

THE MONEY LENDERS ORDINANCE

The provisions of the Money Lenders Ordinance summarized below are important for the protection of all the parties to a loan agreement, and should be read carefully. The summary is not part of the law, and reference should be made to the provisions of the Ordinance itself in case of doubt.

Summary of Part III of the Ordinance—Money lenders transactions

Section 18 sets out the requirements relating to loans made by a money lender. Every agreement for a loan must be put into writing and signed by the borrower within 7 days of making the agreement and before the money is lent. A copy of the signed note of the agreement must be given to the borrower, with a copy of this summary, at the time of signing. The signed note must contain full details of the loan, including the terms of repayment, the form of security and the rate of interest. An agreement which does not comply with the requirements will be unenforceable, except where a court is satisfied that it would be unjust not to enforce it.

Section 19 provides that a money lender must, if requested in writing and on payment of the prescribed fee for expenses, give the original and a copy of a written statement of a borrower's current position under a loan agreement, including how much has been paid, how much is due or will be due, and the rate of interest. The borrower must endorse on the copy of the statement words to the effect that he has received the original of the written statement and return the copy as so endorsed to the money lender. The money lender must retain the copy of the statement so returned during the continuance of the agreement to which that statement relates. If the money lender does not do so he commits an offence. The money lender must also, upon a request in writing, supply a copy of any document relating to the loan or security. But a request cannot be made more than once per month. Interest is not payable for so long as the money lender, without good reason, fails to comply with any request mentioned in this paragraph.

Section 20 provides that the surety, unless he is also the borrower, must within 7 days of making the agreement be given a copy of the signed note of the agreement, a copy of the security instrument (if any) and a statement with details of the total amount payable. The money lender must also give the surety, upon request in writing at any time (but not more than once per month) a signed statement showing details of the total sum paid and remaining to be paid. The security is not enforceable for so long as the money lender, without good reason, fails to comply.

Section 21 provides that a borrower may at any time, on giving written notice, repay a loan together with interest to the date of repayment, and no higher rate of interest may be charged for early repayment. This provision, however, will not apply where the money lender is recognized, or is a member of an association recognized, by the Financial Secretary by notice in the Gazette in force under section 33A(4) of the Ordinance.

Section 22 states that a loan agreement is illegal if it provides for the payment of compound interest, or provides that a loan may not be repaid by instalments. A loan agreement is also illegal if it charges a higher rate of interest on amounts due but not paid, although it may provide for charging simple interest on that part of the principal and interest outstanding at a rate not exceeding the rate payable apart from any default. The illegal agreement may, however, be declared legal in whole or in part by a court if the court is satisfied that it would be unjust if the agreement were illegal because it did not comply with this section.

Section 23 declares that a loan agreement with a money lender and any security given for the loan will not be enforceable if the money lender was unlicensed at the time of making the agreement or taking the security. The loan agreement or security may, however, be declared enforceable in whole or in part by a court if the court is satisfied that it would be unjust if the agreement or security were unenforceable by virtue of this section.

Summary of Part IV of the Ordinance—Excessive interest rates

Section 24 fixes the maximum effective rate of interest on any loan at 60% per annum (the "effective rate" is to be calculated in accordance with the Second Schedule to the Ordinance). A loan agreement providing for a higher effective rate will be unenforceable and the lender will be liable to prosecution. This maximum rate may be changed by the Legislative Council but not so as to affect existing agreements. The section does not apply to any loan made to a company which has a paid up share capital of not less than \$1,000,000 or, in respect of any such loan, to any person who makes that loan.

Section 25 provides that where court proceedings are taken to enforce a loan agreement or security for a loan or where a borrower or surety himself applies to a court for relief, the court may look at the terms of the agreement to see whether the terms are grossly unfair or exorbitant (an effective rate of interest exceeding 48% per annum or such other rate as is fixed by the Legislative Council, may be presumed, on that ground alone, to be exorbitant), and, taking into account all the circumstances, it may alter the terms of the agreement in such a manner as to be fair to all parties. The section does not apply to any loan made to a company which has a paid up share capital of not less than \$1,000,000 or, in respect of any such loan, to any person who makes that loan.

放債人條例

以下所列的《放債人條例》條文撮要，對保障訂立貸款協議的各方均至為重要，應小心閱讀。該撮要並非法例的一部分，如有疑問，應參閱《放債人條例》有關條文。

《放債人條例》第 III 部撮要——放債人進行的交易

本條例第 18 條列出關於放債人作出貸款的規定。每份貸款協議須以書面訂立，並由借款人在該協議作出後的 7 天內及於該筆款項貸出之前簽署。在簽訂協議時，須將已簽署的一份協議摘要，連同本撮要一份給予借款人。該摘要須載有該宗貸款的詳盡細則，包括還款條款、保證形式及利率。不符合上述規定的協議不得予以強制執行，除非法庭信納不強制執行該協議並不公平。

本條例第 19 條訂定，如借款人提出書面要求及就有關開支而支付訂明費用，則放債人須將該借款人在貸款協議下當時的債務情況(包括已還款項、到期或即將到期的款項及利率)的結算書正本及副本一份給予借款人。借款人須在該結算書的副本上簽註文字，表示已經收到該結算書的正本，並將經如此簽註的該結算書副本交回該放債人。放債人則須在與該結算書有關的協議持續期間保留該份已交回的結算書副本。如放債人不照辦，即屬犯罪。如借款人提出書面要求，放債人亦須供給與該宗貸款有關或與保證有關的任何文件的副本。但上述要求，不得在一個月內提出超過一次。放債人如無充分理由而沒有遵照本段所述的要求辦理，則不得收取在該等要求沒有照辦期間的利息。

本條例第 20 條訂定，除非保證人亦是借款人，否則須在協議作出後的 7 天內，給予保證人一份已簽署的協議摘要、一份保證文書(如有的話)及詳列須支付款項總額的結算書。如保證人在任何時間提出書面要求(不得在一個月內超過一次)，放債人須給予他一份已簽署並詳列已支付款項總額及尚欠款項總額的結算書。放債人如無充分理由而沒有遵照辦理，則不得在該項要求沒有照辦期內強制執行該項保證。

本條例第 21 條訂定，借款人以書面通知後，可隨時將貸款及計算至還款日期為止的利息償還，放債人不得因借款人提早還款而徵收較高利率。放債人如是財政司根據《放債人條例》第 33A(4) 條以憲報公告認可的放債人或認可的社團的成員，則上述條文不適用。

本條例第 22 條述明，任何貸款協議如訂定須支付複利或訂定不准以分期方式償還貸款，均屬非法。此外，任何貸款協議如訂定到期而未支付的款項須收取較高利率，亦屬非法，但該協議可訂定，未償還的本金部分及利息須收取單利，但利率不得超過在沒有拖欠的情況下須支付的利率；但如法庭信納，該協議如因不符合本條規定而成為非法並不公平，則可宣布該份非法協議全部或部分合法。

本條例第 23 條述明，如放債人在訂立貸款協議時或接受貸款保證時並未領有牌照，則與該放債人訂立的貸款協議及給予他的保證不得強制執行；但如法庭信納，該協議或保證如因本條規定而不能強制執行並不公平，則可宣布該協議或保證的全部或部分可予強制執行。

《放債人條例》第 IV 部撮要——過高利率

本條例第 24 條釐定任何貸款的最高實際利率為年息 60%("實際利率"須按照本條例附表 2 計算)任何貸款協議如訂定更高的實際利率，則不得強制執行，而放債人亦可被檢控。此最高利率可由立法會予以變更，但已存在的協議則不受影響。對於向繳足股本不少於 \$1,000,000 的公司作出的貸款或作出如此貸款的人，本條並不適用。(1999 年第 23 號第 3 條)

本條例第 25 條訂定，在強制執行貸款協議或強制執行貸款保證的法庭法律程序中，或在借款人本人或保證人本人向法院申請濟助時，法庭可查察該協議的條款，以視該等條款是否極之不公平或利率過高(實際利率如超過年息 48% 或立法會所訂的其他利率，即可單憑該理由而推定該利率過高)，而法庭在顧及所有情況後，可將該協議的條款更改，使其對協議各方均公平。對於向繳足股本不少於 \$1,000,000 的公司作出的貸款或作出如此貸款的人，本條並不適用。(1999 年第 23 號第 3 條)