

CODE OF MONEY LENDING PRACTICE

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PART I - INTRODUCTION

1. Status of the Code of Practice

- 1.1 This Code of Money Lending Practice (“Code”) is issued by The Hong Kong S.A.R. Licensed Money Lenders Association Limited (“LMLA”). The Hong Kong Monetary Authority and the Companies Registry support the initiative of the LMLA in issuing the Code although the Hong Kong Monetary Authority does not have any supervisory or regulatory responsibility in respect of members of the LMLA.
- 1.2 This is a non-statutory Code issued on a voluntary basis. It is to be observed by members of the LMLA (“members”) in dealing with their personal customers. It covers specifically the money lending services. However, the principles of the Code apply to the overall relationship between members and their customers.
- 1.3 LMLA expects their members to comply with the Code.
- 1.4 The recommendations set out in this Code are supplementary to and do not supplant any relevant legislation, in particular, the Money Lenders Ordinance.
- 1.5 This Code is effective from March 18, 2002 and is subject to review and revision from time to time. Members should take active steps to comply with the Code as quickly as possible. They should achieve full compliance within 6 months of the effective date of the Code. However, a further 6 months will be allowed for compliance with those parts of the Code which require system changes.

2. Objectives

- 2.1 The Code is intended:
 - (a) to promote good money lending practices by setting out the minimum standards which members should follow in their dealings with personal customers;
 - (b) to increase transparency in the provision of money lending services so as to enhance the understanding of customers of what they can reasonably expect of the services provided by members;

- (c) to promote a fair and cordial relationship between members and their customers; and
- (d) through the above, to foster customer confidence in the money lending industry.

3. Principles

3.1 The above objectives are to be achieved:

- (a) having regard to the need for members to conduct business in accordance with prudential standards in order to preserve the stability of the money lending industry;
- (b) while striking a reasonable balance between consumer rights and efficiency of money lending operations.

4. Enquiries

4.1 Enquiries about the Code should be addressed to the LMLA. Its current address and telephone number is as follows:

The Hong Kong S.A.R. Licensed Money Lenders Association Limited
21/F., Allied Kajima Building
138 Gloucester Road
Wanchai
Hong Kong
Tel: 2827 8281
Fax: 2827 8292
Website: www.lmla.com.hk
Email: enquiry@lmla.com.hk

4.2 The Code can be viewed or downloaded from the website of LMLA. All members will make copies of the Code available to customers or advise them how to obtain copies.

PART II – RECOMMENDATIONS OF MONEY LENDING PRACTICE

Chapter 1 – Relationship between Members and Customers

5. Terms and Conditions

- 5.1 Members should make readily available to customers or prospective customers written terms and conditions of their services. Members should be prepared to answer any queries of customers or prospective customers relating to terms and conditions.
- 5.2 The terms and conditions should be available in both Chinese and English unless there is little or no demand for bilingual information. Plain language should be used to the extent that this is consistent with the need for legal certainty. Legal and technical language should only be used where necessary.
- 5.3 The terms and conditions should, where applicable, highlight the relevant interest rates (or the basis on which this will be determined), and the customers' liabilities and obligations in the use of a service.
- 5.4 In drawing up terms and conditions for the services, members should have due regard to applicable laws in Hong Kong, including, in particular, consumer protection legislation.
- 5.5 The terms and conditions should be consistent with this Code.
- 5.6 Members should advise customers to read and understand the terms and conditions applying to the service.
- 5.7 Members should give customers 30 days' notice before any variation of the terms and conditions which affects the liabilities or obligations of customers takes effect. For all other variations, members should give customers reasonable notice before such variations take effect. The notice should show clearly the variation and the ways in which the customer may indicate refusal and the consequence.
- 5.8 Where the variation involves substantial changes to existing terms and conditions or the changes are very complicated, the member should provide a written summary of the key features of the revised terms and conditions.

- 5.9 Members should issue to customers a single document to provide a consolidation of the revised terms and conditions if there are sufficient changes to warrant it.
- 5.10 A customer may refuse to accept the variation to the terms and conditions and choose to terminate the service within a reasonable period.

6. Debt Recovery Expenses

- 6.1 Any cost indemnity provision contained in the terms and conditions should only provide for the recovery of costs and expenses which are of reasonable amount and were reasonably incurred.
- 6.2 At the request of customers, members should provide a detailed breakdown of the costs and expenses for which customers are required to indemnify the member.

7. Collection, Use and Holding of Customer Information

- 7.1 Members should treat their customers' (and former customers') financial affairs as private and confidential.
- 7.2 Members should at all times comply with the Personal Data (Privacy) Ordinance ("PDPO") in the collection, use and holding of customer information. They should also comply with any relevant codes of practice issued or approved by the Privacy Commissioner for Personal Data giving practical guidance on compliance with the PDPO.
- 7.3 Members should be as specific as possible about the classes of person to whom they may wish to make disclosure of customer information and the purpose of such disclosure. Classes of person about which customers should be specifically notified include among others:
- a) debt collection agencies;
 - b) computer firms to which the processing of personal information is to be, or may be, outsourced;
 - c) credit reference agencies; and
 - d) related companies within the same group to whom customers' names and addresses may be disclosed for marketing purposes.
- 7.4 Members should not, without the prescribed consent of their customers:

- a) provide credit references in respect of a customer; or
 - b) disclose customers' names and addresses to companies which are not related companies within the same group for marketing purposes.
- 7.5 When a customer objects to the disclosure of the information referred to in paragraph 7.3(d) above or refuses to give consent referred to in paragraph 7.4(b) above, the member concerned should not refuse to provide that customer with services.
- 7.6 Where personal information is used by a member for its own marketing purposes for the first time, the member should inform the customer that the member will, without charge to the customer, cease to use the personal information if the customer so requests.
- 7.7 Members should remind customers at least once every three years or by including standard notice in their marketing materials of the right to make the request referred to in paragraph 7.6 above.
- 7.8 Where personal information is transferred to a third party service provider, for example, as part of an outsourcing arrangement, members should satisfy themselves that such information will be treated as confidential and adequately safeguarded by that service provider. Members should remain accountable to customers for any complaints arising out of the handling of customer information by service providers and should not attempt to disclaim responsibility for any breach of customer confidentiality by service providers.

8. Personal Referees

- 8.1 Members may require applicants for money lending services to provide in the application forms for such services the names and particulars of persons who have agreed to act as referees for the applicant.
- 8.2 The role of referees is confined to providing, on a voluntary basis and upon request by the member, information about the applicant in respect of the service specified in the application form. Referees have no legal or moral obligation to repay to the member the outstanding amount due by a customer unless they have entered into a formal agreement to guarantee the liabilities of that customer.
- 8.3 Members should require the applicants to confirm that they have obtained the prior consent of the referees for their names to be used. If the applicant

fails to give such confirmation, members should not approach the referees. In such cases, members should decide on their own judgment whether to continue to process the application.

- 8.4 Members should not try to recover debts, directly or indirectly, from a customer's referees, friends or family members ("third parties") who are not acting as guarantors. Related to this, members should not pass information about the third parties to their debt collection agencies. Members should not, while trying to locate the whereabouts of the customer, cause nuisance to or harass the third parties.

9. Equal Opportunity

- 9.1 Members should at all times comply with the relevant ordinances for the promotion of equal opportunity and any codes issued under these ordinances.
- 9.2 Members should not discriminate against customers with a disability and should adopt a helpful approach by making available to them services on the same terms and conditions as for other customers. Members are also encouraged to install specialized machines or software and to provide physical access to facilitate the provision of services to persons with a disability.
- 9.3 In addition to the statutory requirements, members should not discriminate against any customers simply on the ground of family status (for example, single parents), sexuality, age or race in the provision of services and in the quality and terms of services provided.
- 9.4 Members should provide suitable training to front-line staff to raise awareness of the principles and guidelines relating to equal opportunity and the provision of assistance to customers with a disability.

10. Member Marketing

- 10.1 Members should exercise care in the use of direct mail and in particular should exercise restraint and be selective:
 - a) where customers are minors; and
 - b) where promoting loans.

- 10.2 Members should ensure that all advertising and promotional materials are fair and reasonable, do not contain misleading information and comply with all relevant legislation, codes and rules.
- 10.3 In any advertising and promotional material for a service that includes a reference to an interest rate, members should also indicate the annual percentage rate of interest (APR), where relevant, and that full details of the relevant terms and conditions are available on request.
- 10.4 Members should exercise restraint in making unsolicited (that is, cold) calls to customers.

11. Annual Percentage Rates (APRs)

- 11.1 In verbal and written discussions with prospective customers concerning interest rates, members should be prepared to quote the APRs for loan products to facilitate comparison between different charging structures.
- 11.2 Members should be prepared to respond to enquiries from customers concerning APRs and the method of calculation. The method set out in the relevant legislation should be adopted in the calculation of the APR.

12. Handling Customer Complaints

- 12.1 Members should establish procedures for handling customers' complaints in a fair and speedy manner. The complaint procedures should take into account the following criteria:
 - a) transparency – the applicable procedures should be documented;
 - b) accessibility – the procedure should be easily invoked by customers; and
 - c) effectiveness – the procedures should provide for the speedy resolution of disputes in a fair and equitable manner.
- 12.2 Details on how to invoke complaint procedures should be made available to customers and other interested parties such as personal referees and guarantors so that they know what steps they should take if they wish to make a complaint.
- 12.3 Members should ensure that all their staff who deal directly with customers are made aware of the complaint procedures and are able to help customers by giving correct information about these procedures.

- 12.4 Members should send an acknowledgement to the complainant within 7 days upon receiving a written complaint (where the complaint cannot be resolved within 7 days) and a written response to the complaint within a reasonable period, normally not exceeding 30 days. Correspondence with the complainant should be sent in Chinese or English in accordance with the language of the complaint.

Chapter 2 – Loans

13. Loans

13.1 Approval of loans is subject to members' credit assessment which should take into account the applicants' ability to repay. In doing so, members may have regard to the following factors:

- a) prior knowledge of the customers' financial affairs gained from past dealings;
- b) the customer's income and expenditure;
- c) the customer's assets and liabilities;
- d) information obtained from credit reference agencies; and
- e) other relevant information supplied by the applicant.

13.2 Members should endeavour to ensure that a prospective borrower understands the principal terms and conditions of any borrowing arrangement. The following information should be provided upon application for a loan or, where relevant, in a subsequent offer:

- a) the rate of interest for the loan and whether it may be varied over the period of the loan;
- b) the basis on which interest will be determined and when it will be payable, including where relevant the APRs, and the number of days in the year (in both ordinary and leap years) that will be used for the calculation;
- c) the specified period for which the loan is available;
- d) details of terms of repayment, including where relevant the instalments payable by the customer;
- e) any overriding right to demand immediate repayment in the event of default;
- f) other significant features such as security requirements, and the borrower's right to make early repayment; and
- g) the member's right, in the event of default of the borrower, to set off any credit balance in other accounts held by the borrower (or in

a joint account of the borrower) against the amount due to the member.

- 13.3 For personal loans with a specified maturity date, members should quote the APRs for different tenors which are commonly selected by customers. Where there is more than one applicable interest rate during the loan period, members should follow the method set out in the relevant legislation and quote the effective APRs for the relevant tenors.
- 13.4 For personal loans which are revolving in nature (excluding overdrafts), members should quote the APR calculated in accordance with the method set out in the relevant legislation.
- 13.5 Where the rate of interest for a loan is based on a reference rate, for example, best lending rate, members should notify customers of any changes in the reference rate as soon as practicable, unless such changes have been widely publicized in the media.
- 13.6 Default interest rate should be expressly stated in the terms and conditions. Members should also state the circumstances where default interest would be charged and the calculation method. If customers fail to make repayments without prior agreement, members may, in accordance with the relevant terms and conditions, charge simple interest on that sum from the date of default until payment, at a rate not exceeding the normal rate under the agreement. Members should advise customers in advance of their right to charge such interest and inform customers promptly after exercising such right.
- 13.7 Members should advise customers to inform them as soon as possible of any difficulty in repaying or servicing the loan over the credit period.

14. Guarantees and Third Party Securities

- 14.1 Members should provide an individual proposing to give a guarantee or third party security (“the surety”) with a copy or summary of the contract evidencing the obligations to be guaranteed or secured.
- 14.2 Members should advise the surety:
 - (a) that by giving the guarantee or third party security, the surety might become liable instead of or as well as that other person;
 - (b) whether the guarantee or third party security includes an All Monies Clause or is unlimited as to amount and, if so, the implications of such liability (for example, that the surety will be

liable for all the actual and contingent liabilities of the borrower, whether now or in future). If this is not the case, what the limit of the liability will be;

- (c) whether the liabilities under the guarantee or the third party security are payable on demand;
 - (d) under what circumstances the surety would be called upon to honour his or her obligations;
 - (e) under what circumstances, and the timing within which, it would be possible for the surety to extinguish his or her liability to a member; and
 - (f) that if the surety is unsure of his obligations he/she should seek independent legal advice before entering into the guarantee or providing third party security.
- 14.3 Members should provide the surety with a copy of any formal demand for overdue payment that is sent to a borrower who has failed to settle the overdue amount following customary reminder.
- 14.4 Members should provide, upon request by the surety, a copy of the statement of account of the borrower.

Chapter 3 – Recovery of Loans and Advances

15. Debt Collection By Third Party Agencies

- 15.1 It is essential that debt collection agencies should act within the law, refrain from action prejudicial to the business, integrity, reputation or goodwill of the members for whom they are acting and observe a strict duty of confidentiality in respect of customer information. Members should enter into a formal, contractual relationship with their debt collection agencies which, among other things, enforces these requirements. The contract should make it clear that the relationship between the member and the debt collection agency is one of principal and agent.
- 15.2 Related to the above, members should specify, either in the contract or by means of written instructions, that their debt collection agencies must not resort to intimidation or violence, either verbal or physical, against any person in their debt recovery actions. In addition, members should require their debt collection agencies not to employ harassment or improper debt collection tactics such as the following:
- (a) Harassment tactics
 - (i) putting up posters or writing on the walls of the debtor's residence or other actions designed to humiliate the debtor publicly;
 - (ii) pestering the debtor with persistent phone calls;
 - (iii) making telephone calls at unreasonable hours; and
 - (iv) pestering the debtor's referees, family members and friends for information about the debtor's whereabouts.
 - (b) Other improper tactics
 - (i) using false names to communicate with the debtor;
 - (ii) making anonymous calls and sending unidentifiable notes to the debtor;
 - (iii) making abusive or threatening remarks to the debtor; and
 - (iv) making false or misleading representation with an intent to induce the debtor to make a payment.
- 15.3 Members and their collection agencies should not try to recover debts, directly or indirectly, from the third parties including referees, family members or friends of the debtors if these persons have not entered into a formal contractual agreement with the members to guarantee the liabilities of the debtors. Members should issue written instructions to their debt

collection agencies, or include a clause in the contract with their agencies, to this effect.

- 15.4 Members should not pass information about the third parties other than debtors or guarantors to their debt collection agencies. If the third parties are to be approached for information to help locate the debtor or guarantor, this should be done, without causing nuisance or harassment to such third parties, by staff of the member.
- 15.5 Members intending to use debt collection agencies should specify in the terms and conditions of credit facilities that they may employ third party agencies to collect overdue amounts owed by the customers. Members who reserve the right to require customers to indemnify them, in whole or in part, for the costs and expenses they incur in the debt recovery process should include a warning clause to that effect in the terms and conditions.
- 15.6 Members should remain accountable to customers for any complaints arising out of debt collection by third party agencies and should not disclaim responsibility for misconduct on the part of the debt collection agencies.
- 15.7 Members should give the customer advance written notice (sent to the last known address of the customer) of their intention to commission a debt collection agency to collect an overdue amount owed to the member. The written notice should include the following information:
 - (a) the overdue amount repayable by the customer;
 - (b) the length of time the customer has been in default;
 - (c) the contact telephone number of the member's debt recovery unit which is responsible for overseeing the collection of the customer's debt to the member;
 - (d) the extent to which the customer will be liable to reimburse the member the costs and expenses incurred in the debt recovery process (if the member requires the customer to indemnify it for such costs and expenses); and
 - (e) that the customer should in the first instance report improper debt recovery actions taken by the debt collection agency to the member.
- 15.8 Members should not engage more than one debt collection agency to pursue the same debt in one jurisdiction at the same time.

- 15.9 Members should require their debt collection agencies, when collecting debts, to identify themselves and the member for whom they are acting. Members should issue authorization documents to their debt collection agencies which should be presented to the debt for identification purposes when required to do so.
- 15.10 Members should establish effective communication with their debt collection agencies and systems for prompt updating of the agencies on the amount of repayment made by customers so that the agencies will stop immediately all recovery actions once the debts are settled in full by the customers.
- 15.11 If a customer owes several debts to more than one member that are being collected by the same debt collection agency, the customer has the right to give instructions to apply repayment to a particular debt.
- 15.12 Members should stop their debt collection activities on a debtor once they become aware that a bankruptcy order has been issued in relation to the debtor.

16. Management of Relationship with Debt Collection Agencies

- 16.1 Members should have proper systems and procedures in place for the selection of debt collection agencies and the monitoring of their performance. These systems and procedures should be subject to regular review and should consist of the following essential elements:
 - (a) a review of the background information of the debt collection agency including a company search to identify the owners and directors of the debt collection agency;
 - (b) a basic assessment of the financial soundness of the debt collection agency;
 - (c) a site visit to ascertain the business address of the debt collection agency;
 - (d) an evaluation of the operation of the debt collection agency; and
 - (e) in the case of appointing a new debt collection agency, a procedure to obtain references from at least two of the existing clients (preferably authorized institutions as defined under the Banking Ordinance) of the agency.

- 16.2 Members should encourage their debt collection agencies to aspire to the highest professional standards and, where appropriate, to invest in suitable systems and technology.
- 16.3 Debt collection agencies should not be given a free hand as to recovery procedures. Members should establish effective procedures to monitor continuously the performance of their debt collection agencies, particularly to ensure compliance with the provisions in paragraphs 15.2 and 15.3 above.
- 16.4 Members should evaluate on a regular basis whether the charges of the debt collection agencies employed by them are reasonable having regard to the prevailing market practices. They should assess the reasonableness of any charge before passing it on to the customer concerned.
- 16.5 Members should require debt collection agencies to inform customers that all telephone communication with customers will be tape recorded and the purpose of doing so, and to keep records of all other contacts with customers. Such records should include information on the agency staff making the contact; the date, time and place of contact; and a report on the contact. Both the tape and the records should be kept for a minimum of 30 days after the contact is made.
- 16.6 Members should make unscheduled visits to the agencies to inspect their professionalism, operational integrity, the involvement of suitably trained personnel and the adequacy of resources to cope with the business volumes assigned to them and to ensure agencies' compliance with their contractual undertakings.
- 16.7 Members should have established procedures to handle complaints received from debtors. They should carry out a careful and diligent inquiry into the complaint to check whether there is any misconduct on the part of the debt collection agency and whether there is any violation of the requirements contained in the Code. Members should require debt collection agencies to take appropriate remedial actions if necessary.
- 16.8 Members should maintain a register of complaints about improper actions taken by their debt collection agencies and should respond promptly to the complainants after investigation.
- 16.9 Members should not delegate authority to the debt collection agencies to institute legal proceedings against customers without the member's formal approval.

- 16.10 Members should specify in their contracts with debt collection agencies that the agencies should not sub-contract the collection of debts to any other third parties.
- 16.11 Where members are aware that their debt collection agencies perform similar functions for other members, the sharing of information as to their performance, approach, attitude, behaviour etc. is encouraged.
- 16.12 Members should bring apparently illegal behaviour by debt collection agencies to the attention of the Police. Members should also consider whether to terminate the relationship with a debt collection agency if they are aware of unacceptable practices of that agency or breaches of its contractual undertakings.

Useful Definitions

These definitions explain the meaning of words and terms used in the Code. They are not precise legal or technical definitions.

Credit References –

A credit reference is an opinion about a particular customer's ability to enter into or repay a financial commitment. It is given by a member, to an enquirer, with the prescribed consent of the customer concerned. Typically, the reference will cover information confirming that an account is held and how long for. It indicates the customer's financial position but is not intended to be conclusive proof of the customer's position.

Credit References Agencies –

Any data user who carries on a business of compiling and disseminating personal information, of a factual nature, about the credit history of individuals, whether or not that business is the sole or principal activity of that data user.

Day -

Day means calendar day if not otherwise specified.

Guarantee –

An undertaking by a person called the guarantor promising to pay the debts of another person if that other person fails to do so.

Members –

Members of the Hong Kong S.A.R. Licensed Money Lenders Association Limited.

Personal Customers –

A private individual who maintains an account (including a joint account with another private individual or an account held as an executor or trustee, but excluding the accounts of sole traders, partnerships, companies, clubs and societies) or who receives other services from a member.

Prescribed Consent –

Express consent of a customer given voluntarily.

Promotional Material –

Any literature or information which is designed to help sell a product or service to a customer. This does not include information relating to service enhancements and changes to customers' existing accounts which need to be sent to the customers to meet legislative and regulative requirements or which may be sent where it is in the interest of customers.

Related Companies –

This refers to a member's subsidiary, holding company or a subsidiary of the holding company.

Security –

A word used to describe the pledging of assets, such as properties, life policies and shares to members as support for loans granted to customers. If the loans are not repaid the member's position is "secured" which means that it can sell the assets to meet the amount outstanding on the loan.

Third Party Security –

Security provided by a person who is not the borrower.