File Reference: CO/2/19/3C(2021)Pt.28

LEGISLATIVE COUNCIL BRIEF

Money Lenders Ordinance
(Chapter 163)

Resolution of the Legislative Council under Sections 24 and 25 of the Money Lenders Ordinance

Money Lenders (Amendment) Regulation 2022

INTRODUCTION

A

Pursuant to sections 24 and 25 of the Money Lenders Ordinance (Cap. 163) ("the Ordinance"), the Government submits the resolution ("the Resolution") at **Annex A** to the Legislative Council ("LegCo"), recommending the statutory interest rate cap be lowered from 60% per annum to 48% per annum, and the extortionate rate from 48% per annum to 36% per annum.

B

2. At the meeting of the Executive Council on 7 June 2022, the Council **ADVISED** and the Chief Executive **ORDERED** that the Money Lenders (Amendment) Regulation 2022 ("the Amendment Regulation"), at **Annex B**, should be made under section 34 of the Ordinance to remove the references to the exact figures of the interest rate cap and the extortionate rate in the Money Lenders Regulations (Cap. 163 sub. leg. A) ("the Regulations").

JUSTIFICATIONS

The review of the interest rate limits

3. The Ordinance stipulates that the interest rate cap on a loan shall be 60% per annum; and that the interest rate of a loan exceeding which shall render the loan, *prima facie*, to be presumed to be extortionate and may trigger reopening of the transaction by the court (the power, not an obligation, rests with the court) having regard to the relevant

circumstances[1] ("the extortionate rate") shall be 48% per annum[2].

4. The interest rate cap and the extortionate rate were first introduced alongside the enactment of the Ordinance in 1980, with a view to affording greater protection to borrowers, particularly when the interest rates charged by money lenders at the time usually exceeded 100% per annum, and even up to as much as 350% per annum. The two interest rate limits were set at the current levels upon their introduction in 1980.

5. The interest rate environment[3] and the money lending sector in Hong Kong[4] have changed significantly since 1980. Statistics collected from licensed money lenders by the Companies Registry ("CR") on unsecured personal loans also show that in general the lower average loan amount corresponded to higher interest rate and default rate, suggesting that the burden of higher interest rate and higher risk of default falls more on borrowers of lower income[5]. In recent years, the community, including LegCo members and stakeholders such as the Consumer Council, etc, are concerned that interest rates charged by money lenders being excessive, which would harm borrowers, particularly those with lower income, and

---

[1] The circumstances to be taken into account by the court as stipulated in section 25 of the Ordinance include interest rate prevailing at the time the loan was made; the age, experience, business capacity and state of health of the debtor; the degree to which, at the time of entering into the transaction, the debtor was under financial pressure, and the nature of that pressure; the degree of risk accepted by the lender, having regard to the nature and value of any security provided; the lenders' relationship with the debtor, etc.

[2] Section 3 of the Ordinance provides that it does not apply to an authorised institution within the meaning of the Banking Ordinance (Cap. 155). This notwithstanding, the Code of Banking Practice endorsed by the Hong Kong Monetary Authority stipulates that authorised institutions should not charge customers extortionate interest rates. If the annualised percentage rates ("APRs") charged by them and calculated in accordance with the method set out in the relevant guidelines issued by the industry associations exceed the level which is presumed to be extortionate under the Ordinance, they should be able to justify why such high interest is not unreasonable or unfair. The Code specifies that unless justified by exceptional monetary conditions, the APRs charged should not exceed the legal limit as stated in the Ordinance.

[3] For example, the best lending rate of Hong Kong, which is one of the benchmarks that banks use to compute the rates they offer for customer loans, has decreased from the level of around 14% in 1980 at the time of introduction of the limits of the interest rates in the Ordinance, to around 5% which has remained largely intact from the period of 2009 to present.

[4] Over the years, the size of licensed money lenders has grown rapidly, from 775 in 2003, to 2 490 in 2021, representing an increase of over 200%.

[5] The CR's survey showed that in 2020, for unsecured personal loans with interest rate ranging from 37% to 48%, the average loan amount was some $32,000, with a default rate of about 7.3%; for loans with interest rate from 49% to 60%, the average loan amount was some $30,000, with a default rate of about 8.6%. The default rates of these two types of loans were both higher than that of the overall unsecured personal loans, which was around 6.9%.

lead to accumulation of debts and other social problems.

6. The Financial Services and the Treasury Bureau ("FSTB") has conducted a review of the interest rate cap, and the extortionate rate stipulated in the Ordinance. Taking into account suggestion from the Consumer Council in 2019[6], the effective interest rates adopted by the local money lending sector[7], the relevant practices of comparable jurisdictions[8] and related court judgments[9], FSTB proposes reducing the interest rate cap from 60% per annum to 48% per annum, and the extortionate rate from 48% per annum to 36% per annum.

<u>The making of the Amendment Regulation</u>

7. Schedule 3 to the Regulations ("Schedule 3") contains a summary of certain provisions of the Ordinance that must, under section 18 of the Ordinance, be included in or attached to a note or memorandum provided alongside a loan agreement, with a view to assisting the borrower to understand the relevant legal requirements concerning loans. Schedule 3 includes a summary of the provisions of sections 24 and 25 of the Ordinance, and references to the exact figures of the interest rate cap and the extortionate rate stipulated therein. In view of FSTB's plan to move the Resolution at the LegCo to amend the rates of the interest rate cap and the extortionate rate, the references to the rates in Schedule 3 should be consequentially amended.

8. Sections 24 and 25 of the Ordinance clearly set out the figures of the interest rate cap and the extortionate rate, which are well known to and easily accessible by money lenders and borrowers. The prevailing issue with the interest rates charged on loans is more about illegal lending,

---

6 The Consumer Council mentioned in its report "Money Lending – Reforming Law and Trade Practices for Consumer Protection" published in 2019 that since the Ordinance was enacted in 1980, there had not been any revision of the interest rate cap. As bank interest rates had fallen significantly since then, the interest rate cap for money lending seemed apparently not reflecting market conditions, and was higher than jurisdictions of comparable levels of development. The report recommended 48% per annum to be a more appropriate interest rate cap.

7 According to information of 20 credit card issuing banks, the normal APRs were mostly in the range of about 33% to 41% as at end-2021. Banks would charge higher for delinquent APR, in the range of about 38% to 47%.

8 For example, the interest rate cap for money lending is 48% per annum in Australia, and 4% per month in Singapore.

9 There were court rulings in certain cases that some loan agreements between money lenders and borrowers should not be executed because of the excessive interest rates charged.

and whether the interest rates are in compliance with the calculation stipulated in the Ordinance[10]. For better protection of borrowers, the Police will step up prosecution against breaches of the deceiving acts of money lenders while FSTB and other agencies will continue conducting publicity campaign on prudent borrowing. Given the summary of provisions of the Ordinance in Schedule 3 itself is not part of the law[11], we consider that the references to the figures of the interest rate cap and the extortionate rate in the Regulations can be omitted.

THE RESOLUTION AND AMENDMENT REGULATION

9. The Resolution seeks to lower the statutory interest rate cap and the extortionate rate respectively stipulated in section 24(1) and 25(3) of the Ordinance from 60% per annum to 48% per annum, and from 48% per annum to 36% per annum.

10. The Amendment Regulation shall remove direct quotes of the rates of the interest rate cap and the extortionate rate in the summary of sections 24 and 25 of the Ordinance quoted in Schedule 3 to the Regulations.

LEGISLATIVE TIMETABLE

11. The tentative legislative timetable is as follows-

<u>The Resolution</u>

Moving of a resolution in LegCo (for positive vetting)	13 July 2022
Commencement	30 December 2022 (if the proposed Resolution is passed)

[10] Detailed stipulations on how the effective rate of interest of a loan is calculated are set out in Schedule 2 of the Ordinance. We understand from the Police that out of 2 704 criminal cases in relation to debt collection in 2021, 58 (or 2.1%) were related to lending money at an excessive interest rate. The cases generally involved unlicensed money lenders.

[11] The preamble of Schedule 3 states that, “The summary is not part of the law, and reference should be made to the provisions of the Ordinance itself in case of doubt.”

The Amendment Regulation

Publication in the Gazette	17 June 2022
Tabling at LegCo (for negative vetting)	22 June 2022
Commencement	30 December 2022

IMPLICATIONS OF THE PROPOSAL

12. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the Ordinance or the Regulations. The proposal has no financial, civil service, productivity, environmental, gender or family implications, and no sustainability implications other than economic implications. As for economic implications, any impact on the local money lending sector should not be substantial given that unsecured personal loans with interest rates between 49% and 60% only form a small portion of their overall lending business in terms of the loan amount, and that money lenders and borrowers originally charged with interest rates ranging 49% and 60% can still negotiate new loan agreements under the new statutory interest rate cap.

PUBLIC CONSULTATION

13. We consulted the Legislative Council Panel on Financial Affairs (“FA Panel”) on the proposed amendments to the interest rate cap and the extortionate rate in May 2021, and members generally supported, and kept the FA Panel informed of the latest developments vide an information paper in March 2022.

14. We also issued a letter to all licensed money lenders and, through the Hong Kong Monetary Authority, to the Hong Kong Association of Banks and the DTC Association in April 2021 and June 2022, conveying the amendment proposals of the interest rate cap and the extortionate rate. Major concerns of stakeholders were the magnitude of the rate reduction, implementation timeframe, and whether access to credit by borrowers with sub-standard personal credit records would be affected. We have duly considered views of the trade in finalising the legislative amendment proposals, including making reference to the recommendation

of the Consumer Council, the effective interest rates adopted by the local money lending sector and interest rate caps of comparable jurisdictions, and have set end of this year as the implementation date. We will also continue our efforts in promoting responsible borrowing through regulatory measures and public education with a view to mitigating the risks posed by excessive borrowing to the trade, borrowers and the community at large.

PUBLICITY

15. We will issue a press release upon the passage of the resolution, and arrange a spokesperson to answer press enquiries.

ENQUIRIES

16. Any enquiries on this brief can be addressed to Mr Desmond WU, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2528 6384.

Financial Services Branch
Financial Services and the Treasury Bureau
15 June 2022

Annex A

Money Lenders Ordinance

Resolution of the Legislative Council

Resolution made and passed by the Legislative Council under sections 24 and 25 of the Money Lenders Ordinance (Cap. 163) on 2022.

Resolved that, with effect from 30 December 2022, the Money Lenders Ordinance (Cap. 163) be amended as set out in the Schedule.

Schedule

Amendments to Money Lenders Ordinance

1. Section 24 amended (prohibition of excessive interest rates)

Section 24(1)—

Repeal

"60"

Substitute

"48".

2. Section 25 amended (reopening of certain transactions)

Section 25(3)—

Repeal

"48"

Substitute

"36".

Clerk to the Legislative Council

2022

Explanatory Note

Under section 24(1) of the Money Lenders Ordinance (Cap. 163) (***Ordinance***), a person commits an offence if the person lends or offers to lend money at an effective rate of interest which exceeds the rate specified in that section (***interest rate cap***).

2. Also, under section 25(3) of the Ordinance, if the effective rate of interest under an agreement for the repayment of a loan or for the payment of interest on a loan exceeds the rate specified in that section (***extortionate rate***), the transaction is presumed to be an extortionate transaction.

3. This Resolution reduces the interest rate cap from 60% per annum to 48% per annum and the extortionate rate from 48% per annum to 36% per annum.

Annex B

Money Lenders (Amendment) Regulation 2022

(Made by the Chief Executive in Council under section 34 of the Money Lenders Ordinance (Cap. 163))

1. Commencement

This Regulation comes into operation on 30 December 2022.

2. Money Lenders Regulations amended

The Money Lenders Regulations (Cap. 163 sub. leg. A) are amended as set out in section 3.

3. Schedule 3 amended (form of summary of provisions of the Ordinance to be included in or attached to a note or memorandum of a loan agreement)

(1) Schedule 3—

Repeal

"at 60% per annum".

(2) Schedule 3—

Repeal

"48% per annum or such other rate as is fixed by the Legislative Council,"

Substitute

"the rate specified in the section".

Clerk to the Executive Council

COUNCIL CHAMBER

2022

Explanatory Note

Under section 24(1) of the Money Lenders Ordinance (Cap. 163) (***Ordinance***), a person commits an offence if the person lends or offers to lend money at an effective rate of interest which exceeds the rate specified in that section (***interest rate cap***). Under section 25(3) of the Ordinance, if the effective rate of interest under an agreement for the repayment of a loan or for the payment of interest on a loan exceeds the rate specified in that section (***extortionate rate***), the transaction is presumed to be an extortionate transaction.

2. Schedule 3 to the Money Lenders Regulations (Cap. 163 sub. leg. A) (***principal Regulations***) contains the form of a summary of the provisions of Parts III and IV of the Ordinance. Under section 18(1) of the Ordinance, a loan agreement is unenforceable if the summary is not included in or attached to a copy of a note or memorandum of the loan agreement.

3. This Regulation amends Schedule 3 to the principal Regulations so that the summary refers to the interest rate cap and the extortionate rate as respectively specified in the said sections 24(1) and 25(3).