable unless a note of contract is duly signed¹⁴².

Responsible lending

(i) Designated credit bureau

The RML has been given the power to establish the Moneylenders Credit Bureau¹⁴³ (“MLCB”) by designating one company at any one time to be the credit bureau to provide credit reports, and to serve as a repository of data for the purpose of policy review¹⁴⁴. The information which the MLCB collects from different money lenders provides critical knowledge to others by allowing them to access and view a debtor’s unsecured loans with other money lenders. The MLCB also gives money lenders access to up-to-date details of the borrower’s creditworthiness and indebtedness, therefore helping licensed money lenders make an informed decision on loans¹⁴⁵. Money lenders are required to obtain a credit report of the borrower from the MLCB before granting a loan¹⁴⁶. Such credit reports are provided by MLCB at a fee not exceeding an amount approved by the RML¹⁴⁷. Upon obtaining a credit report, if the money lender intends to grant a loan, it must submit the loan information such as the principal amount, repayment details, rate of interest to the MLCB for record¹⁴⁸. However, if the money lender declines to grant a loan, the reasons for so declining¹⁴⁹ must also be reported to the MLCB. In addition, after a loan is granted, money lenders must update the information relating to any repayment of the loan¹⁵⁰. All these requirements encourage and promote responsible lending on the part of the money lenders.

From the borrower’s perspective, these requirements encourage borrowers to develop greater financial prudence and borrow within their means, given that their loan information will be accessible by all licensed money lenders.

These credit reports from the MLCB can be accessed by both borrowers and licensed money lenders. Borrowers can therefore use their own credit reports to keep track of and better manage their own loans while money lenders can use the credit report for better credit risk assessment before granting a new loan, enabling them to deny loans to those who are borrowing beyond their means. This in turn can help money lenders lower the default rate and hence, their cost of doing business. Money lenders can also use the credit reports to keep track of borrowers with active loan contracts with them, including whether the borrowers have taken up other new loans. The Ministry of Law and the RML use the data at the MLCB for better monitoring of borrowing and lending activities.

¹⁴² Section 20(1) of the Moneylenders Act

¹⁴³ Section 30D of the Moneylenders Act

¹⁴⁴ Section 30E of the Moneylenders Act

¹⁴⁵ See <https://www.mlcb.com.sg/AboutUs/IntroductionToMLCB.aspx>

¹⁴⁶ Section 30N(5) of the Moneylenders Act

¹⁴⁷ Section 30V(2) of the Moneylenders Act

¹⁴⁸ Section 30N(7) of the Moneylenders Act

¹⁴⁹ Section 30N(7) of the Moneylenders Act

¹⁵⁰ Section 30P of the Moneylenders Act

(ii) Loan cap

The total maximum amount for unsecured loans that can be borrowed at any time across all money lenders in Singapore is stated in the Notes to Borrowers. For Singapore citizens and permanent residents, the total maximum loan amount that can be borrowed is SG\$3,000 for an individual with annual income below SG\$20,000 and 6 times the monthly income for those with a higher income. For foreigners residing in Singapore, the total maximum loan amount is SG\$1,500 for an individual with annual income below SG\$10,000; SG\$3,000 for those with an annual income between SG\$10,000 and SG\$20,000; 6 times the monthly income for those with an annual income higher than SG\$20,000. Money lenders cannot extend loans beyond this cap, and must obtain credit reports from the MLCB before granting a loan¹⁵¹. There is no cap for secured loans¹⁵².

Advertising Activities

Under the Moneylenders Act, money lenders are prohibited to use or publish any advertising or marketing materials which contain any false or misleading information¹⁵³. Pursuant to the RML Directions dated 31 July 2013¹⁵⁴, money lenders are only permitted to advertise their business in the following media:

- (1) business or consumer directories in print or online media;
- (2) internet websites belonging to the money lender; and
- (3) advertisements placed within the approved place of business, or on the exterior side of the wall, door, shutter, gate or window of the approved place of business.

In addition, all advertisements must not:

- (1) contain a material misrepresentation;
- (2) omit to state a material fact;
- (3) contain any information which cannot be verified;
- (4) create an unjustified expectation about the results that can be achieved by the money lender or a borrower (e.g. understating the cost of borrowing or overstating the ease of borrowing); or
- (5) contain graphics that could convey an impression that is inaccurate or inconsistent with the nature of the loan product or the risks to the borrower in taking up the loan product.

Furthermore, all advertisements must contain the following information:

- (1) the business name as stated in the licence;
- (2) the licence number;
- (3) where it states a business address, it shall state only the address of the money lender's place of business approved by the RML;
- (4) where it states a contact number, it shall state only the land telephone line(s) of the money lender which has been approved by the RML;

¹⁵¹ Section 30N(5) of the Moneylenders Act

¹⁵² Notes of Borrowers

¹⁵³ Section 16 of the Moneylenders Act

¹⁵⁴ Directions of the Registrar under Section 16(3) Read with Section 26(1) of the Moneylenders Act Regarding the Advertising & Marketing Activities of Licensed Moneylenders. See <https://www.mlaw.gov.sg/content/rom/en/information-for-moneylenders/relevant-laws-and-regulations.html>

- (5) where it states a contact person, it shall state only the name of any officeholder or employee of the money lender to whom the advertisement relates and whose office-holding or employment has been approved by the RML;
- (6) where it states the interest rate, the rate is to be expressed only as a percentage per annum with the words "per annum" or "p.a." added;
- (7) where it purports to offer a discounted rate, or any other special offer, e.g. payment holiday/waiver, it shall also state:
 - (a) whether there are any fees payable at any point in time which are not as a result of the borrower defaulting on the loan; and
 - (b) additional information, such as the qualifying criteria for the loan or any special terms and conditions which apply.

According to the news release issued by the Singapore Police Force, in the first quarter of 2018, there were 127 cases relating to loan scams, some of which involved advertising through SMS or WhatsApp messages¹⁵⁵.

Supervision and Enforcement

Money lenders are required to submit on a quarterly basis to the RML a statement containing every money lending transaction entered into by the money lender together with a statement showing its cash and loan positions for that period¹⁵⁶. In addition, money lenders must submit annual audited accounts to the RML¹⁵⁷ and as mentioned in the Moneylenders Act, accurate borrower information must be provided to the MLCB¹⁵⁸ together with timely updates to the MLCB when borrowers repay their loans¹⁵⁹.

The RML and the Police are the enforcement authorities under the Moneylenders Act. There are two major remedies provided by the Moneylenders Act to tackle non-compliance or breaches of the legal requirements, including (i) bringing prosecutions; and (ii) bringing disciplinary actions such as forfeiture of security deposit, suspension or cancellation of licence, and variation of conditions of a licence etc. Upon conviction, offenders are liable to a maximum penalty of SG\$500,000 fine and/or imprisonment for a term of 7 years¹⁶⁰. It is noted that Singapore Police Force issues enforcement news on unlicensed moneylending from time to time¹⁶¹.

5.4 Taiwan

Overview and Regulatory Body

In Taiwan, lending activities are not exclusively conducted by banks, though research shows that such activities are mainly conducted by local licensed banks and financial institutions and

¹⁵⁵ News Releases issued by Singapore Police Force dated 9 May 2018

¹⁵⁶ Section 24(3)(a) of the Moneylenders Act; section 17A of the Moneylenders Rules 209

¹⁵⁷ Section 24A(8) of the Moneylenders Act

¹⁵⁸ Section 30R of the Moneylenders Act

¹⁵⁹ Section 30P of the Moneylenders Act

¹⁶⁰ For conviction of unlicensed money lending. See section 14 of the Moneylenders Act

¹⁶¹ Singapore Police Force, Unlicensed Moneylending.

See <http://www.police.gov.sg/resources/prevent-crime/unlicensed-moneylending/latest-news#content>

their activities are governed by the Banking Act¹⁶². Generally speaking, private parties may enter into agreements¹⁶³, including loan agreements¹⁶⁴, under the Civil Code¹⁶⁵ and those parties which are not covered by the Banking Act would be governed by the Civil Code. However, the Civil Code only provides the general principles applicable to loan agreements but there is no stipulation as to which institutions can be registered to conduct lending activities.

As mentioned above, money lending services are generally provided by banks. There are 38 domestic banks, 26 local branches of foreign banks (Taipei Branch only) and 3 local branches of Mainland Chinese Banks (Taipei Branch only)¹⁶⁶. As at May 2019¹⁶⁷, the amount of consumer loans made by domestic banks is NT\$8,285,813 million (roughly equivalent to HKD 2.1 billion).

The Financial Supervisory Commission of the Republic of China ("FSC") is the authority responsible for development, supervision, regulation, enforcement and examination of financial markets and financial services enterprises¹⁶⁸.

Licensing Regime

Entities conducting finance-related activities such as engaging in a money market or credit card business have to obtain the approval of the Central Competent Authority, which is the FSC¹⁶⁹. These entities are generally banks and their scope of business may include the extension of loans¹⁷⁰. It is noted that the scope of business for each bank shall be determined individually by the FSC and would be noted on the bank's business licences¹⁷¹.

Capital requirement

As aforementioned, mainly local licensed banks which are governed by the Banking Act, are able to register as a financing company to carry on lending activities in Taiwan. According to the Banking Act¹⁷², the minimum capital requirement for different types of banks shall be determined by the Central Competent Authority, i.e., the FSC, based on the population and economic conditions in each of the geographic areas, and the type of bank under consideration. There is therefore no fixed capital requirement for banks.

¹⁶² 康臨芳，北京法院網，"世界主要國家和地區對民間借貸的規制".

See <https://bigy.chinacourt.gov.cn/article/detail/2013/10/id/1115386.shtml>;

范文仲，中國銀監會國際部，"現金貸監管國際比較" (中國金融雜誌 2017 年第 24 期).

See <https://new.qq.com/omn/20171227/20171227A00PTJ.html>

¹⁶³ Article 153 of the Civil Code

¹⁶⁴ Article 199 of the Civil Code

¹⁶⁵ 民法

¹⁶⁶ Central Bank of the Republic of China (Taiwan), "List of Financial Institutions".

See <https://www.cbc.gov.tw/lp.asp?ctNode=495&CtUnit=210&BaseDSD=7>

¹⁶⁷ FSC, "Consumer Loans at General Banks and Credit Cooperatives".

See https://www.banking.gov.tw/ch/home.jsp?id=157&parentpath=0,4&mcustomize=bstatistics_view.jsp&serno=201105120014

¹⁶⁸ Financial Supervisory Commission "Introduction". See <https://www.fsc.gov.tw/en/home.jsp?id=9&parentpath=0,1>

¹⁶⁹ Articles 19 and 47-1 of the Banking Act

¹⁷⁰ Article 3 of the Banking Act

¹⁷¹ Article 4 of the Banking Act

¹⁷² Article 23 of the Banking Act

Interest Rates

The Civil Code provides general principles governing the interest rates for loans. It states that if loan agreements do not specify interest rates, it would be set at 5% per annum as a default¹⁷³. If the interest rate is set at 12% per annum, the borrower can choose to repay at any time after a year¹⁷⁴. If the interest rate exceeds 20% per annum, the creditor would not be entitled to claim any interest over twenty percent¹⁷⁵. There is no differentiation as to whether the loan is secured or unsecured.

The Banking Act stipulates that as from 1st September 2015, the interest rates charged by banks on cash cards or the interest rates charged by financial institutions engaging in credit card businesses involving revolving credit cannot exceed 15% per annum¹⁷⁶. In addition, the calculation of interest on cash cards using a compound interest method is prohibited¹⁷⁷.

It is an offence for creditors to charge usurious interest as a result of the debtors' urgent situations, negligence and inexperience¹⁷⁸. The maximum penalty for this offence is three-years imprisonment and a fine of no more than NT\$300,000¹⁷⁹.

Consumer Credit Data

Pursuant to the Banking Act and relevant regulations, an entity collecting credit-related information from financial institutions, processing such information and maintaining the relevant database and providing credit-related information and records to financial institutions for credit checking purposes must obtain prior approval from the FSC¹⁸⁰. Currently, the Joint Credit Information Center ("JCIC") is the only FSC authorised entity that offers such services¹⁸¹.

Credit Approval/Responsible Lending

Card issuers must establish a credit approval process to approve the credit limit which include the following criteria:

- (1) the applicant must be at least 20 years old¹⁸²;
- (2) he has independent and stable financial resources with the ability to pay off the debts¹⁸³;
- (3) the debtor's total unsecured debt balance at all financial institutions should not exceed the average monthly income by twenty-two times¹⁸⁴; and

¹⁷³ Article 203 of the Civil Code

¹⁷⁴ Article 204 of the Civil Code

¹⁷⁵ Article 205 of the Civil Code

¹⁷⁶ Article 47-1 of the Banking Act

¹⁷⁷ Article 9 of Regulations governing the Cash Card Business of Financial institutions

¹⁷⁸ Article 344 of the Criminal Code of the Republic of China

¹⁷⁹ Article 344 of the Criminal Code of the Republic of China

¹⁸⁰ Articles 3(22) and 22 of the Banking Act

¹⁸¹ "History of JCIC". See https://www.jcic.org.tw/main_en/docDetail.aspx?uid=242&pid=242&docid=347;

"Organisation of JCIC". See https://www.jcic.org.tw/main_en/docDetail.aspx?uid=368&pid=368&docid=120

¹⁸² Article 5(1) of the Regulations Governing the Cash Card Business of Financial Institutions; Article 21 of the Regulations Governing Institutions Engaging in Credit Card Business

¹⁸³ Article 5(2) of the Regulations Governing the Cash Card Business of Financial Institutions; Article 22(1) of the Regulations Governing Institutions Engaging in Credit Card Business

¹⁸⁴ Article 5(3) of the Regulations Governing the Cash Card Business of Financial Institutions; Jin-Kuan-Yin-(4)-Zi-09600523370 which announced on 7th January 2008

- (4) the card issuers should obtain information to try and understand the applicant's debt situation¹⁸⁵ by making considerable number of credit inquiries with the JCIC contemporaneously¹⁸⁶ but this should not form the only basis for application approval¹⁸⁷. If the JCIC holds a note that "the applicant's relative paid off the loan for the applicant", the financial institution should not raise the line of credit or issue a new card separately when it cannot verify the applicant's repayment ability¹⁸⁸.

Regarding student applications, the following criteria applies:

- (1) a full-time student cannot hold more than two cash cards with the initial line of credit exceeding NT\$10,000 from each card issuer¹⁸⁹ or three credit cards with a credit limit not exceeding NT\$20,000 from each card issuer¹⁹⁰;
- (2) the initial line of credit for a credit card can be raised up to NT\$20,000 with the consent of the applicant's parents¹⁹¹;
- (3) the financial institution must notify the applicant's parents and ask them to pay attention to the use of the card by the cardholder¹⁹²; and
- (4) if the financial institution finds that the student applicant holds more than two cash cards issued by different financial institutions with the line of credit for each card exceeding NT\$20,000, the financial institution must immediately suspend the card and notify the cardholder¹⁹³.

Advertising

The Consumer Protection Act states that traders must ensure the accuracy of the contents of advertisements¹⁹⁴. Where the content of the advertisement is found to be misleading consumers by giving them incorrect value and money management concepts, the FSC may order the card issuer to take remedial action during a prescribed period of time and suspend the advertisement¹⁹⁵.

It is noted that banks in credit related transactions with consumers must disclose in their marketing advertisement the annual percentage rate of all charges payable¹⁹⁶. Consumer credit transactions in this context include personal loan transactions and revolving credit transactions such as credit card and cash card transactions¹⁹⁷.

¹⁸⁵ Article 22(1) of the Regulations Governing Institutions Engaging in Credit Card Business

¹⁸⁶ Article 22(4) of the Regulations Governing Institutions Engaging in Credit Card Business

¹⁸⁷ Article 22(6) of the Regulations Governing Institutions Engaging in Credit Card Business; Article 5(7) of the Regulations Governing the Cash Card Business of Financial Institutions

¹⁸⁸ Article 5(6) of the Regulations Governing the Cash Card Business of Financial Institutions

¹⁸⁹ Article 6(1) of the Regulations Governing the Cash Card Business of Financial Institutions

¹⁹⁰ Article 23 of the Regulations Governing Institutions Engaging in Credit Card Business

¹⁹¹ Article 6(1) of the Regulations Governing the Cash Card Business of Financial Institutions

¹⁹² Article 6(2) of the Regulations Governing the Cash Card Business of Financial Institutions; Article 23 of the Regulations Governing Institutions Engaging in Credit Card Business

¹⁹³ Article 6(3) of the Regulations Governing the Cash Card Business of Financial Institutions

¹⁹⁴ Article 22 of the Consumer Protection Act

¹⁹⁵ Article 20 of the Regulations Governing Institutions Engaging in Credit Card Business

¹⁹⁶ Article 2 of the Regulations Governing Disclosure of Total Finance Charges in Consumer Credit Transaction Advertisements and Calculation of Annual Percentage Rate by Banks and Insurance Enterprises

¹⁹⁷ Article 5 of the Regulations Governing Disclosure of Total Finance Charges in Consumer Credit Transaction Advertisements and Calculation of Annual Percentage Rate by Banks and Insurance Enterprises

The forms and restrictions in advertisements are governed by the Regulations Governing Cash Card Business of Financial Institutions issued on 22nd May 2007 and the Regulations Governing Institutions Engaging in Credit Card Business issued on 23rd July 2014 and the relevant requirements are as follows:

- (1) the financial institutions shall not engage in marketing campaign targeting students¹⁹⁸;
- (2) it cannot appeal to the public using marketing tactics of "fast card approval", "get a card by another card", "get a card with a name card or business card" or similar tactics that will give the consumer an impression that no credit review will be conducted in the card approval process¹⁹⁹;
- (3) the financial institution is prohibited from peddling such marketing in the streets including arcade areas²⁰⁰. The term "street" in the context of credit cards is defined as any space having the character of an open space, such as corridors of underground shopping streets, underpasses, gas stations, or public transport stations²⁰¹;
- (4) the provision of gifts, prizes or other benefits to potential or current cardholders or other third parties during the application, revision or activation of the cards is prohibited²⁰²;
- (5) for printed advertisement:
 - (a) it shall include easy-to-understand warnings, for example, "*if you don't pay back what you borrowed, it will be difficult for you to borrow money again* (借錢不還, 再借困難)", "*You might suffer all your life if you pay back debt with debt* (以債養債, 終身受害)", in its printed advertising and other forms of advertising and the proportion should not be smaller than one-eighth of the entire printed page²⁰³; and
 - (b) the size of the words or characters cannot be smaller than font size #14²⁰⁴ and interest rates and all other charges should be clearly provided in the advertisements²⁰⁵;
- (6) for dynamic advertisements:
 - (a) they have to use the warning statements as follow, "*please use your cash card with prudence* (請謹慎使用現金卡)"²⁰⁶. The warning statement must occupy at least one-eighth of the screen space and be run throughout the duration of the advertisement²⁰⁷;
 - (b) it should not state that such kind of lending is designed for financing start-up companies, or investments including medium to long term financing²⁰⁸;

¹⁹⁸ Article 6(1) of the Regulations Governing the Cash Card Business of Financial Institutions; Article 23(1) of the Regulations Governing Institutions Engaging in Credit Card Business

¹⁹⁹ Article 10 of the Regulations Governing the Cash Card Business of Financial Institutions ; Article 19(1) of Regulations Governing Institutions Engaging in Credit Card Business;

²⁰⁰ Article 10 of the Regulations Governing the Cash Card Business of Financial Institutions; Article 19(2) of Regulations Governing Institutions Engaging in Credit Card Business

²⁰¹ Jin-Guan-Yin-Piao-Zi-No.10040000440 issued on 15th February 2011

²⁰² Article 10 of the Regulations Governing the Cash Card Business of Financial Institutions; Article 19 of Regulations Governing Institutions Engaging in Credit Card Business

²⁰³ Article 11 of the Regulations Governing the Cash Card Business of Financial Institutions

²⁰⁴ Article 11 of the Regulations Governing the Cash Card Business of Financial Institutions

²⁰⁵ Article 11 of the Regulations Governing the Cash Card Business of Financial Institutions

²⁰⁶ Article 11(1) of the Regulations Governing the Cash Card Business of Financial Institutions

²⁰⁷ Article 11(1) of the Regulations Governing the Cash Card Business of Financial Institutions

²⁰⁸ Article 11(1) of the Regulations Governing the Cash Card Business of Financial Institutions

- (c) the advertisement space for the interest rates and all other charges shall occupy at least one quarter of the screen space and there is specific regulation providing that the proportion for interest rates must occupy at least one-twelfth of the screen space²⁰⁹;
- (d) the length of the advertisement on interest rates and other charges have to last for at least four seconds²¹⁰; and
- (e) at the end of the advertisements, the warning statement "*please use your cash card with prudence (請謹慎使用現金卡)*" must be played for one-eighth of the entire play time (at least five seconds) during the advertisement and the said statement has to be read out in the same voice used in the advertisement²¹¹. Simultaneously, the following statements have to be shown in full screen, namely, "(1) *Make sure you check the content of the contract (請務必確認契約內容)*", "(2) *Make sure that you manage and balance your income and expenditure (請確實管控收支平衡)*" and "(3) *Make a reasonable repayment plan (請規劃合理償還計畫)*"²¹².

Enforcement

It is noted that violation of the provisions in the relevant regulations²¹³ and the Banking Act²¹⁴, for example, operating business in contravention of the scope of business as stated in its Business Licence²¹⁵, could result in criminal prosecutions²¹⁶ and the imposition of administrative fines²¹⁷ as stated in the Banking Act. Directors that led to the above violation shall be punishable by imprisonment for not more than three years and/or a criminal fine of not more than NT\$5,000,000²¹⁸. Further, there could be an administrative fine of not less than NT\$500,000 and not more than NT\$10 million for failing to obtain approval from FSC to engage in money market or credit card business²¹⁹.

It is noted that the National Police Agency of Taiwan issues enforcement statistics on the number of cases and individuals involving illegal money lending and illegal debt collecting on a monthly basis²²⁰.

5.5 United Kingdom

Overview and Regulatory Body

In the UK, there are around 39 million people with outstanding borrowing, estimated at more than £1.63 trillion (roughly equivalent to HKD 15.9 trillion), and of this, £216 billion (roughly

²⁰⁹ Article 11(2) of the Regulations Governing the Cash Card Business of Financial Institutions

²¹⁰ Article 11(2) of the Regulations Governing the Cash Card Business of Financial Institutions

²¹¹ Article 11(3) of the Regulations Governing the Cash Card Business of Financial Institutions

²¹² Article 11(3) of the Regulations Governing the Cash Card Business of Financial Institutions

²¹³ Article 55 of Regulations Governing Institutions Engaging in Credit Card Business

²¹⁴ Articles 3, 4, 47-1 and 47-2 of the Banking Act

²¹⁵ Articles 3 and 4 of the Banking Act

²¹⁶ Articles 126 and 127 of the Banking Act

²¹⁷ Articles 130(5) and 131(7) of the Banking Act

²¹⁸ Article 127 of the Banking Act

²¹⁹ Article 131(7) of the Banking Act

²²⁰ 中華民國內政部警政署 查獲經濟案件概況.

See <https://ba.npa.gov.tw/npa/stmain.jsp?sys=220&yym=10707&yymt=10807&kind=21&type=1&funid=q07020101&cycle=41&outmode=0&compmode=0&ohhtml=q250x&outkind=1&fldlst=111&codspc0=0,1,6,2,&rdm=eUlimmdr>

equivalent to HKD 2.1 trillion) is consumer credit borrowing²²¹. Financial Lives Survey 2017 published by the FCA showed that in total, 15% of UK adults were over-indebted²²² and there were over 3 million people in the UK using high-cost credit²²³. According to the FCA website, there are 1,251 authorised credit institutions in July 2019 and these institutions, among other businesses, include credit companies²²⁴.

Consumer credit in the UK is regulated by the Financial Services and Markets Act (“**FSMA**”) and Consumer Credit Sourcebook (“**CONC**”) which sets out the detailed obligations that are specific to credit-related regulated activities and activities connected to those activities carried on by these credit companies²²⁵.

FCA is the integrated regulator of the conduct of financial services firms and financial markets and its duties and powers are set out in the Financial Services and Markets Act 2000²²⁶. The FCA is responsible for overseeing what firms do, their conduct, and how they carry out their businesses. It regulates all financial services firms, irrespective of their sizes. There are approximately 58,000 financial services firms being regulated by the FCA²²⁷, including banks, building societies, credit unions, financial advisers, general insurers and insurance intermediaries, mortgage lenders and intermediaries, and consumer credit firms such as credit card issuers, money lenders, pawnbrokers, credit brokers and debt management and collection companies etc.

Recently, FCA has introduced new rules to clarify its expectations in relation to the credit companies in relation to the assessment of creditworthiness for consumer credit. In particular, the credit companies should make a reasonable assessment, not just of whether the customers will repay, but also of their ability to repay affordably and without significantly affecting their wider financial situation²²⁸. Although the FCA found that the credit firms’ practice fell below their expectation in relation to the standard of debt advice given, recent efforts of continuing scrutiny and close supervision has led to improvements but there are still areas that the FCA is working on, especially in relation to the identification and treatment of vulnerable customers²²⁹. One of the focuses of enforcement this year is on reinforcing the Threshold Conditions²³⁰ and FCA had cancelled 226 firms’ permission to conduct regulated business and prohibited 7 individuals²³¹.

Getting Authorised

Broadly speaking, the same rule applies to all consumer credit firms, including money lenders, which is that authorisation from the FCA²³² has to be obtained. A checklist informs applicants of the required information and documents for an authorisation application. The checklist is

²²¹ FCA Annual Report and Accounts 2018/19, page 53

²²² FCA Annual Report and Accounts 2018/19, page 56

²²³ FCA Annual Report and Accounts 2018/19, page 34

²²⁴ All UK credit institutions as shown in FCA website.

²²⁵ CONC 1.1.2

²²⁶ See <https://www.fca.org.uk/about/the-fca>

²²⁷ Ibid

²²⁸ FCA Annual Report and Accounts 2018/19, page 53

²²⁹ FCA Annual Report and Accounts 2018/19, page 58

²³⁰ FCA Enforcement annual performance report 2018/19, page 4

²³¹ FCA Enforcement annual performance report 2018/19, page 17

²³² FCA Guide for Consumer Credit Firms, page 17

divided into different areas, including the firm's history and details, business activities and plan, financial details, system and controls and compliance monitoring etc.²³³.

Threshold conditions

All firms have to demonstrate that they meet and will continue to meet the FCA's minimum standards to become authorised. These are known as the threshold conditions. The FCA will assess each application in a way that is proportionate to the size and nature of the business, and the potential risks to consumers. The threshold conditions are²³⁴:

- (1) Legal status and location of offices - Firms must have a legal status to carry out the regulated activities. If the firm is a body corporate constituted under the law of the UK, the firm's mind and management, e.g. directors, compliance function, audit function, should be in the UK.
- (2) Effective supervision - A firm must be capable of being effectively supervised by the FCA. Matters which may affect this include the complexity of its business, the products it offers and how the business is organised. In most cases, firms should have a UK establishment.
- (3) Appropriate resources - The firm must demonstrate appropriate resources relative to the nature and scale of the business. This requirement applies not just to financial resources but also to other resources which are essential to effectively run the firm, such as the knowledge and competence of staff and the assets of the business, such as premises and technology.
- (4) Suitability - The firm must demonstrate the competence and ability of management, and that the firm's affairs are conducted in an appropriate manner regarding the interests of consumers and the integrity of the UK financial system.
- (5) Business model - The firm's strategy for doing business must be suitable for its regulated activities and have regard to the FCA's operational objectives.

Approved person

Apart from the above, at least one individual of the firm must be approved by the FCA²³⁵. This individual will be the "approved person" of the firm. The FCA can approve an individual only if it is satisfied that he complied with the "fit and proper test". When considering a candidate's fitness and propriety, the FCA will look at (i) honesty; (ii) integrity and reputation; (iii) competence and capability; and (iv) financial soundness²³⁶. In the process, the candidate is required to disclose his employment history and any on-going and concluded civil, criminal, disciplinary and regulatory investigations and proceedings concerning the candidate and entities of which the candidate is or has been a controller, director, or senior manager etc. In determining a person's honesty, integrity and reputation, the FCA will have regard to all relevant matters including, but not limited to²³⁷:

- (1) whether the person has been convicted of any criminal offence;
- (2) whether the person has been the subject of any adverse finding or any settlement in civil proceedings;

²³³ See <https://www.fca.org.uk/publication/publications/full-permission-checklist.pdf>

²³⁴ FCA Guide for Consumer Credit Firms

²³⁵ See <https://www.fca.org.uk/firms/approved-persons/consumer-credit>

²³⁶ Ibid

²³⁷ Paragraph 2.1.3 of the Fit and Proper Test

- (3) whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings;
- (4) whether the person has been the subject of any justified complaint relating to consumer lending;
- (5) whether the person has been involved with a company, partnership or other organisation that has been refused authorisation;
- (6) whether the person has been a director, partner, or concerned in the management, of a business that has gone into insolvency;
- (7) whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended or criticised by a regulatory body;
- (8) whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar; and
- (9) whether the person has ever been disqualified from acting as a director or disqualified from acting in any managerial capacity.

Capital requirement

There is no fixed capital requirement imposed by the FCA for consumer credit firms. However, all consumer credit firms authorised by the FCA are required to maintain adequate financial resources at all times (Principle 4 of the FCA Handbook²³⁸). In order to satisfy the threshold conditions for authorisation purposes, consumer credit firms must demonstrate to the FCA that they have appropriate resources relative to the nature and scale of the business²³⁹ and also show how these resources are to be organised to achieve their business plan²⁴⁰.

General Lenders' Obligations

Once authorised, firms have a continued responsibility to satisfy the threshold conditions, and follow the FCA's rules and guidance applicable to consumer credit firms, which are primarily set out in the CONC. The rules are principle based and it is the firm's obligations to consider how to comply with the rules taking into account its individual circumstances. The Principles for Businesses are the fundamental obligations that firms must comply at all times and of key relevance to all regulated firms is Principle 6 on consumers' interests - "a firm must pay due regard to the interests of its customers and treat them fairly"²⁴¹. Below is a brief summary of the relevant requirements applicable to consumer credit firms.

Pre-contractual information disclosure

Before the loan agreement is made, the firm must disclose the terms of the agreement to the borrower, such as nature/parties of the agreement, provision of credit, rate of interest, total amount payable, repayments, charges, right of withdrawal and early settlement²⁴². The disclosure must be made in a table form²⁴³. Furthermore, the firm must provide the borrower with an adequate explanation of the following matters in order to place the borrower in a

²³⁸ Guide for consumer credit firms, page 11; Principle 4 of FCA Handbook

²³⁹ Guide for consumer credit firms, page 20

²⁴⁰ Guide for consumer credit firms, page 22

²⁴¹ FCA Guide for Consumer Credit Firms

²⁴² Section 3 of the Consumer Credit (Disclosure of Information) Regulations 2010

²⁴³ Section 8 of the Consumer Credit (Disclosure of Information) Regulations 2010

position to assess whether the agreement is adapted to the borrower's needs and financial situation²⁴⁴:

- (1) the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use;
- (2) how much the borrower will have to pay periodically and, where the amount can be determined, in total under the agreement;
- (3) the features of the agreement which may operate in a manner which would have a significant adverse effect on the borrower in a way which the borrower is unlikely to foresee;
- (4) the principal consequences for the borrower arising from a failure to make payments under the agreement at the times required by the agreement including, where applicable and depending upon the type and amount of credit and the circumstances of the borrower:
 - (a) the total cost of the debt growing;
 - (b) incurring any default charges or interest for late or missed payment or underpayment;
 - (c) impaired credit rating and its effect on future access to or cost of credit;
 - (d) legal proceedings, including reference to charging orders, and to the associated costs of such proceedings;
 - (e) repossession of the borrower's home or other property; and
- (5) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.

In addition, the firm must provide the borrower with an opportunity to ask questions about the agreement and advise the borrower on how to ask the firm for further information and explanation²⁴⁵. Even where a borrower states or implies that there is no need for an explanation of the loan agreement, the lender must continue to comply with the above disclosure obligations²⁴⁶.

Responsible lending

A firm must establish and implement clear and effective policies and procedures to make a reasonable creditworthiness assessment²⁴⁷. Before making a loan agreement, the firm must undertake an assessment of the creditworthiness of the borrower²⁴⁸ by considering the potential for the commitments under the loan agreement to adversely impact the borrower's financial situation, taking into account the information of which the firm is aware at the time the loan agreement is to be made; and the ability of the borrower to make repayments as they fall due²⁴⁹. As the assessment should include the firm taking reasonable steps to assess the borrower's ability to meet repayments in a sustainable manner without the borrower incurring financial difficulties or experiencing significant adverse consequences²⁵⁰. Where appropriate,

²⁴⁴ CONC paragraph 4.2.5

²⁴⁵ CONC paragraph 4.2.5(1)(c) and (d)

²⁴⁶ CONC paragraph 4.2.9

²⁴⁷ CONC paragraph 5.3.2

²⁴⁸ CONC paragraph 5.2.1(1)

²⁴⁹ CONC paragraph 5.2.1(2)

²⁵⁰ CONC paragraph 5.3.1(2)

a credit assessment must be based on sufficient information obtained from the borrower, or obtain such information from a credit reference agency²⁵¹, where necessary, the firm should also take adequate steps, insofar as it is reasonable and practicable to do so, to ensure that the information on an application for loan relevant to a creditworthiness assessment is complete and correct²⁵².

Interest rates

There is no specific interest cap for loans in the UK other than for high-cost short-term credit, sometimes known as payday loans which are unsecured loans to be repaid within a maximum of 12 months with an annual percentage rate equal to or in excess of 100%. In order to protect borrowers in these situations, the FCA has implemented specific measures, requiring the firms offering such loans to meet the following criteria²⁵³:

- (1) an initial cost cap of 0.8% per day – interest and fees charged must not exceed 0.8% per day of the amount borrowed;
- (2) a £15 cap on default fees – if borrowers default, fees must not exceed £15. Firms can continue to charge interest after default but not above the initial rate; and
- (3) a total cost cap of 100% – borrowers must never pay more in fees and interest than 100% of what they borrowed.

Consumer credit data

In the UK, there are three main credit reference agencies which are independent organisations, regulated and authorised by the FCA, namely, Callcredit Limited, Equifax Limited and Experian Limited.

Financial Promotions and Advertising

A firm must ensure that a financial promotion is clear, fair, and not misleading. It must ensure that each financial promotion²⁵⁴:

- (1) is clearly identifiable as such;
- (2) is accurate;
- (3) is balanced and, in particular, does not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks. Information or a statement included in a financial promotion will not be treated as “prominent” unless it is presented, in relation to the other content of the financial promotion, in such a way that it is likely that the attention of the average customer to whom the financial promotion is directed would be drawn to it²⁵⁵;
- (4) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to which it is directed, or by which it is likely to be received; and

²⁵¹ CONC paragraph 5.2.1(3)

²⁵² CONC paragraph 5.3.3

²⁵³ An article “Price cap on high-cost short-term credit” issued by FCA. See <https://www.fca.org.uk/firms/price-cap-high-cost-short-term-credit> (updated on 21st June 2016)

²⁵⁴ CONC paragraph 3.3.1

²⁵⁵ CONC paragraph 3.2.3

- (5) does not disguise, omit, diminish or obscure important information, statements or warnings.

In a financial promotion to a borrower, a firm must not state or imply that credit is available regardless of the borrower's financial circumstances or status²⁵⁶. A statement or an implication that credit is guaranteed or preapproved, or is not subject to any credit checks or other assessment of creditworthiness, may contravene the rules relating to responsible lending²⁵⁷. Certain expressions in credit advertisements such as "interest free", "no deposit", "loan guaranteed" or "pre-approved" are restricted if they are actually subjected to certain conditions²⁵⁸.

Further, the Committee of Advertising Practice of the Advertising Standard Authority ("ASA") published an advertising guidance in 2016 which emphasises the importance of not trivialising the seriousness of taking out a short-term, high interest loan²⁵⁹. Advertisements must be prepared with a sense of responsibility to the borrowers and to society²⁶⁰. It provides examples of spending that is likely to be considered non-essential and frivolous, including holidays, to go on a shopping trip, to fund a social life, "a weekend away", or "a slap up meal". It also provides advice on the risk of advertisement being disproportionately jolly, light-hearted or humorous which may distract consumers from the serious nature of a loan²⁶¹. Some factors which have the potential to distract viewers from the seriousness of the decision to apply for a loan are listed, for example, the use of animation, use of songs, light-hearted and humorous tones or catchy/upbeat jingles²⁶². Clear warning is provided that advertisements would likely to be problematic if they suggested loans were a suitable means of addressing ongoing financial concerns²⁶³. According to the FCA's website, there were 10 open enforcement cases as at 31st March 2019 in relation to financial promotions²⁶⁴.

The Office of Communications ("Ofcom") is the co-regulatory partner of ASA and acts as ASA's legal "backstop" for broadcast advertising relating to loans. This means failure of an advertiser to following an ASA ruling could result in it being referred to Ofcom, which has the power to take legal action.

Supervision and Enforcement

The FCA takes an active approach to monitoring and engaging with regulated firms. Supervision may take one of the following forms, namely, proactive supervision, reactive supervision, whistleblowing, thematic reviews, specialist supervision teams, prudential supervision, financial promotions, unfair terms in consumer contracts and so on²⁶⁵. From time to time, it may proactively contact a firm to gather information and address identified risks. For the market as a whole, the FCA will conduct market studies to look for structural issues. It will generally aim to resolve issues without the use of formal powers. However, where

²⁵⁶ CONC paragraph 3.3.3

²⁵⁷ CONC paragraph 3.3.4

²⁵⁸ CONC, paragraph 3.6.8

²⁵⁹ Page 4 of Guidance on the trivialisation of short-term, high cost credit in ads issued by ASA

²⁶⁰ Page 4 of Guidance on the trivialisation of short-term, high cost credit in ads issued by ASA

²⁶¹ Page 5 of Guidance on the trivialisation of short-term, high cost credit in ads issued by ASA

²⁶² Page 5 of Guidance on the trivialisation of short-term, high cost credit in ads issued by ASA

²⁶³ Page 6 of Guidance on the trivialisation of short-term, high cost credit in ads issued by ASA

²⁶⁴ Enforcement annual performance account 2018/19 issued by the Financial Conduct Authority, page 8

²⁶⁵ FCA Guide for Consumer Credit Firms, pages 31-37

appropriate, it will take enforcement actions for severe and/or repeated breaches of FCA's standard and expectations. All authorised firms are required to report information, mostly financial information and transaction volumes, to the FCA online on a regular basis, typically 6 months or annually depending on the nature and size of the business²⁶⁶. For example, key financial figures, breakdown of value and amount of loan, arrears, interest rate etc.²⁶⁷.

As regards enforcement, FCA have an extensive range of disciplinary, criminal and civil powers to tackle breaches of rules and other regulatory requirements against regulated firms and individuals²⁶⁸. They include, inter alia:

- (1) withdrawing a firm's authorisation;
- (2) banning individuals from carrying on money lending activities;
- (3) suspending firms (up to 12 months) from undertaking money lending activities;
- (4) suspending individuals (up to 2 years) from undertaking specific functions;
- (5) imposing financial penalties on firms or individuals;
- (6) censuring firms and individuals through public statements;
- (7) seeking injunctions and restitution order; and
- (8) bringing criminal prosecutions.

In suitable cases, the FCA may also invite firms to sign a voluntary requirement which would prevent on-going harm to consumers, or senior managers to provide attestations to stop such breaches²⁶⁹.

In order to support FCA's commitment to being a transparent regulator, details of the case length and case costs of their enforcement activities on regulatory, civil and criminal cases²⁷⁰ are published. The FCA also publishes enforcement statistics such as the number of cases opened and closed each year²⁷¹ and some tribunal statistics including regulatory cases on both disciplinary cases against firms and individuals, and non-disciplinary cases²⁷². In addition, outcomes such as variation/cancellation/refusal of authorisation/approval/permissions, financial penalty, public censure, suspension/restriction, criminal outcome, civil outcome, prohibition and redress/restitution by financial year²⁷³ are also published. Further, they also publish enforcement statistics on actions taken against firms and individuals that do not meet the minimum standards i.e., the Threshold Conditions for firms and the Fit and Proper test for individuals²⁷⁴.

²⁶⁶ FCA Guide for Consumer Credit Firms, page 38

²⁶⁷ FCA Guide for Consumer Credit Firms, page 40

²⁶⁸ FCA Enforcement Information Guide

²⁶⁹ FCA – Our approach to supervision, pages 17 and 18

²⁷⁰ Enforcement annual performance report 2018/19, pages 6-10

²⁷¹ Enforcement annual performance report 2018/19, page 8

²⁷² Enforcement annual performance report 2018/19, page 9

²⁷³ Enforcement annual performance report 2018/19, page 10

²⁷⁴ Enforcement annual performance report 2018/19, page 17

5.6 Summary

For ease of reference, an overview summary of the regulatory framework for money lenders in the researched jurisdictions is set out in Appendix 2.

The regulatory framework adopted in some of the researched jurisdictions, such as Australia and the UK, differs markedly from the local regime. Nevertheless, review of these regulatory frameworks reveals that in the main, specific measures have been implemented on the licensing regime, credit assessment, responsible lending, advertising, supervision and enforcement aspects so that there is rigorous control on the activities of the money lenders making such measures comparable to that of the banks and financial institutions in their own jurisdictions. In Hong Kong, while the AIs are appropriately regulated by the HKMA, there is a lack of comparable regulation for money lenders.

Notably, Australia and the UK take an integrated approach whereas in Hong Kong, there are sector specific regulators for different players in the financial markets. The regulations for Singapore are more prescriptive whereas in Mainland China, the laws tend to be less specific and regulation falls on the provincial government authorities. For Taiwan, the more stringent restrictions on loans are targeted at young borrowers and focus on advertising.

Turning to the interest cap, in all of the researched jurisdictions, they are lower than that set in Hong Kong except for the UK where there is no interest cap for loans except for high-cost short term credit.

Despite these differences, the regulatory regimes in these jurisdictions all share a common objective of strengthening the regulation of money lenders which in turn leads to enhanced consumer protection. It can be observed that for most of these regulatory frameworks, 2 aspects are involved, a statute based framework and a more flexible rule based regulation with the regulator being empowered to make binding rules from time to time. Money lenders are required to comply with a wide range of obligations when conducting their businesses, in particular in the areas of licensing, pre-contractual disclosure, responsible lending, advertising practices and regulatory reporting. Insofar as enforcement is concerned, diverse tools are also available to the regulators, including civil, criminal and administrative actions.

In many aspects, compared to Hong Kong, the money lenders in the researched jurisdictions are currently subject to much more stringent controls. In the next chapter, the Council will identify areas of weaknesses, concerns and loopholes relating to the existing regulatory framework in Hong Kong by drawing references to the different regulatory regimes mentioned in this chapter.

6 Areas of Concern

This chapter reviews the areas of concern of the existing regulatory framework for money lenders in Hong Kong. In carrying out this review, the Council has taken into account the relevant practices in the researched jurisdictions in Chapter 5, local circumstances and information analysis as presented in previous chapters in relation to the money lending industry.

6.1 Lack of a Sector Specific Regulator

As cited in previous chapters, the MLO was enacted in 1980. The purpose of the legislation was *“to provide a framework of law which will allow the present power of the loansharks to be broken but which would at the same time permit reputable money lenders to carry on their business without unnecessarily onerous or burdensome controls”*. There has been no major reform of the regulatory framework since the MLO came into operation. With the changes both in the landscape of the money lending business and the prevalence of consumer indebtedness over the past 4 decades, the Government should consider reviewing the MLO to better regulate this growing market with reference to the industry and regulatory developments both in Hong Kong and internationally.

As mentioned in Chapter 2, at present, the application for a money lender’s licence in Hong Kong involves 3 bodies, the Licensing Court, the Registrar and the Police.

Although there are regular liaison meetings between the Registrar and the Police and a joint operation was conducted to combat money lending-related malpractices, centralised oversight is lacking in the existing regime. Given that there are a sizeable number of 2,260 money lenders in Hong Kong²⁷⁵, the existing arrangement of dividing the administration of the regulatory regime into 3 separate bodies is not the most effective and therefore unsatisfactory.

Furthermore, the usual role one would expect from a regulator, for example, identifying systemic risks and problems of the industry, and providing regulatory guidance to all or specific licensees where appropriate to tackle issues so that there is timely intervention or prevention resulting in better protection for the consumers is not being taken up by either the Registrar or the Police. Without the necessary resources and expertise, not to mention the fact that they have their core mandates, neither one is the right body to perform the role of a regulator. In most of the researched jurisdictions, the responsibility of licensing and supervision of money lenders is borne by a single regulator.

Nowadays, regulators in finance industries are set up to supervise the industry, taking a holistic approach so that it could identify and tackle any problems swiftly and proportionately. The Police deals with the unscrupulous practices of money lenders and investigates all the complaints vigorously, but at the moment, this is only upon receiving complaints or intelligence or observing an upsurge of crime in the community that the Police would take enforcement actions or caution the public. This is a reactive approach and often this action comes too late for those who have fallen victim to unscrupulous money lenders’ practices.

²⁷⁵ LMLA, Market Data and Statistics. See https://www.lmla.com.hk/statistical_highlights.aspx

6.2 Inadequate Vetting on Licence Applications

One of the NGOs which provides counselling services to people in financial distress criticised the low application threshold and the ease of obtaining a money lender licence, causing there to be inconsistent quality amongst the industry players. The current vetting process fails to ensure that every person who is in control of the affairs of the applicant is sufficiently qualified and suitable.

The MLO specifies that the Licensing Court should consider, among other factors, whether the applicant is a fit and proper person to carry on money lending business in a licence application. Yet at present, other than the application forms, there is only a one-page guideline published by the Police about the required documents to be submitted by an applicant. Unlike most of the other jurisdictions researched e.g. Australia, Mainland China, Singapore and the UK, where specific criteria on the eligibility for licence are in place, the local guideline does not specify any minimum requirements expected by the Police of the applicant, e.g. education level and working experience etc. Furthermore, approval from the Licensing Court is not required under the MLO for a person to become a director, partner or ultimate shareholder of the applicant. Only when complaints are made against money lenders will the Police conduct investigations.

Although the MLO provides that a licensee has a duty to notify the Registrar about certain changes, such as a change of the directors and management of the company²⁷⁶, this notification requirement applies only after changes have taken place. Hence, no prior approval is necessary.

The scope and extent of due diligence are also subject to criticism. An insufficient background check may fail to prevent “phoenixing” whereby individuals set up new credit businesses under a different name after they have had their licences revoked/refused/not renewed. It is noted that the current check mainly concentrates on criminal convictions and disciplinary sanctions²⁷⁷. The applicant is not required to reveal on-going and concluded investigations, and civil proceedings.

Although the applicant is required to submit a supplementary information sheet containing information in relation to its intended business²⁷⁸, the required information is considered to be too general and brief. The applicant is not required to provide in the course of its application a business plan detailing the source of funding, organisation structure, loan approval processes, internal audit and compliance monitoring policies, credit risk management, and responsibilities of senior management etc.

Contrasting the licensing conditions which impose capital requirements for AIs, the current MLO and the Licensing Conditions do not have similar provisions for money lenders. While the Guideline on Application issued by the Police requires the licence applicants to provide documentary proof to show their financial situation, this only refers to the bank statements of the company, directors or shareholders²⁷⁹. Should there be circumstances warranting an investigation during the licence application, the Police could request the applicant to produce for inspection such books, records or documents relating to the application²⁸⁰ but this falls

²⁷⁶ Section 17 of the MLO

²⁷⁷ See Form 5 and section 4 of the Supplementary Information Sheet

²⁷⁸ See section 3 of the Supplementary Information Sheet

²⁷⁹ Guideline on Application for New Issue/Renewal of and Endorsement on Money Lenders Licence, Required Documents

²⁸⁰ Section 9(2) of the MLO

short of there being any requirement to ensure that a money lender has adequate financial resources to run its business.

Furthermore, references drawn from the other jurisdictions show that all of them have stipulations on what constitute adequate financial resources for money lenders. For small-sum loan companies in Mainland China, the capital requirement for a limited liability company and company limited by shares are RMB5 million and RMB10 million respectively²⁸¹. In Singapore, the incorporated company must have a minimum paid-up capital of SG\$100,000 before being eligible to apply for a money lenders licence²⁸². For Australia, Taiwan and UK, there is no set amount for capital requirement but the respective laws provide detailed descriptions as to what constitute adequate financial resources for money lenders. In Australia, the credit licensees are obliged to have adequate financial resources to engage in credit activities, carry out supervisory arrangements and have adequate risk management systems²⁸³. In Taiwan, the FSC would determine the level of capital requirement of each bank based on the population and economic conditions in each geographic area and the type of bank involved²⁸⁴. In UK, the FCA would determine the level of adequate resources based on the nature and scale of the business²⁸⁵.

6.3 Inadequate Regulation on the Conduct of Money Lenders

The conduct of money lenders is mainly governed by the MLO and the licensing conditions. Emerging malpractices in the market are regulated through the imposition of licensing conditions, which can only be done by the Licensing Court. Neither the Registrar nor the Police has power to make binding rules/directions to regulate money lending practices. Clearly, this situation is undesirable as the relevant authorities are unable to react effectively to address different industry-wide problems. This is in contrast to the regulators in the researched jurisdictions, for example the FCA in the UK, the RML in Singapore and ASIC in Australia who are empowered to issue binding rules and therefore are able to have a more immediate and effective supervision of the industry.

The stringent licensing conditions implemented in 2016 served to address the unscrupulous practices of financial intermediaries associated with money lenders in Hong Kong. However, debt collectors who have close relationships with money lenders remain under-regulated. Money lenders are not required to supervise or take responsibility for the undesirable practices of the debt collectors they use or employ. Although there are criminal sanctions in place to combat the illegal practices of debt collectors, there is no administrative measures to govern the activities of debt collectors engaged by money lenders. In general, money lenders are not liable for the undesirable practices of their debt collectors unless an agent and principal relationship can be established.

At present, the COP issued by LMLA is the only code of practice available in the money lending market. Only members of the LMLA are required to comply with the COP. As in July 2019, LMLA has 42 members²⁸⁶ out of the 2,713 licensed money lenders and they are the key industry players in Hong Kong. For various reasons, one of which could be that they choose to trade

²⁸¹ Guiding Opinion, Article 2

²⁸² Section 6A(1)(a) of the Moneylenders Act; Section 3A of the Moneylenders Rules 2009

²⁸³ Section 47(1)(l) of the MLO

²⁸⁴ Article 23 of the Banking Act

²⁸⁵ Guide for consumer credit firms, page 20

²⁸⁶ See <https://www.lmla.com.hk/Membership.aspx?id=124>

on the fringes, the majority of the licenced money lenders have opted not to become a member of LMLA. In other words, the majority of money lenders in Hong Kong are not obliged to follow the COP. In any event, review of the COP shows that it merely sets out minimum standards and provides some useful principles on the practices of money lenders. In addition to the COP being a voluntary code with no legal status, the COP also does not provide for any consequence of non-compliance.

6.4 Lack of Prudent Credit Assessment

According to the two NGOs interviewed, borrowers may choose to obtain smaller loans from multiple money lenders (ranging from a few thousand dollars up to ten thousand dollars) in shorter terms of one year or less. In some cases, borrowers are indebted to more than 10 money lenders, with one extreme case where a borrower accumulated debts with 120 money lenders. The reason for this borrowing behaviour stemmed from some money lenders being willing to grant a loan without conducting any prudent affordability check on the borrower. While of course consumers who seek out the money lenders are to blame, equally, a responsible money lender should try to make reasonable enquiries into both the level of indebtedness of the borrower and the borrower's ability to make repayments as they fall due. In other words, the money lenders should make sure that the loan they grant should be predictably affordable by the borrowers. Although the COP requires money lenders to take into account the borrower's ability to repay during the process of approval of the loan, as mentioned previously, it is only a voluntary code, and there are no legal consequences for non-compliance.

In the researched jurisdictions, it is clearly observed that where there is mandatory consumer credit data sharing, credit assessment can be facilitated and this is helpful both to the money lenders and the borrowers. Although some consumer credit data is available via TU, provision of this data is only limited to its members, with no control on its collection and all this affects the effectiveness in monitoring the consumer lending market in Hong Kong or using the collected data as useful statistics for market surveillance.

6.5 Abuse of Referee's Personal Data

Some money lenders require borrowers to provide the names of referees in the loan application process. The previous requirement under the licensing conditions was that money lenders were only required to obtain written confirmation from the borrower that the provision of referee's personal data is not in contravention of the Personal Data (Privacy) Ordinance. Recent amendment of the licensing conditions in October 2018 now requires money lenders to obtain consent from the referees that they agree to become referees. However, there is still no requirement to obtain consent from the referee that he/she agrees to his/her personal data being used, whether for marketing purposes or otherwise. Tightening of regulations on this front will address potential malpractices where referees suffer from marketing cold calling or nuisance calls from money lenders.

6.6 High Interest Cap

The MLO provides a two-tier structure for prohibiting charging of excessive interest. In essence, any interest rate exceeding 60% per annum is strictly prohibited²⁸⁷ and any person charging an interest rate higher than 60% per annum commits a criminal offence. An interest rate exceeding 48% per annum is presumed to be extortionate, and the Court can reopen the transaction and substitute just terms²⁸⁸. However, the Court could equally declare that such transaction is not extortionate having regard to all the relevant circumstances of the case.

The setting of interest rate of a particular transaction is effectively a risk based decision to be assessed on a case by case basis, taking into account various factors such as the borrower's repayment ability, creditworthiness, quality of collateral, risk appetite of the money lender and financial capability of the individual money lender.

One crucial problem which is not addressed in the current regime is the "exorbitant" interest rates charged by money lenders which, under current market conditions, is an extremely heavy burden to the borrowers regardless of the presence of security and collaterals, and is disproportionately high as compared with that of other loan products in the market. This leads to the question as to whether the current interest rate cap in the MLO is too high and should be decreased. After all, the current interest rate cap was imposed at the time of the enactment of the MLO in 1980 and there has been no revision for decades.

Noting the interest caps imposed in other jurisdictions – 48% per annum in Australia, 4% per month in Singapore, and 36% per annum in Mainland China and 20% per annum in Taiwan, there is naturally a question as to whether, from the consumer protection perspective, a lower interest cap should be imposed. The Council is also mindful that an interest cap which is set too low may make it commercially unprofitable to lend and will therefore adversely impact and stifle the business of smaller scale money lenders, which could give rise to unhealthy market consolidation in the long run. This would ultimately have an impact on consumers as this could adversely affect the high risk borrower's access to credit.

One further point worth noting is that there is currently no distinction in interest rate cap between secured and non-secured loans. It is a matter of general practice that when financial institutions consider a loan application, interest rate of a secured loan will enjoy a lower rate than that of an unsecured one.

6.7 Excessive and Misleading Advertising

In general, the majority of businesses in Hong Kong are free to use various channels to promote their goods/services to the general public. Insofar as money lenders are concerned, there are no specific restrictions controlling the advertising media, number, location contents, tone and frequency of advertising activities. Typically, advertising media favoured by money lenders include TV, radio, internet, newspaper/magazine, social media and telemarketing. In most of the researched jurisdiction (Australia, Singapore, Taiwan and UK), there is requirement for the advertisements to be accurate and not to contain misleading information.

It has long been recognised that consumption behaviour can be heavily influenced by advertisements and those from financial institutions are frequently found via different media

²⁸⁷ Section 24 of the MLO

²⁸⁸ Section 25 of the MLO

especially targeting younger and other more vulnerable consumers. It can be observed that some advertisements placed by money lenders and AIs are light-hearted or humorous and distract viewers from the seriousness and financial implications of making a borrowing decision. Such high intensity of misleading advertisement could possibly give the perception that access to credit is easy, leading to irresponsible borrowing and spending as a result. Taiwan and the UK have imposed specific restrictions on the use of certain expressions in credit advertisements.

Although money lenders are required to display/broadcast a risk warning statement in its advertisements, over-exposure to these warning messages together with the advertisements might reduce consumers' receptiveness to the message, especially for those having a tendency to overspend and rely on credit to manage their own finances.

6.8 Limited Enforcement Tools and Consumer Redress

Non-compliance of the requirements of the MLO or the licensing conditions constitutes an offence which attracts fines and/or imprisonment²⁸⁹. It may also lead to administrative sanctions such as the suspension/revocation of a licence. A person convicted of an offence under the MLO could also be disqualified by the magistrate from holding a money lender licence for 5 years²⁹⁰. However, at present, the Registrar and Police have no power to impose a fine or ban an individual from engaging in the money lender's business in the absence of criminal prosecution/conviction, or issue a remediation order to compel the money lender to take certain remedial actions.

6.9 Low Market Transparency

The problem of the poor market transparency here is twofold. Firstly, there is a shortage of credit data relating to the industry such as the total amount of new loans/outstanding loans, arrears, default rate, ratio of secured to unsecured loans and demographics of borrowers etc., in which such data could be used for the purpose of policy review. Secondly, the Council observes that there is a lack of publicly available enforcement statistics, for example, the number of objections made, the number of licence revoked, reasons for objection or revocation, number of on-site inspections made, and number of warnings/advisory letters issued etc. From a regulatory perspective, the publication of the enforcement statistics could improve transparency, thereby foster the adoption of good practices by money lenders.

Based on the foregoing observations, the Council will set out in the following chapter its recommendations.

²⁸⁹ Section 29 of the MLO

²⁹⁰ Section 32 of the MLO

7 Recommendations and the Way Forward

In previous chapters, the report reviewed the money lending market and its development over the years, analysed the consumer and trade issues which have arisen from such development; and examined the current regulatory framework of money lenders in Hong Kong and other jurisdictions.

As a result, the report concluded that the current regulatory framework governing money lenders in Hong Kong is outdated due to the changed landscape in the money lending industry over the past 40 years and changes in the consumer behaviour in borrowing. In turn, this led to the emergence of new types of challenges being faced by borrowers which were not originally envisaged by the MLO. The weaknesses and inadequacies of the existing legislation and regulations which warrant immediate attention and need to be addressed have been outlined in detail in Chapter 6.

Further, research of comparable jurisdictions for relevant legislations and regulations also showed that the existing MLO falls short of international standards and reinforces the need to reform. Responsible lending is one of the key messages embedded in the regulations of these jurisdictions.

The report also concluded that over-indebtedness of consumers can be minimised with consumer education and easy access to help and advice for those in financial difficulties.

That being the case, in order to enhance consumer protection, the Council urges the Government to conduct a comprehensive review of the regulatory regime for money lenders with a view to strengthening the laws and regulations relating thereto and to direct time and resources into consumer education in relation to consumer indebtedness. The Council recognises that some of the recommendations will have commercial repercussions on the money lenders in that their compliance costs would inevitably be increased and this could ultimately have an impact on the consumer, either by the costs being passed on or some money lenders deciding not to continue due to a decrease of profits which means there is less choice for the consumer. Taking into account the need to strike a proper balance between enhancing consumer protection, maintaining business sustainability and allowing borrowers to have reasonable access to credit, the Council puts forward the following 4 key recommendations.

- (1) Strengthen consumer education and the provision of advisory services;
- (2) Amend existing legislation;
- (3) Establish a new sector specific regulator with the recommended areas the regulator should focus on; and
- (4) Improve market transparency.

Technology is reshaping every single industry and lending is no exception. With technological innovations, the traditional lending model is changing dramatically. While the topic of FinTech, which involves complicated legal, technical and security issues, is beyond the scope of this report, the evolution of FinTech (e.g. P2P lending, digital lending) should be taken into consideration by the Government when formulating and implementing the above recommendations.

7.1 Strengthen Consumer Education and the Provision of Advisory Services

It is clear from the results of the consumer survey and exchanges with the NGOs that public education on consumer indebtedness should be carried out in tandem with the proposals of the Council to further increase awareness of responsible borrowing and the risk of over indebtedness.

For consumers to make rational, well-informed choices about different credit or loan products, they need to have easy access to information, and be given the ability to understand that information. Consumers will also require guidance and assistance in making financial decisions and managing their money especially at those points in their lifecycle when they are most vulnerable to over-indebtedness (such as losing a job or facing long-term illness). The availability of adequate support and free debt management advice is crucial. The Council therefore recommends that the Government should take a leading role in working together with the NGOs and the trade to co-ordinate an effective strategy and roll out a platform to deliver timely and handy consumer education, information and advice on debt management, as well as explore alternatives for credit provision to consumers.

Services should include general information and budgeting advice, support in managing and repaying debts, and specialised legal advice. To help reduce the number of consumers who become over-indebted, loan searching facilities and alternatives for credit provision will need to be in place.

7.2 Amend Existing Legislation

Establish a sector specific regulator

Over the years, Hong Kong has adopted a sector specific approach in the regulation of the financial market. Regulators work to prevent consumer detriments on an ex-ante basis through licensing and positive conduct obligations, rather than simply providing remedies for dealing with misconduct after it has emerged.

Currently there is a lack of a regulator for the money lenders and this has been identified as a substantial gap in resolving a few of the problems in the industry.

In Australia and the UK, under an integrated regulatory model, one regulator oversees all major players in the respective financial markets, including banks and financial institutions, insurance companies, finance and securities companies etc. However, in Hong Kong, a sector specific approach has been adopted to regulate financial services, such as the HKMA and the Insurance Authority in their regulation of the banking and insurance sectors respectively. The money lenders have been left to be managed by other bodies such as the Licensing Court, the Registrar and the Police.

The analysis in Chapter 6 clearly showed that the current approach cannot adequately manage the rapidly growing money lending business and thus, the Council recommends that the Government should establish a sector specific regulator i.e. a new statutory authority, to oversee the money lending industry.

Impose a duty to carry out prudent credit assessment

To ensure responsible lending, in most of the researched jurisdictions (Australia, Singapore, Taiwan and the UK), there is the requirement in their relevant legislations that money lenders must comply with the responsible lending conduct obligations. This obligates money lenders to carry out credit assessment before granting a loan to determine whether the loan is suitable for the borrower, thereby enhancing consumer protection.

Once the duty is in place in the legislation, the regulator can then issue further guidelines on how the money lender should discharge its responsible lending obligations and comply with the requirements under the legislation. Further details will be discussed in the following section under the recommendations to the sector specific regulator.

Adjust the interest cap

As discussed in Chapter 6, the MLO provides a two-tier structure for prohibiting charging of excessive interest whereby interest rate of 60% and above is illegal and interest rate of 48% is presumed to be extortionate with the Court being able to reopen the transaction and substitute just terms.

There has not been any revision of the interest cap since the enactment of the MLO in 1980. Since then, interest rate has fallen dramatically and the current rates of 48% and 60% seem grossly disproportionate to reflect the market conditions. Comparisons with jurisdictions with interest rate caps also show that 60% is an inordinately high percentage.

Contrasting local and international bank lending rates, 48% is still considered high. However, given comparisons to levels in the different researched jurisdictions and the recognition of the fact that the commercial risk level of money lending business is higher than that of other financial institutions, this figure could be a good reference point for adjustments of the current interest rate.

Research into other jurisdictions also revealed that a universal cap rather than a 2-tier cap is more popular. This is probably due to the fact that the presumption of extortionate interest is rebuttable and as it tends to create uncertainty which has to be resolved by the Court on a case by case basis, the value of this 2-tier system rather than a universal cap is diminished.

Research further showed that in the jurisdictions under review, there is no differentiation between secured and unsecured loans insofar as the interest cap is concerned. It is the general view that the percentage interest should be lower for secured loans and for vulnerable consumers. However, much depends on the quality of the security which translates into credit risks in determining the interest rate.

The Council proposes that there should be a maximum universal cap which should not be more than 48%. The Government should consult the industry as to which is the most appropriate rate to apply.

As for the fees charged, the regulator should ensure that such fees should not be disproportionate to the loan amount and the money lender should be required to include in the disclosure to consumers a clear and accurate breakdown of all fees and charges related to the loan transaction.

Additional requirements on advertising practices

The report's research showed that the primary regulatory concern in other jurisdictions was whether the advertisement delivered clear, accurate and balanced messages to consumers, with mandatory warning messages to be included in some jurisdictions. However, the focus of their concern did not extend to the number and frequency of advertisements as media placement was at the discretion of the credit providers.

Although there is no single piece of comprehensive legislation to regulate advertising practice in Hong Kong, where the product advertised is known to cause harm, whether to health (e.g. tobacco), or of particular sensitivity (e.g. alcoholic beverages, betting or infant formula), legislation or codes of practice would be introduced to regulate in order to offer enhanced protection to consumers. Where services are involved (e.g. medical or legal), the relevant regulatory body will impose codes of practice to regulate what constitutes acceptable levels of advertising taking into account *inter alia*, matters such as ethical considerations.

However, when proposing measures to deal with advertising, the Council is cognizant of the restrictions that AIs are subjected to and has taken this into account when making the recommendations so that there would be parity between money lenders and AIs.

To address the concerns in relation to advertising as outlined in Chapter 6, acknowledging the fact that advertising could possibly affect borrowers' behaviour, and drawing reference from the UK, the Council recommends that provisions should be inserted in the MLO to both prohibit the placing of misleading advertisements and to regulate the tone of the advertisements. Advertisements should not imply that credit is available regardless of the borrower's financial status; nor should they trivialise the seriousness of taking out a loan or be disproportionately light-hearted. Examples of these requirements can be found under the section on UK regulations on financial promotions and advertising in Chapter 5.

The Council also recommends that the current guidance notes annexed to the CR Guidelines be incorporated into regulations mandatorily requiring that a warning statement be displayed at the bottom or either side of the screen throughout the entire advertisement (irrespective of the duration) with the backdrop of the warning statement covering at least 10% of the screen (i.e. additional requirement) together with a clear read-out for at least 3 seconds. The need for an educational message in advertisements to promote responsible borrowing similar to the requirement by the HKMA of AIs should also be considered.

Furthermore, the Council recommends that a common approach in relation to the calculation and presentation of interest rates should be adopted across credit providers. As consumers are already familiar with the AI's method of calculation and presentation, i.e. the use of APR, the Council proposes that money lenders should be required to follow suit. This would facilitate consumers to make proper comparisons between the interest costs of credit/loan products offered by different credit providers.

Failure to comply with either the licensing conditions or regulations constitutes a breach which should result in disciplinary sanctions such as the revocation or suspension of licence and other penalties e.g. fines to be imposed. The regulator may also instigate prosecution in appropriate cases.

7.3 Recommendations for the New Sector Specific Regulator

Strengthen the vetting process of licence applications and to raise the bar for entry requirements and introduce a fit and proper criteria for money lenders

As mentioned previously, under the MLO, the current licensing process involves 3 parties, namely the Registrar, the Licensing Court and the Police. Should a sector specific regulator be established, the licensing role would then fall within the remit of the regulator who could then set down guidelines to strengthen the vetting process of licence applications by:-

- Setting threshold requirements for a fit and proper person and setting the requisite professional standards expected of a money lender such as implementing minimum requirements in terms of working experience and education level for the management of the licensee;
- Setting capital requirements;
- Ensuring that background checks are extended to the management of the licensee to include on-going/concluded investigations and civil judgments/proceedings;
- Requiring the applicant to submit a business plan detailing the source of funds, internal compliance monitoring, loan approval processes, credit assessment, credit risk management etc.; and
- Introducing approval requirements when there are subsequent changes in directors and management of the money lender.

In relation to setting capital requirements for money lenders, reference from other jurisdictions show that it may not be necessary or appropriate to set a fixed capital requirement for money lenders in Hong Kong as long as there is stipulation that money lenders need to have adequate financial resources to meet their obligations, business operations and credit activities as authorised. Given the varying scales of business of the different money lenders, the Government should consult the industry as to which is the most appropriate model to apply.

Lay down regulations/guidelines for prudent credit assessment

In Hong Kong, under the voluntary COP of the LMLA (section 14), when assessing a loan application, money lenders should take into account the borrower's ability to repay and may have regard to various factors such as borrower's income and expenditure, assets and liabilities, information from credit reference agencies etc. As mentioned previously, the low percentage of money lenders being a member of the LMLA and the fact that the COP is voluntary means that it is difficult to know whether proper credit assessment would be carried out before loan approval.

With a sector specific regulator in place, licensing conditions can be introduced to ensure that there is an obligation imposed on the money lenders to carry out such credit assessment. When carrying out the assessment, money lenders should be required to: (1) make reasonable inquiry about the borrower's financial situation; and (2) take reasonable steps to verify the borrower's financial situation before approving a loan. A loan should only be granted if, based on the assessment, the borrower will be able to meet his payment obligations without incurring substantial financial hardship. In other words, the loan is likely to be affordable by the borrower. The extent and scope of such an assessment should be dependent upon and proportionate to the type of credit and the size of the loan. For small amounts of credit, the

approval process should be quicker whereas for property mortgages, a longer approval process with more in-depth inquiry is to be expected.

It is further recommended that the regulator should issue practical guidelines on how the above requirements could be interpreted and complied with. These guidelines should provide guidance and reference but not be too prescriptive as this may increase compliance cost and ultimately cause harm to borrowers. However, money lenders should be prepared to justify their decisions, if challenged.

For example, if the monthly repayment of the loan is greater than the borrower's monthly salary, the situation is likely to result in substantial financial hardship to the borrower and be unsustainable, unless the borrower can show unreported regular income from other sources.

As mentioned in Chapter 5, in some of the researched jurisdictions such as Singapore, Taiwan and the UK, money lenders are required to provide consumer credit data to third parties agencies which are authorised by the regulatory body to collect consumer credit data and share this data so that the money lenders can make informed decisions about lending and encourage better financial prudence on the part of the borrower. In Australia, this practice of credit data sharing and collection is voluntary. To ensure the information is current, there is a continuous duty on the money lender to update the loan information until the loan is fully repaid.

Having referenced other jurisdictions, to enable money lenders in Hong Kong to more easily carry out this credit assessment exercise, the regulator could consider putting in place some guidelines to require mandatory collection of consumer credit data into a central data repository which could then be shared amongst relevant stakeholders. The regulator could consider as to whether this collection and sharing should be limited to money lenders or be extended to include AIs.

Introduce best practices and eliminate unscrupulous trade practices through use of strengthened licensing conditions and introduce regulations

Although LMLA's voluntary COP aims to regulate the conduct of money lenders, its voluntary nature and the limited number of members mean that this could hardly be expected to curb the unscrupulous trade practices of some of the market players.

The regulator can, where appropriate, consider incorporating issues contained in the voluntary COP into the licensing conditions so that money lenders would be obliged to follow best practices and existing licensing conditions can be strengthened. Such best practices could include issues such as information disclosure requirements. Alternatively or in addition, where appropriate, regulations should be introduced to address areas of concern in order to address specific unscrupulous practices as and when they arise. Examples of currently observed unscrupulous practice by money lenders include the unchecked use of debt collectors and the abusive use of personal data of referees. In the former example, regulations should be put in place to governing the practice of debt collectors engaged/appointed by money lenders by requiring money lenders to enter into formal contractual relationship with debt collectors to ensure that the money lenders become responsible for the debt collectors' misconducts. In the latter example, regulations should be introduced to require the money lenders to obtain from the borrowers the referee's written consent for use of his/her personal data for marketing or other purpose in order to prevent abuse of use by money lenders.

In addition, there should be regulations in place to ensure that the money lenders clearly inform and disclose to the borrowers the possibility of sub-mortgage of their properties, if applicable, as security before entering into the loan agreement.

Enhance enforcement and handle complaints

To increase the deterrent effect against any breaches of the law and licensing conditions, and at the same time providing additional flexibility to the regulator in tackling non-compliant cases, the Council recommends that the regulator be given more enforcement tools such as:

- the power to issue a public reprimand;
- the power to give enforcement notices;
- the ability to impose a financial penalty on the licensee or their staff;
- the ability to impose a ban on an individual prohibiting him/her from engaging in money lending business;
- the power to issue a remediation order to compel the money lender to take remedial action; and
- the authority to take disciplinary action against a director, a partner or the management of the money lender.

The Council also proposes that the regulator set up a special division to handle complaints and possible breaches of regulations.

7.4 Improve Market Transparency

The Council is of the view that credit data of money lending transactions could serve an important function in policy formulation or review. Although money lenders are obliged to provide information relating to their businesses as and when required by the Registrar or the Police, and they have to submit financial data such as financial assets and liabilities to the CR upon renewal of licence, there are no requirements for the provision of meaningful credit statistics such as the total amount of new loans, outstanding loans, average tenure, general demographics of borrowers, arrears and default rates which could aid in more effective policy making and oversight of the level of indebtedness of the community.

Therefore the Council recommends that the regulator should collect loan profiles from money lenders on a systematic and regular basis, such as the types of statistics mentioned above.

In addition, the Council recommends that enforcement statistics be published regularly in order to enhance regulatory transparency. Statistics to be published should include the number of objections made, the number of licences revoked and or suspended, reasons for objection, suspension or revocation, the number of inspections made, the number of warnings/advisory letters issued and the number of complaints received etc. It is hoped that enhanced transparency could help foster the adoption of good practices by money lenders and raise the professional standard of the industry through ongoing market surveillance.

7.5 The Way Forward

The Council hopes that the above recommendations will stimulate and generate an informed and in-depth discussion among the different stakeholders in the community so that their views and concerns can be heard and taken into account.

The report does not seek to moralise on the rights and wrongs of consumer borrowing. The Council reiterates that it recognises the legitimate role and function of money lenders in the society and their business needs of earning a return that can compensate the risks they bear. The Council also understands that over regulation could have negative impact on the access to credit for some borrowers, leaving them with no choice but to borrow from illegal lenders.

Striking a balance between maintaining reasonable access to credit from money lenders and enhancing consumer protection is the objective of this report. The Council hopes that a revamp of this outdated legislation will mean that the money lending industry will be subject to a regulatory regime that ensures fairness between a money lender and a borrower, bringing with it strengthened consumer protection.

From research findings, excessive spending in leisure activities is a main reason for the younger generation to borrow and thus, fundamentally consumer education on financial management and prudent access to credit is critical to developing a culture of healthy and responsible borrowing for Hong Kong.

Appendix 1: Review of Online Websites of Financial Service Providers

Covering period	1 June 2018 (Friday) to 31 August 2018 (Friday)
Search engine	Google
Websites	27 (7 AIs and 18 licensed money lenders, 2 unknown)

7 Authorised Institutions

1. Bank of China (<https://www.bochk.com/tc/loan/personal/instalment.html>)
2. China Construction Bank (Asia) (http://www.asia.ccb.com/hongkong_tc/personal/)
3. Citibank (<https://www.citibank.com.hk/chinese/loans/loans.htm?lid=HKZHCBGPLMITLOverview>)
4. DBS Bank (Hong Kong) Limited
(<https://www.dbs.com.hk/personal-zh/loans/personal-loans/default.page>)
5. Public Bank (Hong Kong) (<https://www.publicbank.com.hk/tc/retail/ploan/personal>)
6. Public Finance Limited (https://www.publicfinance.com.hk/2/finance/html_form/tc/index.aspx)
7. The Hongkong and Shanghai Banking Corporation Limited
(<https://www.hsbc.com.hk/zh-hk/loans/>)

18 Licensed Money Lenders

1. Aeon Credit Service (Asia) Company Limited (<https://www.aeon.com.hk/tc/html/index.html>)
2. Cashing Pro (<http://www.cashingpro.com.hk/zh/>)
3. Easy One Finance Limited (<https://www.221.com.hk/tc/>)
4. EasyLend (<https://www.easylend.hk/zh-hant/>)
5. Ego Finance Limited (<https://www.ego-finance.com/hk/>)
6. Finance One Limited (<https://financeone.com.hk/>)
7. Formax Finance Limited (<https://www.formax.hk/>)
8. i-Choice (<https://www.i-choice.hk/zh-hant/>)
9. K Cash (<https://kcash.hk/>)
10. MoneyMonkey (<https://www.moneymonkey.hk/tc/>)
11. PrimeCredit Limited (<https://www.primecredit.com/chi/index.php>)
12. Promise (<http://www.promise.com.hk/>)
13. Thousand FCS Ltd. (<http://cashfinance.hk/loan.php>)
14. Top Profit Finance Limited (https://www.tpfhk.com/personal_loan.php)
15. Turbo Credit Company Limited (<http://www.turbocredithk.com/>)
16. uFinance (<https://www.ufinance.co/student-loan>)
17. WeLend (<https://www.welend.hk/>)
18. Zero Finance (<https://www.zerofinance.hk/zh/>)

2 Unclassified (during the review period)

1. Johnston Finance Limited (<http://www.johnstonfinance.hk>)
2. Money SQ (<https://www.moneysq.com/>) (now with Money Lender's Licence)

Appendix 2: Overview of Regulatory Framework for Money Lenders in Other Jurisdictions

Jurisdiction	Australia	Mainland China	Singapore	Taiwan	UK
Legislation	National Consumer Credit Protection Act	N/A	Moneylenders Act	Banking Act Civil Code	Financial Services and Markets Act
Rules/Guidance	National Credit Code National Consumer Credit Protection Regulations	Guiding Opinions of China Banking Regulatory Commission and the People's Bank of China on the Pilot Operation of Small-sum Loan Companies Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Private Lending Cases Notice of the Supreme People's Court on Issuing the Several Opinions on Further Strengthening Financial Trials	Moneylenders Rules	Regulations Governing Institutions Engaging in Credit Card Business Regulations Governing the Cash Card Business of Financial Institutions	Consumer Credit Sourcebook
Regulatory body	Australian Securities and Investments Commission	Provincial government authorities	Registry of Moneylenders	Financial Supervisory Commission	Financial Conduct Authority
Licensing body	Australian Securities and Investments Commission	Provincial government authorities	Registrar of Moneylenders	Financial Supervisory Commission	Financial Conduct Authority

Jurisdiction	Australia	Mainland China	Singapore	Taiwan	UK
Fit and proper person requirement	Yes	Yes	Yes	-	Yes
Capital requirement	Need adequate financial resources	RMB5 mil for limited liability company RMB10 mil for company limited by shares	Minimum paid up capital of SG\$100,000	Need adequate financial resources	Need adequate financial resources
Responsible lending requirement/Credit assessment	Yes	Not provided under the Guiding Opinions	Yes	Yes	Yes
Credit reference agency	No designated agencies	Credit Reference Center under the People's Bank of China	Moneylenders Credit Bureau	Joint Credit Information Center	Independent credit reference agencies authorised by FCA
Pre-contractual disclosure requirements	Yes	Yes	Yes	-	Yes
Interest cap	48% per annum	36% per annum	4% per month	20% per annum	Nil *
Advertising restrictions	Yes	Not provided under the Guiding Opinions	Yes	Yes	Yes
Enforcement	Criminal and disciplinary	To be handled by the relevant department of the provincial government	Criminal and disciplinary	Criminal and administrative	Criminal and disciplinary

Remark:

The information provided in this Annex is for reference purpose only. Whilst the Council endeavours to ensure the accuracy of the information hereof, no express or implied warranty is given by the Council as to the accuracy of the information.

* UK - Except for high-cost short-term credit which has an initial daily cost cap at 0.8%.



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