

**TERM OF SUMMARY OF PROVISIONS OF THE ORDINANCE
TO BE INCLUDED IN OR ATTACHED TO A NOTE OR
MEMORANDUM OF A LOAN AGREEMENT**

**附於或載於借約提要書或
備忘錄的放債人條例摘要**

THE MONEY LENDERS ORDINANCE

放債人條例

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.

下開的放債人條例摘要，對保障簽訂借約的各方均屬重要，故須小心閱讀。該摘要並非法例的一部份，如有疑難之處，可參閱放債人條例的有關條文。

Summary of Part III of the Ordinance – Money lenders transactions

放債人條例第 III 部摘要 – 放債人所進行的交易

Section 18 sets out the requirements relating to loans made by a money lender. Every agreement for a loan must be in 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.

第 18 條列載有關放債人所貸款項的規定。凡借約均須以書面訂立，由借款人於訂立借約後七日內簽署，並須在款項借出前辦妥。在簽署借約時，放債人必須給予借款人一份已簽署的借約提要書及本摘要乙份。該提要書須載明貸款詳情，包括還款條件，抵押形式及利率。凡不符合規定的借約，均不能執行，但如法庭認為不執行借約係不公平者，則屬例外。

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, 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 the 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.

第 19 條規定如借款人提出書面要求及繳交規定的費用，放債人必須發給該借款人結算書的正本及副本各一份，列明在該借約下借款人的債務詳情，包括已還款若干、到期未付或行將到期繳付的款項若干，以及利率等。借款人必須在結算書的副本註明他已經收到結算書的正本，並把已作上述批註的副本交回放債人。放債人必須在有關結算書的合約有效期間收存該份交回的結算書副本。如放債人不這樣做的話，即屬犯法。如借款人提出書面要求，放債人亦須供給有關該項貸款或抵押的任何文件副本。上述每項要求，每月只限提出一次。如放債人無充分理由而拒絕本段提及的任何要求，則借款人可免繳拒絕期內的利息。

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.

第 20 條規定：除非保證人亦為借款人，否則放債人須在訂立借約後 7 日內向保證人提供已簽署的借約提要書、有關抵押的文件（如有的話），以及詳列還款總額的結算書各一份。如保證人隨時提出書面要求（每月只限一次）；放債人須供給已簽署的結算書一份，詳列已付還總額及尚欠餘款。放債人如無充分理由而拒絕此項要求，則在拒絕期內，有關抵押的規定不能執行。

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.

第 21 條規定借款人如以書面通知，有權隨時將欠款連同計至還款日期止的利息清還放債人，放債人不得因借款人提早還款而收取較高的利息。

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.

放債人若為財政司長根據放債人條例第 33A(4)條在有效憲報公佈認可的人士或經其認可社團的成員，則上述規定並不適合。

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.

第 22 條規定凡收取複利或訂明不准分期攤還借款的借約均屬不合法，此外，對到期未還的款項收取較高利息的借約亦屬不合法，但該等借約可規定對到期未還的本金及利息加收單利，所收利率不得超過原來借款的利率。如果法庭認為因合約不符合本條條文規定而列作不合法屬不公平做法的話，則法庭可以宣佈該不合法合約合法，或部份內容合法。

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.

第 23 條規定：在訂立借約或接受貸款抵押時，如放債人未領有牌照，有關借約及抵押不能予以執行。但是，假若法庭認為由於本條規定而不能執行有關借約或抵押的規定會造成不公平，法庭可宣告整份或部份借約或抵押規定可予執行。

Summary of Part IV of the Ordinance – Excessive interest rates

放債人條例第 IV 部摘要 – 過高的利率

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 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. This 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 the loan.

第 24 條規定：貸款的最高實際利率為年息 6 分（「實際利率」）須按放債人條例第二附表的规定計算。凡借約所訂實際利率超過此限制，皆不能執行，且放債人更可被檢控。此最高利率可由立法會予以修訂，但已簽訂的借約則不受影響。對於向實收股本不少於 \$1,000,000 的公司作出的任何貸款或作出該等貸款的任何人士，本條規定並不適用。

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 applied 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 circumstance, it may alter the terms of the agreement in such a manner as to be fair to all parties. This 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.

第 25 條規定：在有關執行借約或抵押規定的法律訴訟中，或在借款人或保證人向法院求助時，法庭可考慮借約的條件是否不公平或利率是否過高（如實際利率超過年息 4 分 8 厘或立法會所訂定的其他利率即可視為過高的利率）。法庭在考慮一切情形後，可將借約的條件修改，使其對立約各方均屬公平。對於向實收股本不少於 \$1,000,000 的公司所作出的任何貸款或作出該等貸款的任何人士，本條規定並不適用。