

Bitquant Research Laboratories (Asia) Limited (''BRLAL'') is a financial research laboratory. We are developing financing mechanisms for start ups and small high technology firms in Hong Kong.

The managing director for BRLAL is Dr. Joseph Wang. Dr. Wang has a Ph.D. in computational astrophysics from the University of Texas at Austin and a Bachelors of Science in physics from the Massachusetts Institute of Technology. His work experience includes over two decade of software development in both large and small companies, as well as six years of experience at JPMorgan in both Hong Kong and New York City. He was an employee at JPMorgan at the time of the 2008 financial crisis, and is extremely proud and honoured to have played a small role in preventing complete and total global financial catastrophe. His work experience in startup technology companies has given him vast experience in the financing needs of startup companies, and his experience at JPMorgan has given him essential experience on how financial systems can be used to aid or hinder economic growth. A resume containing Dr. Wang's work and education experience has been provided to the Hong Kong Police (see Document C.2)

As a person with experience in financial technology, the applicant wishes to develop Hong Kong as a financial technology center and believes that as a matter of business strategy, that a Money Lending License is important for his efforts to develop startups and blockchain technology. The Basic Law places certain obligations on the Hong Kong government, and BRLAL is acting in ways to assist the Hong Kong government to carry out its obligations under the Basic Law.

Article 109

The Government of the Hong Kong Special Administrative Region shall provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial centre.

Article 118

The Government of the Hong Kong Special Administrative Region shall provide an economic and legal environment for encouraging investments, technological progress and the development of new industries.

We note that the Hong Kong government has placed a high priority on the development of financial technology, startups, and blockchain technology. On 24 February 2016, Financial Secretary John Tsang stated in a budget speech before Legco.

63. Government will encourage the industry and relevant organisations to explore the application of "Blockchain" technology in the financial services industry, with a view to developing its potential to reduce suspicious transactions and bring down transaction costs. The Cyberport will provide training to the industry through its incubation programme to promote relevant technologies for developing more services and products.

BRLAL has found it necessary to apply for a license in order to conduct these activities. In order to develop financial technology such as blockchain appropriate for money lending in Hong Kong, BRLAL has found through its experience that it must engage in the business of money lending. Although BRLAL has attempted to conduct business solely through exempt lending, it has found that this is unsatisfactory, and BRLAL must have a license to enable it to carry out its business objectives.

THE POLICE HAVE OBJECTED TO A LICENSE ON THE GROUNDS THAT DR. WANG IS NOT A FIT AND PROPER PERSON

On 9 May 2015, the Commissioner of Police received an application for a money lenders license from BRLAL for a money lending license. This application was followed by a long series of objections and correspondence relating to this license. The most recent objection letter was dated 17 February 2016 (see

Document A.1) , in which the Commissioner of Police issued an objection to the application of BRLAL for a money lending license on the grounds that the applicant and the persons associated with the company were not fit and proper persons. The substance of the objection was

The fact in support of the objection is that you could not produce sufficient documentation to prove that you have sufficient qualification and relevant experience in money lending business. In such circumstances, the Commissioner is not satisfied that you are a fit and proper person for the carrying of the money lending business.

The applicant argues that the Commissioner of Police has misinterpreted the meaning of "fit and proper" in the statute and asserts that meaning of "fit and proper" which is required by legislative intent, by case law, and by the Basic Law relates to the character and reputation of the applicant and the likelihood that the applicant will engage in criminal, abusive, exploitative, fraudulent or otherwise anti-social behavior, and not to the applicant's qualifications and relevant experience. The applicant further argues that the documentation which has been provided to the Police are clearly sufficient to establish the applicant's good character and reputation.

We will demonstrate that the Commissioner's interpretation of the statute cannot be sustained as a matter of law, and in using the correct interpretation, that documents that have been provided to the police are sufficient to demonstrate that the applicant is a person of good character who is unlikely to engage in behaviour which is contrary to the public interest and should be granted a license notwithstanding the objection of the Police.

THE FACT THAT THE BURDEN OF PROOF IS ON THE APPLICANT TO SHOW THAT HE IS FIT AND PROPER DOES NOT REMOVE THE NEED FOR THE GOVERNMENT TO PRESENT A CASE

The government cites the case Lo Kwai Ying versus Attorney General HCMP002721/1989 to argue that the burden of proof is on the applicant for demonstrating that they are a fit and proper person for conducting money lending. The applicant agrees that statute and the applicable case law clearly places the burden of proof on the applicant demonstrate that he is a fit and proper person, and were the applicant to provide no evidence supporting that he is a fit and proper person to conduct money lending then surely the government should prevail with their objection.

However, the fact that the burden of proof is on the applicant to show that he is a fit and proper person does not remove the obligation of the government to present a case. In Lo Kwai Ying, the licensing tribunal stated and the Supreme Court affirmed that the standard to be used in judging whether an applicant is a fit and proper person is the civil standard of balance of probabilities. This means that should the applicant provide evidence that he is a fit and proper person, that the government must provide equal or more convincing evidence that he is not in order to prevail. If the applicant provides clear evidence that he is a fit and proper person and the government provides no evidence at all, then under the standard of Lo Kwai Ying, the court should find for the applicant.

In addition, although the burden of proof that the applicant is indeed a "fit and proper" person is on applicant, if the government asserts a specific meaning of "fit and proper" that places restrictions on personal freedoms guaranteed by the Basic Law, we shall argue on the basis of R v Oakes [1986] 1 S.C.R. 103 that the burden of proof that their interpretation of "fit and proper" passes constitutional muster is on the government.

THE TERM FIT AND PROPER DEPENDS ON THE CONTEXT AND SHOULD BE DETERMINED BY STATUTORY CONSTRUCTION AND REFERENCE TO LEGISLATIVE INTENT, CASE LAW, AND THE BASIC LAW

In this situation there are no substantive disputes over fact, and the key dispute is one of statutory interpretation. Specifically the applicant disputes

the government's interpretation of the meaning of the term "fit and proper" in the Money Lending Ordinance. We begin by noting that under common law, the term "fit and proper" has no precise meaning and takes its meaning entirely from context. In the case of *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 per Toohey J and Gaudron J at 380, the High Court of Australia stated:

The expression "fit and proper person", standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of "fit and proper" cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

Therefore, in order to determine whether the applicant is a fit and proper person we must find the meaning of fit and proper within the conduct of the Money Lending Ordinance with the understanding that the meaning within this ordinance may be entirely different from the meaning on other ordinances. To determine the meaning of a term within an ordinance we may do so by looking at the legislative intent of the ordinance, by looking at the applicable case law, and by looking at constitutional norms. We argue that in using these three approaches, that we find a clear and consistent meaning for the term "fit and proper" under which the applicant clearly qualifies.

#### THE LEGISLATIVE INTENT OF THE MONEY LENDING ORDINANCE WAS TO PREVENT LOAN SHARKING WITHOUT ADVERSELY IMPACTING LEGITIMATE BUSINESS

The starting point for determining the interpretation of an ordinance is the Interpretations Ordinance. Section 19 of the ordinance states that

An Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit.

This section then directs us to understand the meaning of "fit and proper" within the Money Lending Ordinance by understanding the object and intentions of the Ordinance. In the current situation the object and intentions of the Ordinance are very clear from the legislative history of the Money Lending Ordinance. Upon the second reading of the bill in 1980, the Attorney-General of Hong Kong stated in Hansard 28 May 1980 p. 847 (see Document F.1):

The object of this Bill is to provide a framework within which to tackle the problem of 'loansharking' in Hong Kong. The present Money Lenders Ordinance, Chapter 163, provides no control whatsoever over the type of people who engage in money lending. It is based on the (United Kingdom) Money Lenders Act 1900 which has been superseded by the Money Lenders Act 1927 and the Consumer Credit Act 1974. The updating of the legislation here in Hong Kong is long overdue, and especially is this so in view of the serious social problems which I know arise from loansharking. It is well known for instance that a number of loanshark firms are in fact run by triad societies, that grossly excessive interest rates are very frequently charged—experience shows that between 100% and 340% or 350% per annum is the norm, and cases have come to light of people being charged up to 1,400% per annum. Terms are introduced into these loan agreements which, taken together with the interest rates to which I refer, in fact mean that the borrower in practice can never repay the sum lent, so that he presents as it were a permanent

meal-ticket to the lender and the borrower may by reason of that remain under the control of the lender in other ways too. It is well known and recognized I think that unacceptable and often criminal methods of enforcing payment by physical violence are not uncommon—and indeed I have learned of one case where fear drove a married woman into prostitution under the control of the loanshark in a desperate attempt to repay what her husband had borrowed.

The Attorney-General continued:

At the same time it must be recognized that reputable money lending fulfills a very necessary social need—and I wish to stress that there are many reputable companies operating in the field of unsecured personal loans, and it is very important that these companies are not hindered or interfered with in their proper and respectable business. So my aim in the design and drafting of this legislation has been to provide a framework of law which will allow the present power of the loansharks to be broken but which would at the same time permit reputable money lenders to carry on their business without unnecessarily onerous or burdensome controls.

Following the statement of the objectives of the Ordinance, the Attorney-General continued by describing specifically how the framework of the Ordinance was designed to stop abusive, criminal, and exploitative practices without creating any burdens on legitimate money lending (see Document F.1). During the debates on the Money Lending Ordinance on 25 June 1980 (see Documents F.2 and F.3), there was agreement among the unofficial members that the goal of the Ordinance was to stamp out loan sharking without affecting legitimate businesses. In response to comments on the bill, the Attorney-General agreed to an additional series of amendments (see Document F.3) to reduce the possible inconvenience to other reputable businesses. In proposing these amendments, the Attorney-General specifically stated (p. 950):

Sir, it is not the intention of this Bill to inconvenience more than absolutely necessary anyone, and still less to harm the honest business in any way.

The objective of preventing loan sharking while allowing genuine commercial transactions to be conducted free from governmental interference is reinforced by subsequent statements made at the time of the second reading of amendments that were passed in 1988 (see Document F.4)

The Money Lenders Ordinance was enacted in 1980 principally to curb loansharking. It provides a framework for the licensing of money lenders, the control of money lending transactions, and the prohibition of excessive interest rates. In the operation of the Ordinance over the years, a number of weaknesses has emerged. Experience has also shown that certain genuine commercial transactions have been caught even though they were not intended to be, and indeed, ought not to be, caught by the provisions of the Ordinance. The purpose of this Bill is to remedy these problems.

From these statements, it is clear that purpose of this Ordinance is to combat loan-sharking, exploitative personal lending, and to prevent criminal and abusive activity. However, but that an important objective of the the Money Lending Ordinance is to protect the operations of legitimate and honest money lenders, and to create a regulatory structure that does not harm the business operations of legitimate businesses.

Based on these two objectives, a decision must me made. Is an applicant likely to be a loan shark, and likely to engage in exploitative, abusive, and criminal activities, or is the person likely to be an honest and reputable business person, in which case the the intent of the legislature was that the business remain unhindered by the Money Lending Ordinance. The license process was specifically designed to make this determination.

It is clear from the statements made at the time of the passage of the ordinance, that the licensing process was designed for the sole and specific purpose of eliminating criminal, anti-social, and otherwise abusive behavior, and that the legislature specifically intended that the statute not impact businesses that were not engaged in loan sharking. It is the applicant's position that "fit and proper" refers solely to the likelihood that the applicant will engage in loan sharking, and that expanding the definition of "fit and proper" goes against the legislative intent of the statute. As such it is the applicant's position that the meaning of "fit and proper" within the Ordinance pertains to the applicant's good character and reputation and not to his qualifications and relevant experience.

#### CASE LAW ILLUSTRATES THE BEHAVIOUR WHICH THE MONEY LENDING ORDINANCE WAS INTENDED TO COMBAT

The intent and object of the Money Lending Ordinance can further be illustrated by the applicable case law. The case of Lo Kwai Ying versus Attorney General which illustrates the type of activities that the Money Lending Ordinance was designed to combat. The applicant in that case had been arrested for common assault against a borrower, and had a criminal history of bookmaking. Their place of business had been raided by the Anti-Triad Units of the Hong Kong Police, and the documents seized by the police showed clearly that the applicant in that case were issuing loans that had charged illegal interest rates.

This case illustrates the type of person which the Money Lending Ordinance was designed to prevent from engaging in business, and it is position of the applicant that in determining whether current applicant is a "fit and proper" person to engage in money lending, that the Licensing Court should focus on whether the current applicant is or is not likely to engage in behaviour that is similar to that of the applicant in the Lo Kwai Ying case. If the court believes that the applicant is unlikely to engage in the type of behaviour that was typical of the applicant in that case, we believe that it was the intent of the legislature that the applicant be granted a license.

#### THE BASIC LAW REINFORCES THE NOTION THAT REPUTABLE BUSINESSES BE ALLOWED TO CONDUCT ACTIVITIES UNHINDERED

One final approach to understanding the meaning of "fit and proper" within the Money Lending Ordinance is to view the ordinance within the framework of the constitutional norms of the Hong Kong Special Administrative Region.

##### Article 5

The socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years.

##### Article 11

In accordance with Article 31 of the Constitution of the People's Republic of China, the systems and policies practised in the Hong Kong Special Administrative Region, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of this Law.

No law enacted by the legislature of the Hong Kong Special Administrative Region shall contravene this Law.

The capitalist system practiced within the Hong Kong Special Administrative Region is an integral part of "one country, two systems" and legislative debates surrounding the the Money Lending Ordinance provides an example of the system which the Basic Law was intended to protect. The role of the government within the capitalist system of the HKSAR is not to make fundamental economic decisions, but to allow those decisions to be made by non-governmental mechanisms such as the market. The government only intervenes when there is a

social ill which must be addressed and intervenes only to the degree necessary to eliminate this social ill.

In order to preserve the capitalist system, the Basic Law contains a set of legal safeguards which amplify and reinforce the legislative objectives of the Money Lending Ordinance, and prohibits the government from using the Money Lending Ordinance in ways that were outside of the intent of the legislature. We believe that these considerations are important in understanding the meaning of "fit and proper" within the Money Lending Ordinance.

THE BASIC LAW REQUIRES THAT RESTRICTIONS ON THE FREE OPERATION OF FINANCIAL BUSINESS AND FINANCIAL MARKETS BE GROUNDED IN LAW

Under Article 110,

The Government of the Hong Kong Special Administrative Region shall, on its own, formulate monetary and financial policies, safeguard the free operation of financial business and financial markets, and regulate and supervise them in accordance with law.

The definition of law is found in Article 8 of the Basic Law

The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region.

In the case *Leung Kwok Hung and Another v. HKSAR* (2006) HKCFI 123, the Court of First Instance ruled that the Basic Law Article 30 requirement that freedom and privacy of communication of Hong Kong residents be protected by law required that surveillance be authorized by legislation and it was improper to conduct surveillance in the absence of legislative authority. In view of the pressing social need for the government to have powers of surveillance to combat crime, the court suspended its finding of unconstitutionality for a limited period to allow the legislature to pass a law placing police surveillance on firm legal foundation, which the legislature subsequently did.

The applicant asserts that the similar language in Article 110 requires that any restrictions on the free operation of financial business and financial markets must be grounded on the law, which is to say the common law, rules of equity, ordinances, subordinate legislation and customary law subject to amendment by the Legislative Council.

In this case, the only basis that has been advanced for denying a license on the basis of "relevant qualifications and experience" is the "fit and proper" condition of the Money Lending Ordinance. However, we have demonstrated that the Money Lending Ordinance was intended solely to combat criminal and abusive activity among money lenders, and that the legislature specifically intended that persons not involved in these activities to be unaffected by the legislation. As there is no legal foundation for an objection on the basis of "relevant qualifications and experience" within the Money Lending Ordinance, and for the government to sustain its objection, it must show some alternative legal basis for the objection.

We note that the role of the Hong Kong Police in the Money Lending Ordinance is solely that of investigation and objection, and the Ordinance does not give the Police or any other agency of the Hong Kong government authority to create subordinate legislation or to enforce standards of practice in the field of money lending. We believe that this was intentional and illustrates legislative intent that the Money Lending Ordinance be used only to combat loan sharking, and that the legislature intended the Police to engage only in investigation and not rule making.

The applicant argues that as a matter of law, without additional legal



foundation it would be improper for the Licensing Court to consider whether the applicant has the relevant qualifications and experience to conduct money lending, and should as a matter of law confine itself to the question of whether the applicant is of good character and whether the is likely to engage in loan sharking if granted a license. The writers of the Money Lending Ordinance expressed a clear intention that the licensing process be used only as a means of combating loan sharking, and to use the this ordinance to restrict businesses in other ways would be improper.

THE BASIC LAW REQUIRES THAT RESTRICTIONS ON PERSONAL FREEDOM ARE PERMITTED ONLY IF THERE IS A LEGITIMATE PUBLIC GOAL

In addition to requiring that restrictions on the free operation of financial business and financial markets have proper legal foundation, the Basic Law gives residents of Hong Kong the fundamental freedom to choose their occupation and places a duty on the Hong Kong government to safeguard the free movement of goods, intangible assets and capital.

Article 33

Hong Kong residents shall have freedom of choice of occupation.

Article 115

The Hong Kong Special Administrative Region shall pursue the policy of free trade and safeguard the free movement of goods, intangible assets and capital.

The standard used by Hong Kong courts in determining whether a restriction in freedom is justified is the test used in the the Canadian Supreme Court case *R v Oakes* [1986] 1 S.C.R. 103

First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair "as little as possible" the right or freedom in question. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance".

The *Oakes* test was incorporated into Hong Kong case law by the decision *R. v. Sin Yau Ming* [1991] HKCA 86 and has been used in numerous cases in Hong Kong (see *HKSAR v. Ng Kung Sig and Another* (1999) 2 HKCFAR 442 at para 60; *Leung Kwok Hung and Others v. HKSAR* (2005) 8 HKCFAR 229 at para 60; *Ming Pao Newspapers Ltd v. Attorney-General of Hong Kong* [1996] AC 907 at para 15). It is well established that in determining whether an action is permissible under the Basic Law that the courts should balance the right of the individual versus the needs of society and to restrict a freedom only to the degree necessary to achieve a legitimate social purpose

The elimination of loan sharking is certainly a legitimate social purpose, and it is definitely within the power of the Hong Kong legislature to pass legislation to combat these activities. It is also clear that the legislature took extreme care in crafting the ordinance to restrict the freedom of choice of occupation and the free flow of capital in the minimum possible manner. As such, so long as the Ordinance is used in the matter intended by the legislature to combat loan sharking, there is no conflict with the Basic Law Articles 33 and 115.

The applicant also believes that if the legislature were to determine that additional social objectives such as the lack of qualifications and relevant experience were a social issue, that it would be well within the power of the legislature to address this issue. In cases such as *Fok Chun Wa and Another v. The Hospital Authority and Another* [2010] HKCA 136, the Hong Kong courts have

deferred to the judgment of the legislature and of executive bodies acting under legislative authority to achieve a balance between the rights of the individual and the needs of society.

However, in this case it is the applicant that is interpreting the statute consistently with the balance envisioned by legislature, and the government which is acting in conflict with the balance intended by the legislature. In the legislative history of the Money Lending Ordinance, the legislature specifically identified the existence of loan sharking as the social ill to be addressed, and specifically stated its intention not to add additional burdens for reputable and honest businesses. In passing and amending the Money Lending Ordinance, there is no evidence in the legislative history that the legislature considered a lack of qualifications or experience to be a social ill requiring redress. On the contrary, the legislature specifically stated that the Money Lending Ordinance was not intended to affect honest and reputable business people, regardless of their qualifications or experience.

In the current application, the government are seeking restrictions on money lending that are far beyond the legislative intent of the statute. As they are seeking a restriction on freedoms, the Oakes test requires the government to justify that these restrictions are necessary to achieve some legitimate objective (see *R v Oakes* [1986] 1 S.C.R. 103 para 66)

The government has presented no evidence that either the legislature or any agency of the Hong Kong government has ever considered that having money lenders without proper experience or qualifications is a social problem that as a matter of public policy must be addressed. They have also presented no evidence that a single member of the general public has ever been harmed by an money lender with inadequate experience or qualifications, or even a hypothetical scenario by which inadequate experience or qualifications would harm the general public.

Indeed, we would indeed assert that there is no rational basis to believe that there is any public policy benefit or rationale for licensing money lenders on the basis of qualifications. We note that as money lenders provide money to the general public rather than receive funds from them, that the business failure of a money lending company would not expose the public to risk, and that as money lenders keep their deposits funds in banks, that there is no danger of systemic risk. The legislature has considered these factors and has determined that the only risk in money lending that they consider necessary for regulation is the possibility of abusive and criminal activity.

The applicant asserts that the use of the statute to regulate an activity that has not been demonstrated to cause social harm against the express intent of the legislature constitutes an impermissible restriction on the freedom of choice of occupation and the free movement of capital. Because neither the government or the legislature has even argued much less demonstrated that there is social interest or benefit in regulating the qualifications of money lenders, the applicant asserts on the basis of the principle of proportionality that using the Money Lending Ordinance to regulate qualifications is an impermissible use of the statute and conflicts with Articles 33 and 115 of the Basic Law, and that Article 33 and 115 in conjunction with the stated intention of the legislature allows the licensing mechanism of the statute to be used only to combat activities associated with loan sharking. The consequence of this restriction is that the meaning of "fit and proper" is an issue of character and not of qualifications, and that the License Court should confine itself to the question of whether the applicant is of good character.

THE GOVERNMENT'S INTERPRETATION OF FIT AND PROPER IS NOT ONLY INCONSISTENT WITH THE INTENT OF THE STATUTE, CASE LAW, AND WITH THE BASIC LAW BUT SHOULD BE REJECTED ON EFFICIENCY GROUNDS

In the objection letter the government stated that the applicant has failed to



demonstrate the relevant qualifications and experience. We have argue that this is an incorrect interpretation of the term "fit and proper" in the Money Lending Ordinance, and that expanding the definition of fit and proper to include relevant qualifications and experience is inconsistent with the intent of the statute and conflicts with the Basic Law. We shall now argue that their definition should also be rejected on the basis of judicial and administrative efficiency.

We note that the length of time that this matter has taken illustrates that the government has a fundamental misunderstanding of the meaning of "fit and proper." It was explicitly stated that the goal of the statute was to allow "reputable money lenders to carry on their business without unnecessarily onerous or burdensome controls". Were the government to confine themselves to the question of whether the applicant is likely to involved in criminal or anti-social behaviour should he receive a license, then the applicant believes that this matter would have been resolved very quickly and would have been a routine administrative matter.

The very fact that this matter has taken nearly a year, and consumed massive amounts of time and resources on the part of the courts, the police, and the applicant is a consequence of the government using the mechanism in the Money Lending Ordinance to regulate matters that the legislature specifically intended not to be regulated by the Money Lending Ordinance. As such we believe that this is a strong indication that they have expanded the definition "fit and proper" far beyond what the legislature intended and what is allowed by case law and the Basic Law, but also illustrates that their interpretation of the law should be rejected not only on the basis of law but on public policy grounds.

We believe that were the court to sustain this objection, that this would further the problems that have resulted from the government's misapplication of the statute. Under the terms Section 11(2) any person can issue an objection provided they do so in a timely manner. Under Section 11(5) objections from private individuals are to be treated in the same manner as those from the government. This section is vital for the use of the ordinance to combat abusive behavior and loan sharking, as it allows people to object to money lenders who have engaged in objectionable behaviour which is not known to the police.

If the court were to sustain this objection, they would provide a mechanism by which anyone who has an interest in delaying a license issuance could issue an objection on the basis of experience and qualifications. This would force the License Court would be forced to develop standards for experience and qualifications for money lenders, and we believe that this is contrary to the the intention of the legislature in passing this ordinance.

This case has consumed massive amounts of precious time and energy on the part of the applicant, the government, and the courts, and we strongly believe that the limited resources available to the government and the courts would best be spent at being directed to combat loan sharking rather than in regulating things that the Money Lending Ordinance was not intended to regulate. The Money Lending Ordinance is a specific tool that is intended for a specific purpose, the prevention of loan sharking, and using that tool for other unrelated purposes makes it less effective at its original purpose.

If the legislature believes that the lack of relevant experience and qualifications is a pressing social problem, then by law and public policy it must create a new system for addressing those issues. The current Money Lending Ordinance is not and should not be the proper mechanism to address issue outside those envisioned by the authors of the legislation and using it for unintended purposes would make it less effective at its intended purpose.

THE COURT SHOULD DETERMINE WHETHER THE APPLICANT WILL BECOME A LOAN SHARK OR AN HONEST BUSINESSMAN

Once we see that the objective of the Money Lending Ordinance is to prevent loan sharking while allowing proper and respectable businesses to conduct business free from excessive government interference, then the meaning of "fit and proper" becomes clear. To determine whether a person is "fit and proper" to conduct money lending, one must consider whether or not he is likely to engage in criminal or abusive behavior typical of loan sharks in which case he should be barred from money lending, or whether he is likely to run proper and respectable business in which case he should not only be allowed to run a business, but should do so with minimal governmental interference.

For the purpose of this statute, the criterion determining fitness is to determine whether or not an applicant is likely to engage in loan sharking. To place additional restrictions on an applicant beyond what is required to insure that loan sharking does not take place goes against the spirit and objectives of the ordinance and interferes in the right to choose one's occupation, the free operation of financial business and financial markets and the free movement of capital in contravention of the Basic Law.

On the basis of the arguments we have presented, we believe that the issue before the court is a simple one. If granted a license will the applicant will he run his business as a loan shark or run his business as an honest and reputable business man?

If the court concludes that the applicant will be an honest and reputable business man and not a loan shark, it is the intention of the legislature that he should be allowed to carry on his business without unnecessarily onerous or burdensome controls.

We now present evidence that, if granted a license, that the applicant will run his business as an honest and reputable business man and not a loan shark.

THE DOCUMENTARY EVIDENCE SHOWS CLEARLY THAT THE APPLICANT IS A PERSON OF GOOD CHARACTER AND IS UNLIKELY TO ENGAGE IN CRIMINAL, ANTI-SOCIAL, OR ABUSIVE BEHAVIOR

As we have mentioned earlier, the only issue which we believe is proper for the Licensing Court to adjudicate is the character of the applicant, and the likelihood that he would behave in a criminal or anti-social manner associated with loan sharking if granted a license. We have provided documentation to the Hong Kong Police showing the applicant's efforts at promoting financial technology in Hong Kong and helping to create a technology ecosystem for Hong Kong. These are the activities of a reputable businessman interested in honest trade, and not those of a gangster or con artist interested in exploiting clients.

To establish the good character of the applicant, we first note that the applicant has provided voluminous documentation to the Hong Kong Police and has attempted to aid their investigation by any means possible. According to the statement by investigating police constable (see Document B.3), the applicant has no criminal record and the government has stated no criminal, moral, or character reasons to deny a license.

We note that the Hong Kong Police have had adequate time and opportunity to examine the documents and statements provided by the applicant and have found no misstatements or inaccuracies. We note that most of these documents have been in the possession of the police for several months, and the Hong Kong Police has had more than enough time to investigate the authenticity and veracity of the documents should this be an issue. We also note that if there are any material misstatements in the documentary evidence, that this would be sufficient to deny the license on the grounds of bad character, and that the Police have asserted no such issues.

We next examine his academic and employment history, which was provided to the Hong Kong Police on 3 June 2015 (see Document C.2). We are presenting this

information not to demonstrate qualifications and experience, but rather to illustrate that the applicant is a person of good character and has been associated with reputable institutions. Dr. Wang has spent his life in reputable universities, small technology companies, and investment banks, and not in degree mills, brothels or illegal gambling dens. He has spent his time researching ways of helping small businesses owners through advanced technologies and not in seeking ways to assault, exploit or threaten them.

In addition, we would present the following documents that were presented to the Hong Kong Police on 12 June 2015 (see Document C.5). These documents clearly show that the applicant is a publicly spirited individual devoted to working for the public good, and not a person who is likely to be associated with criminal or anti-social activities.

- he has been involved in round table discussions with government officials to promote trade and investment in Hong Kong (Document C.6)
- he has worked with agencies of the Hong Kong government to promote trade and economic cooperation between Hong Kong and Texas (Document C.7)
- he has been involved with discussions with senior government officials in Hong Kong to promote startup industries (Document C.8)

In addition to working with the Hong Kong government, the documents that were provided on 12 June 2015 show that Dr. Wang's professional associates have been reputable people who are active in the field of technology.

- he was asked to give the keynote address at the launch of the Hong Kong Computer Society Financial Technologies Special Interest Group (FTSIG) on 29 January 2015 (Document C.9)
- he was a member of a panel on financial startup companies in Hong Kong sponsored by TiE Hong Kong and co-sponsored by the global accounting firm KPMG on 26 March 2015 (Document C.10)
- he gave a lecture on the impact of bitcoin on small businesses in Hong Kong for the Technology Committee of the Canadian Chamber of Commerce on 4 June 2014 (Document C.11)
- he gave a lecture on the use of smart contracts at the Tuspark HK Innovation Hub on 29 June 2015 (Document C.12)
- he has spoken on panels involving the use of digital currency in Hong Kong and on the use of bitcoin for investment purposes (Document C.13)

In addition to the above, the applicant provided the Hong Kong Police on 12 June 2015, with documentation showing that he is member of the Hong Kong Business Angels Network, a member of TiE Hong Kong, and the HKUST Venture Mentor Service Program. The applicant spends much of his time mentoring the youth of Hong Kong to help them start their own businesses, and considers receiving a Money Lending License to be important in these efforts.

The applicant considers the development of a strong financial technology industry to be of vital importance to the economic future of Hong Kong. As such, he has continued to be active in promoting financial technology in Hong Kong. There is therefore additional documentation on his activities, which are relevant the question of his good character which were provided to the Hong Kong Police on 14 January 2016.

- he has been asked to serve on a panel to advise the Hong Kong Legislative Council on Fintech policy (Documents D.1 and D.2)
- he has taught a continuing education course before the Hong Kong Academy of Law on smart contracts and blockchain technology (Document D.3)
- he has been on a panel sponsored by a major investment bank on smart contracts and blockchain technology (Document D.4)
- he has been on a panel in trade discussing Blockchain technology (Document D.5)
- he has given guest lectures at the Hong Kong University of Science and Technology (Document D.6)
- as an alumni of MIT, he is helping to promote the Innovation Node

- project of MIT in Hong Kong (Document D.7 and D.8)

The applicant is also respected by other members of the license money lending community who have written letters of reference in support of his application (Document E.1 and E.2) which have been provided to the Hong Kong Police.

THE APPLICANT IS A PERSON OF GOOD CHARACTER AND IS LIKELY TO RUN HIS BUSINESS IN AN HONEST AND REPUTABLE FASHION, HE SHOULD THEREFORE BE GRANTED A LICENSE NOTWITHSTANDING THE OBJECTIONS OF THE GOVERNMENT

Although we believe that the applicant has the relevant experience and qualifications to conduct money lending, we believe that the legislature intended that the Licensing Court not make determinations as to whether the applicant has relevant experience and qualifications, and that as a matter of law the court should not attempt to make this determination. Rather, we believe that the purpose of the Money Lending Ordinance was to have the Licensing Court determine whether the applicant is a person of good character and the likelihood that the applicant will engage in criminal, abusive, exploitative behaviour typical of loan sharks.

We believe that the available documentation shows that the applicant is a person of good character who is deeply committed to the well being of his potential clients and that of the general community. His associates and activities are those of a honest and reputable academic and business person who genuinely wishes to conduct his business in a manner that serves the interests of the public. There is no reason to believe that the applicant is or will be involved in criminal or other anti-social behavior or any reason to believe that he will engage in abusive or exploitative lending.

We close by repeating the words of the Attorney-General on 25 June 1980 (see Document F.3) "Sir, it is not the intention of this Bill to inconvenience more than absolutely necessary anyone, and still less to harm the honest businessman in any way." We believe that we have established that the applicant is an honest businessman, and as such he should not be hindered from conducting his business by the Money Lending Ordinance.

We therefore respectfully ask that the Licensing Court grant the license notwithstanding the objections of the government.