

November 2022

New illegal and extortionate interest rates to take effect on 30 December 2022



Introduction

At present, under the Money Lenders Ordinance (the "**MLO**"):

- (i) it is a criminal offence to lend money at an interest rate which exceeds 60% per annum (the "**Statutory Interest Rate Cap**"), and any agreement to lend at an effective interest rate exceeding the Statutory Interest Rate Cap is unenforceable; and
- (ii) any agreement to lend at an effective interest rate exceeding 48% per annum (the "**Extortionate Interest Rate**") is presumed to be an extortionate transaction, and where proceedings are taken for the recovery of monies under an extortionate transaction, the court can "reopen the transaction so as to do justice", which includes lowering the applicable interest rate.

Lowering of rates

On 26 October 2022, the Legislative Council passed two resolutions which will lower the Statutory Interest Rate Cap to 48% per annum, and the Extortionate Interest Rate to 36% per annum. These lowered rates will take effect on 30 December 2022.

Banks should take note of the fact that, although the Money Lenders Ordinance does not apply to authorised institutions, the new regime still has regulatory implications on existing loans made by banks, as well as loan applications received by them before 30 December 2022. The Hong Kong Monetary Authority ("**HKMA**") and the Companies Registry have each issued a letter, titled "[Implementation Arrangements in Connection with the Lowering of Statutory Limits of Effective Rates of Interests as Stipulated in the MLO](#)" dated 27 October 2022, and "Lowering of statutory limit of effective rate of interest stipulated in the MLO" dated 26 October 2022, addressed to banks and money lenders respectively. Below is a summary of the regulatory implications brought by the HKMA letter:

	Advanced by Banks
Before 30 December 2022	<p>In respect of customers who have applied for a loan before 14 November 2022 but are approved on or after 14 November 2022, and where the interest rate will exceed 48% p.a. on or after 30 December 2022</p> <p>A notification containing certain details* needs to be sent to the customer on the date of the approval of the credit application</p> <p>In respect of customers applying for a loan between 14 November 2022 and 29 December 2022, and the interest rate is expected to exceed 48% p.a. at any time</p> <p>A notification containing certain details* needs to be sent to the applicant (i) at the time of the credit application (before the customer decides to apply) and (ii) at the time of informing the customer of the approval of the credit application</p> <p>In respect of existing loans where the interest rate will exceed 48% p.a. on or after 30 December 2022</p> <p>A notification containing certain details* needs to be sent to the customer on or before 14 November 2022</p>
On or after 30 December 2022	<p>New rates need to be observed and appropriate steps need to be taken as a result</p>

* Details of the requirements are set out in the HKMA's letter.

The new rates have no retrospective effect, but, as can be seen from the table above, the HKMA has asked banks to take various steps on or before the new rates coming into effect – time is therefore of the essence. On the other hand, we understand that money lenders have not been asked to take any specific action before the new rates come into effect, and simply need to observe the new rates when they come into effect. Appropriate changes will need to be made to their loan documentation.

How we can help

Many of our clients are banks and money lenders. We have extensive experience in drafting and reviewing standard form loan documents, and advising lenders on Hong Kong's lending regime.

If your business operates in the banking or money lending industry, and you have any questions regarding the new rates, please feel free to reach out to us.

Contact us



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