



## Money lenders: a tighter vetting process



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### **What you should know about Hong Kong's new money lending rules: enhanced licensing conditions for licensees and tightened vetting for new applicants.**

Hong Kong has an active and dynamic money lending market. In addition to loans provided by banks regulated under the Banking Ordinance (Cap. 155), non-bank money lenders provide alternative means of financing for individuals and companies. The money lending industry is regulated under the Money Lenders Ordinance (Cap. 163) (MLO). As of June 2021, there were 2,450 licensed money lenders in Hong Kong, including traditional pawn shops and other innovative versions of the business.

The MLO defines a money-lender as "every person whose business (whether or not he carries on any other business) is that of making loans or who advertises or announces himself or holds himself out in any way as carrying on that business."

To protect the public against loan sharks, the MLO stipulates that non-bank money lenders must apply for a licence before running a money lending business. Licensed money lenders must comply with licensing conditions imposed on them and implement effective measures to mitigate the risk of anti-money laundering (AML) and counter-terrorist financing (CTF).

The MLO has been in force since 1980 and, in 2019, the Consumer Council published a report setting out specific recommendations to address changes in the industry brought about by technology and a modernised market.

As a result, in January 2021, the Companies Registry (CR) issued new guidelines outlining the criteria for determining whether an applicant is fit and proper, and requiring applicants to submit a business plan. In March 2021, a new licensing condition was adopted, requiring licensees to assess a borrower's ability to repay, and two existing conditions related to advertisements and loan referees were amended.

*This article provides an outline of the practical implications of the recent changes to the money lenders licensing regime. Its purpose is by no means to be exhaustive but to provide guidance to holders of a licence prior to its renewal and to those considering to apply for a new licence.*

## Prerequisites for a money lenders' licence

### The applicant must be fit and proper

If the applicant is an individual, the applicant and any person responsible for the business must be fit and proper. If the applicant is a company, its directors, secretaries and any person who controls it or is responsible for managing the business must be fit and proper.

Matters that that will be considered are:

➤ compliance records, ➤ management structure, ➤ financial position, ➤ skills, knowledge and experience, ➤ reliability and integrity and ➤ disciplinary actions.

### The premises must be suitable

The applicant must have a physical office in Hong Kong (not only a domiciliation address) that is suitable for conducting a money lending business. The landlord must consent in writing to the use of the premises for the money lending business.

The premises must be for office or shop purposes and comprise: ➤ a meeting room to receive customers, ➤ a CCTV system and ➤ a safe or locking cabinet.

## Documents to be submitted by new applicants

### 1 Application forms and supplementary information sheets.

The applicant must provide details regarding its directors, shareholders and any person who will participate actively in the business.

The applicant must confirm that it is able to carry on the business.

The applicant must confirm that its controllers, directors, secretaries and management team have the skills, knowledge, and experience to run a money lending business efficiently and effectively.

None of these people should have been dismissed for misconduct, incompetence, negligence or mismanagement.

The applicant must demonstrate its reliability and integrity.

The applicant must provide details of any offence committed by its directors or controllers and confirm that it has never been found guilty of misconduct, fraud, dishonesty or been declared unfit to serve as a director in Hong Kong or elsewhere.

The applicant must confirm that it has no record of non-compliance with the statutory and regulatory provisions applicable to money lenders.

The applicant must confirm that it has never been the subject of any disciplinary hearings or action in Hong Kong or elsewhere.



From September 2021 onward, the applicant will be required to provide additional information regarding any related entity that is a licensed financial institution, insurance company, approved trustee or property developer.

The applicant must confirm that it has adopted adequate management systems.

The applicant must adopt: > AML-CTF systems, > staff recruitment, training and supervision policies, > internal controls and audit function, > procedures for monitoring the performance of debt collectors, > procedures to assess borrowers' repayment abilities (for unsecured personal loans) and > procedures for handling customer complaints.

The guidelines on compliance with AML-CTF requirements were revised in September 2020. Licensed money lenders must now establish independent audit functions to review the adequacy of AML-CTF systems, risk assessment frameworks, the effectiveness of suspicious transaction reporting systems and the staff's level of awareness of their reporting responsibilities. From September 2021 onwards, applicants will be required to describe their internal independent audit function.

Even if the internal policies are not submitted to the CR and HKPF alongside the application, the applicant must adopt all relevant policies to present them to the authorities in case of inspection.

## 2 Academic and professional records.

The applicant must submit to the HKPF copies of its academic certificates and reference letters of previous experience in the money lending business. If the applicant is a company, the documents must be provided for its key executives in charge of the business.

The applicant should hold a degree in accounting or finance and have at least one year of experience in accounting or in the money lending business.

## 3 Information regarding the premises.

The applicant must submit copies of the tenancy agreement, the written consent from the landlord for the use of the premises for the money lending business, the permit to occupy a new building issued by the Buildings Department, the Land Register and the floor plan.

In practice, the applicant must find a suitable office and sign the tenancy agreement before applying for the licence.

## 4 Latest bank account statement.

The applicant must have a bank account in Hong Kong with sufficient funds to start the business.

The required level of funds is usually about HK\$800,000 to HK\$1,000,000.

Alternatively, the applicant can submit the bank account statement of a director.

## **5 Business plan.**

The applicant must provide information about the nature of the business and the entire loan transaction process.

The business plan must include information regarding the type of loans to be provided (e.g., consumer loans, secured or unsecured loans, etc.) and provide details about its marketing and advertising. The applicant must indicate its target customers (e.g., individual or corporate borrowers, nature of their occupations or business and level of income).

The applicant must provide information regarding its shareholding.

The business plan must include a full ownership chart showing the relationship between the applicant and all parent companies, beneficial owners, subsidiaries and associated companies. The ownership chart should specify whether any shares are bearer shares.

The applicant should state whether it is associated with any licensed financial institution, insurance company, approved trustee or property developer.

The applicant must provide information regarding the management team and employees.

The business plan must indicate the number of employees or contain a hiring forecast. For each staff member, the applicant must indicate their position, responsibilities, whether they are employed on a full-time or part-time basis and their reporting lines.

Additional information must be provided regarding key executives, including their names, nationalities, positions, employment histories, qualifications, experience relating to money lending business and levels of education.

The applicant must provide financial information.

The business plan must describe the applicant's initial source of funds (e.g., bank borrowings, shareholders' funds, intra-conglomerate borrowings, debt instruments, etc).

The applicant must provide a two-year financial forecast including the expected profit margin and turnover on each type of loan and the operating capital requirements.

The applicant must provide information regarding digital and automated screening systems

If the applicant intends to use any digital and automated systems for non-face-to-face customer due diligence verifications or risk assessment or online loan approval process, the business plan must include the names and addresses of the service providers.

The applicant must provide information regarding any outsourced AML/CTF service providers

The applicant must provide the names of any outsourced service providers or intermediaries that it intends to use for AML-CTF purposes and describe the nature of the services provided.

The applicant must provide information regarding third parties appointed to grant loans or act as debt collection agents

If the applicant intends to appoint any third parties to grant loans or perform debt collection on its behalf, it must indicate their name, address and intended functions.

## **6 Letter to confirm the understanding of applicable provisions.**

The business plan must be accompanied by a letter from the applicant confirming that it is fully aware of and will comply with the provisions of the MLO, the conditions imposed on the licence by the Licensing Court and the AML-CTF guidelines.

## **The application process**

### **1 File an application with the CR.**

- The CR examines the application to determine if the applicant has a genuine intention to carry on the business, the necessary resources to execute the business plan and knows and is ready to comply with the applicable regulations.
- The CR may request the applicant to provide additional information in the business plan.

### **2 File a copy of the application with the Hong Kong Police Force (HKPF).**

- The HKPF investigates the application and may interview the person(s) in charge of the business and visit the premises.
- The HKPF may object the application within 60 days of the date of the application if **►** the applicant is not fit and proper, **►** the premises are not suitable, **►** the applicant has not complied with all applicable regulations, **►** the name of the applicant is misleading or **►** the application is contrary to the public interest.

### **3 The licensing court determines whether to grant the licence and calls a hearing.**

- The CR sends the application to the Hong Kong Magistrate's Court, alongside any objection made by the CR or the HKPF.
- The licensing court determines whether the licence can be granted and fixes a hearing date. The applicant is informed of the hearing date with 14 days' notice.



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**Attend a hearing before the licensing court.**

- The hearing is generally held within 4 to 6 months after the application.
- The licensing court may impose additional conditions when granting the licence.

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**The CR and the HKPF may conduct random on-site inspections.**

- The CR and the HKPF may inspect the premises to verify that the licensee complies with all applicable provisions. Rectification orders and warning letters may be issued. If irregularities are not rectified, the CR may raise an objection to the licensing court when the application for licence renewal is made.
- To be prepared for any inspections, licensed money lenders should update their internal policies and procedures and provide suitable training to the staff to ensure that all the new requirements are complied with.

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**File an application for renewal every year.**

- Renewal applications must be submitted 3 months before the licence expires.
- A renewed licence will usually be granted within 2-3 months.

## The amended licensing conditions applicable to licensees

With effect from 16 March 2021, the CR has imposed one additional condition and two revised conditions on existing and new money lenders.

Under the new condition 15, money lenders must assess a borrower's ability to repay the loan in an affordable manner before granting an unsecured personal loan or a significant increase in the existing loan amount.

Licensed money lenders and new applicants must adopt written policies and procedures describing the factors that they will take into account in assessing a borrower's ability to repay. They must keep records of the assessment and present it to the CR in case of inspection.

Under the revised condition 9, advertisements published by money lenders should be fair and reasonable and should not contain misleading information. Money lenders must clearly indicate their hotline telephone number for handling complaints and a risk warning statement in all their advertisements.

Money lenders can no longer use expressions such as "interest free" or "0% interest" if the borrower will be required to pay any amount in excess of the principal loan amount.

The warning must be in the following wording: "Warning: You have to repay your loans. Don't pay any intermediaries".

The revised condition 13 requires the money lender to immediately cease to use a referee's information if it becomes aware that the referee did not sign the written consent to act as a referee for the intending borrower.

This revised condition intends to combat the improper use of personal data of referees.

## What to expect

The new and revised regulations are an attempt to regulate the ever-growing money lending industry more efficiently. New applicants and existing money lenders should familiarise themselves with the new conditions to ensure full compliance.

If you plan to apply for a licence for the first time to operate a money lending business, the onus is to convince the HKPF that you are a fit and proper person to hold a licence. You must also demonstrate to the CR that you have a genuine business plan that shows that you are prepared to run a money lending business and that you have the resources and knowledge needed to operate it in compliance with the MLO.

Existing money lenders should familiarise themselves with the new guidelines and implement all new licensing conditions. Assess whether your existing advertisements comply with the new regulations. Check your records relating to referees and review your affordability assessment processes. Train your staff to be up to date with new guidelines.

With the new and strengthened regulations, money lenders should expect more stringent enforcement by regulatory authorities.

*The law in this respect is complex. The information provided in this article does not, and is not intended to, constitute legal advice and should not be relied upon as such.*

*For professional legal advice, please do not hesitate to contact us.*