

## Money lending regime: more stringent regulatory measures



As we have discussed in our article "[Money lending in Hong Kong – pitfalls for lenders and protections for borrowers](#)", the Consumer Council published a report in September 2019 setting out recommendations for better regulation of money lending practices in Hong Kong. The Companies Registry has recently issued new guidelines and revised licensing conditions to money lenders, with a view to address increasing public concerns over irresponsible lending practices of certain money lenders. The new guidelines will take effect from 1 April 2021 and the new licensing conditions apply to licences granted or renewed on or after 16 March 2021.

### **New Guidelines**

The Companies Registry (the "**CR**") recently released the "Guideline on Fit and Proper Criteria for Licensing of Money Lenders" (the "**Fit and Proper Guideline**") and the "Guideline on Submission of Business Plan by Applicant of a Money Lenders Licence" (the "**Business Plan Guideline**"). These new guidelines will take effect from 1 April 2021.

We set out below a brief overview of the new guidelines:-

#### (a) Fit and Proper Guideline

Such guideline will apply to the grant, renewal or endorsement of money lender licences ("**ML Licences**"). It will also be considered in an application for an order to revoke or suspend a ML Licence.

Applicants for ML Licences, existing money lenders and their related persons (e.g. directors, secretary, officers and any person who exercises control over or is responsible for the management of the money lending business) will need to satisfy and continue to satisfy the CR that they are 'fit and proper persons' to be licensed or to control or manage a money lending business.

Briefly, a "fit and proper person" is someone who is financially sound, competent, honest, reputable and reliable. We have extracted the key matters and criteria from the Fit and Proper Guideline, which the CR will consider in determining whether a relevant person is "fit and proper":

- whether there is any record of non-compliance with the Money Lenders Ordinance, the Money Lenders Regulations, licensing conditions and guidelines issued by the CR, etc.;
- whether the money lender has established effective policies, procedures and controls to cover AML/CTF, staff supervision and risk management, etc.;
- whether the financial position of the relevant person is suitable for carrying on a money lending business;
- whether the person possesses the necessary skills, knowledge, experience and professionalism to carry on a money lending business (including an understanding of the applicable regulatory requirements);
- whether the person has been found for fraud, dishonesty or other misconduct or has been disqualified from being a director in HK or elsewhere; and

- whether the person has been subject to any disciplinary action in HK or elsewhere.

(b) Business Plan Guideline

The Business Plan Guideline is applicable to applicants for a new ML Licence. It sets out the information that should be included in a business plan. This will not be relevant to a renewal application.

In short, an applicant must submit a business plan with their licensing application. The business plan should include information about the applicant's proposed money lending business (e.g. business and operations, key officers and shareholding structure, etc.). The purpose of the business plan is to demonstrate that the applicant has a genuine intention to carry on a money lending business, the necessary resources to execute such plan and the knowledge of and the readiness to comply with the relevant requirements.

Failure to include the necessary information in the business plan can delay the application process and/or cast doubt on the applicant's fitness and properness to carry on business as a money lender. Applicants are therefore recommended to carefully prepare their business plans such that their applications can proceed smoothly.

***Changes to licensing conditions***

The CR has imposed more stringent licensing conditions on money lenders to address public concerns over lending practices and misleading advertisements. These revised and additional licensing conditions (along with the existing conditions) attach to ML Licences granted or renewed on or after 16 March 2021. The changes include:

- (a) *Licensing condition 9*: a new proviso will be inserted into this condition such that money lending advertisements must be fair and reasonable and not contain misleading information. In particular, expressions such as "interest-free", "0% interest" and "guaranteed or pre-approved loans" may be considered misleading. Money lenders should assess if any changes to their existing advertisements are required.
- (b) *Licensing condition 10*: the revisions made to the guidance note on this condition is to require money lenders to properly monitor the debt collection activities of their debt collectors.
- (c) *Licensing condition 13*: the revision clarifies that a money lender must cease the use of any information of a referee if it is aware or is informed that such person has not consented to act as the intending borrower's referee.
- (d) *Licensing condition 15*: this new licensing condition requires a money lender to carry out an assessment of an intending borrower's ability to make repayments in an affordable manner (and to have due regard to the outcome of such assessment) before granting a loan (or an increase in the existing loan amount). The affordability assessment must be based on sufficient information and should consider factors such as the borrower's current income and expenditure levels and any reasonably foreseeable changes in the borrower's financial position, etc. The purpose of this condition is to position a money lender as a gatekeeper to mitigate the risk of unaffordable borrowing by borrowers.

We have advised our clients on what practical and operational issues they should consider in order to comply with the new guidelines and new licensing conditions. Please get in touch if you would like to discuss any issue arising from them.

## Get in touch



### **Katherine Liu**

Partner

T: +852 2533 2717

Email: [Katherine.Liu@shlegal.com](mailto:Katherine.Liu@shlegal.com)



### **Conrad Lam**

Associate

T: +852 3166 6946

Email: [Conrad.Lam@shlegal.com](mailto:Conrad.Lam@shlegal.com)

© Stephenson Harwood LLP 2021. Any reference to Stephenson Harwood in this document means Stephenson Harwood LLP and/or its affiliated undertakings. The term partner is used to refer to a member of Stephenson Harwood LLP or a partner, employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Stephenson Harwood LLP's affiliated undertakings.

Full details of Stephenson Harwood LLP and or/its affiliated undertakings can be found at [www.shlegal.com/legal-notices](http://www.shlegal.com/legal-notices).

Information contained in this email is current as at the date of first publication and is for general information only. It is not intended to provide legal advice.

**STEPHENSON  
HARWOOD**  
罗夏信律师事务所