Centre for Banking & Finance Law
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Regulating Moneylending in Singapore: Looking at All Sides

Research Policy Report

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This Report summarises a year of research on moneylending and its regulation in Singapore. Moneylending in Singapore is complex, diverse and challenging; analysing the industry and its borrowers has been an ongoing trial, but an enjoyable and rewarding one. There are four Parts to the Report. The first Part is an introduction, which discusses the motivation behind the research and the methodology used. The second Part provides a detailed summary of the civil and criminal legal regime associated with moneylending. The third Part analyses the main research findings. The fourth and final Part concludes the Report, including a summary of the recommendations and suggestions for further research going forward.

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Centre for Banking & Finance Law
Research Policy Paper

Regulating Moneylending in Singapore: Looking at All Sides

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Part I: Introduction to the Report

This Report summarises a year of research on moneylending and its regulation in Singapore. Moneylending in Singapore is complex, diverse and challenging; analysing the industry and its borrowers has been an ongoing trial, but an enjoyable and rewarding one. There are four Parts to the Report. The first Part is an introduction, which discusses the motivation behind the research and the methodology used. The second Part provides a detailed summary of the civil and criminal legal regime associated with moneylending. The third Part analyses the main research findings. The fourth and final Part concludes the Report, including a summary of the recommendations and suggestions for further research going forward.

I would like to sincerely thank everyone who has assisted with the research and production of this Report. Firstly, to Dora Neo and everyone at the Centre for Banking & Finance Law for providing ongoing guidance of the project, as well as the financial and logistical support that allowed this research to occur. Secondly, to my two research assistants, who were professional, courteous and exceptionally helpful. The very important and enlightening fieldwork portion of this research could not have been completed without their involvement. Finally, to all the stakeholders who agreed to be interviewed – thank you for sharing your knowledge, time and insight. Empirical research such as this would not be possible without the generousity of the interviewees, many of whom are exceptionally busy yet still managed to make time to participate in this important research.

Impetus for the Research

It is clear that moneylending is an important area for Singapore and one that deserves increased academic analysis. The moneylending regulator, the Insolvency and Public Trustee's Office (IPTO), has been active in this area – since 2011 there have been 35 licensed moneylenders convicted for breaches of the Moneylenders Act and fined in excess of $1.5 million. There has also been an increased focus on the prosecution and criminal conviction of unlicensed moneylenders by the Singapore Police Force, resulting in a 21% reduction in loanshark harassment cases in 2011. Further statistics have not been released since this time, but it is clear that the Police Force has maintained a strong interest in the area and has continued actively addressing the harm caused by illegal lending. For example, 47 people were arrested for crimes associated with loanshark activities in December 2014 alone. Since 2011, there have been no official figures released on illegal lending and it is unclear what impact, if any, these increased Moneylending Act restrictions (discussed in Part II below) have had on illegal lending in Singapore.

Despite the government interest and activity in the area, there appears to be surprisingly little academic research on the Moneylenders Act and the impact it has on borrowers.[1] The Act was implemented in 2008 to provide additional legal protection for 'small time' borrowers, who are often desperate for funds and therefore vulnerable to exploitation by moneylenders. Since being enacted, the Act has been amended numerous times to provide additional protection to consumers, including limits on the

[1] One notable exception to this is S Booysen, 'The New Moneylenders Act 2010: A Lost Opportunity' (2009) 21 *Singapore Academy of Law Journal* 394.

regulation of moneylending advertisements, a movement from NIRs (Nominal Interest Rates) to EIRs (Effective Interest Rates), extended coverage, removal of specific fees and, in April 2013, additional restrictions on the amount of money that can be lent. There have also been increases in penalties for illegal moneylending, including mandatory jail sentences and possible caning for harassment activities. These amendments have not received significant attention or scrutiny, apart from criticism from the Moneylenders Association of Singapore, who questioned the increased restrictions on lending and commented that it could lead to increased financial exclusion of borrowers.

All consumer credit reforms should be well researched and subject to detailed analysis to ensure that the reforms do not exacerbate the pre-existing financial difficulties of borrowers. Moneylending borrowers are generally financially vulnerable and on low incomes; they are often desperate for money and therefore can be easily exploited by lenders. This vulnerability justifies additional consumer protection, which is provided by the Moneylenders Act. This protection currently includes interest rate limits[2] and restrictions on lending. Whilst these provisions aim to ensure that low-income borrowers are not subject to large, high interest loans that they cannot afford to repay without financial hardship, both provisions restrict the financial options available to borrowers. The Moneylenders Association of Singapore have stated that it is unlikely moneylenders will provide loans to low-income consumers below the statutory interest rates, therefore the provisions will result in the financial exclusion of these borrowers or avoidance activities by lenders. This finding is strongly supported by the fieldwork research findings discussed in Part III, Section C of this Report.

Whilst it is appealing to argue that moneylending contracts may be too harmful for low-income borrowers and therefore that financial exclusion is a desirable outcome, it is unfortunately not that simple. If desperate borrowers are unable to access regulated credit, they may turn to illegal lenders for the much needed funds, which is likely to do significantly more damage (to themselves and society as a whole) and is something that Singapore is trying to avoid. There have been considerable resources funneled into tackling the problems associated with illegal loan sharks. It would be an unfortunate regulatory outcome if reform undertaken in regards to licensed moneylending caused a notable increase in illegal lending. It is therefore important that the intrinsic relationship between these two issues is recognised and understood.

Moneylending is a relatively small part of the consumer credit market, and often not considered a mainstream financial service. It makes up less than 1% of overall consumer lending in Singapore.[3] Despite this, moneylending is a vital part of the economic structure, and for a number of reasons it is important to have strong academic analysis of the industry. Firstly, as outlined above, there is a distinct lack of academic attention on this important area when compared with the research available on mainstream banking regulation in Singapore. Secondly, it is crucial that this area is subject to academic research and scrutiny. Short-term borrowing under the Moneylenders Act disproportionately affects those who are already exceptionally vulnerable. An ineffective regulatory framework therefore has the

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2 The current limits are 13% for secured loans and 20% for unsecured loans (Moneylenders Rules 2009, s 11). These limits only apply to borrowers with an income of less than $30,000 per annum and will be discussed further in Part II below.

3 Oral answer by Senior Minister of State for Law, Indranee Rajah, to Parliamentary Questions on licensed moneylenders, 20 January 2014.

ability to exacerbate existing hardships. Conversely a strong, effective consumer protection regime can assist to counteract some of the disadvantages that exist in society. It is therefore an area where strong and detailed research can make a real difference to the lives of a large number of people.

Methodology

There are three separate aspects to this Report. Firstly, a desk review of existing primary and secondary sources was conducted. Secondly, in-depth interviews were undertaken with over 30 stakeholders involved in moneylending. Thirdly, there was a fieldwork component where a variety of moneylending businesses were 'mystery shopped' to analyse a number of aspects of the market, including the level of legal compliance and the interest rate charged.

The desk review itself had three main parts. Firstly, the existing literature on moneylending was analysed. As outlined earlier, there has been very little attention paid to moneylending in academia in Singapore, and therefore this was completed quite quickly. It is hoped that the current regulatory interest in the topic will generate increased academic interest because, as outlined above, it is an area very worthy of further analysis. Secondly, the legislative regime associated with moneylending was summarised. This was a surprisingly complex task, as it consists of the Moneylending Act 2010, Moneylending Rules 2009, Moneylending (Amendment) Act 2010, Licence Conditions and Advertising & Marketing Directions – all of which integrate together to provide a detailed and multifaceted regulatory regime. Finally, the judgments of moneylending cases in Singapore, both civil and criminal, were investigated. In total, 27 criminal cases and 17 civil cases were included, which covered a wide range of different actions, court levels and judges.

Qualitative empirical research is crucial to the understanding of the moneylending market in Singapore, especially due to the fact that there is such a void of academic literature on the topic. To obtain this research, over 30 interviews were completed with a variety of people involved in the moneylending industry. These included moneylenders, members of the Moneylenders Association of Singapore, politicians who have been involved in the moneylending legal regime and its reform, academics from a range of disciplines including criminal law, banking and finance and economics, criminal lawyers who represent people charged with illegal lending offences, members of the Attorney-General's Chambers, commercial lawyers who advise businesses on their legal obligations in relation to moneylending, and support organisations which assist people with problem debt or gambling issues. Where permission was given, these interviews were recorded. A number of participants understandably did not want the interview to be recorded, and therefore handwritten notes were taken instead. Whilst a surprising number of interviewees were happy to be named in the Report, the details of interviewees will generally be withheld to protect the identities of those who wish to remain anonymous.

The third and final part, the fieldwork, was undertaken with the help of two National University of Singapore research assistants. These 'mystery shopping' visits were used to determine a range of issues, including the level of compliance with the legal regime, how lenders treated people earning less than $30,000, the different levels of interest, fees and charges associated with moneylending, the variety of loan structures available, and the different administrative requirements from lenders. The business

details were obtained from the List of Licensed Moneylenders available on the website for the IPTO.[4] This List was also compared to the businesses advertising on 'directory.stclassifieds.sg', and it was noted that a number of unlicensed firms were representing themselves on the website as being legitimate licensed businesses. Some of the businesses advertising on the website but not appearing on the List of Licensed Moneylenders were also contacted or visited. In total, the research assistants contacted 35 businesses by phone and visited 66 licensed moneylending businesses. This is a considerable feat and provides an excellent source of information, especially in light of the fact that there are currently only 172 licensed businesses in Singapore. They also called or visited two businesses which had suspended licenses, and seven businesses which advertised on the website but were not on the List of Licensed Moneylenders.

The variety and divergence of the research sources obtained strengthen the findings in this Report, as conclusions reached from one part of the research were then supported and reinforced by further research. It also highlights the importance of multifaceted research, as this allows the researcher to obtain a more accurate understanding of the complexities of the moneylending market in Singapore.

[4] See IPTO, 'List of Valid Moneylenders Registered in the Republic of Singapore, as at 1 December 2014', http://www.ipto.gov.sg/content/dam/minlaw/ipto/Moneylenders/List%20of%20Moneylender.pdf.

Part II: Legal Regime for Moneylending

Introduction to Moneylending in Singapore

Moneylending in Singapore is regulated by the Moneylenders Act 2010 ('the Act') and Moneylenders Rules 2009 ('the Rules'), supplemented and enforced with a range of other notices, regulations and conditions. The current legislation replaced the Moneylenders Act 1959 (1985 Rev Ed). The Act was drafted after a 'holistic review'[5] of the moneylending regime and is 'more flexible, more progressive and modernises moneylending practices'.[6] It was clear that the previous legislation did not adequately reflect the needs of modern borrowers, and a review of the legislation was called for by V K Rajah J in *City Hardware Pte Ltd v Kenrich Electronics Pte Ltd*.[7] The Act was developed as a consumer protection mechanism to protect people who needed to access small amount loans, particularly those on low incomes. The legislation aims to provide 'a modern framework that serves to strike a proper balance between regulating licensed moneylenders and safeguarding the interests of borrowers'.[8] Despite being less proscriptive than the Moneylenders Act 1959, the newer Act still places a number of stringent limitations on how moneylenders can operate in the industry. This can be compared with, for example, the Hong Kong Money Lenders Ordinance which focuses more on regulating lending activity by encouraging a strong and competitive market.

Since being enacted, the legal regime has been amended numerous times to provide additional protection to borrowers.[9] The Moneylenders (Amendment) Rules 2012 resulted in a movement from NIRs (Nominal Interest Rates) to EIRs (Effective Interest Rates),[10] clarified the contractual disclosure requirements for interest repayments,[11] increased the annual income of borrowers who are covered by the interest rate limitations,[12] removed a number of fees that were previously allowed,[13] and amended the forms that licensees must provide to borrowers.[14] The Banking (Credit Card and Charge Card) Regulations 2013 resulted in the additional restrictions on the amount of money that can be lent to consumers under Moneylenders Rules 2009, r 20 (discussed below). There have also been increases in criminal penalties for illegal moneylending, including mandatory jail sentences and possible caning for harassment activities. Despite the substantive nature of the amendments, they have not received significant attention or scrutiny, apart from criticism from the Moneylenders Association of Singapore which questioned the increased restrictions on lending.

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5 Second reading speech, 18 November 2008, [5].

6 Booysen (n 1), 394-395.

7 [2005] 1 SLR 733.

8 Second reading speech, 18 November 2008, [6].

9 For further discussion on the implementation of the Act and an analysis of the difference between the 1985 Act and the 2008 Act, see.

10 Moneylenders (Amendment) Rules 2012 (Sg), r 1A.

11 Moneylenders (Amendment) Rules 2012 (Sg), r 3.

12 Moneylenders (Amendment) Rules 2012 (Sg), r 4. From $20,000 income per annum to $30,000 income per annum, from 12% to 13% for secured lending and from 18% to 20% for unsecured lending.

13 Moneylenders (Amendment) Rules 2012 (Sg), r 5.

14 Moneylenders (Amendment) Rules 2012 (Sg), r 8.

The moneylending regulator, the IPTO, has been active, and since 2011 there have been over 35 licensed moneylenders convicted for breaches of the Act and fined a total of over $1.2 million.[15] There has also been an increased focus on the prosecution and criminal conviction of unlicensed moneylenders by the Singapore Police Force and Attorney General's Chambers, resulting in a 21% reduction in loanshark harassment cases in 2011. Further statistics have not been released since this time, but it is clear that the Police Force has maintained a strong interest in this area and has continued to be very active in addressing the harm caused by illegal lending. For example, in December 2014 alone, 47 people were arrested for crimes associated with loanshark activities.

There has also been regulatory attention on moneylending issues in Singapore. In 2014, the Advisory Committee on Moneylending was formed to review the existing framework and make recommendations on measures for:

1) Capping of interest rates for moneylending loans;
2) Restricting the charging of fees by moneylenders;
3) Capping the aggregate amount of moneylending loans taken out by each borrower; and
4) Other policy parameters which could strengthen the moneylending regulatory regime.[16]

The Committee is chaired by Mr Manu Bhaskaran, Director of Centennial Group International and Vice President of the Economics Society of Singapore, and comprised of 15 people from a range of backgrounds including academia, community and grassroots organisations, members of the Moneylenders Association of Singapore and economists. After undertaking significant research into the moneylending industry in Singapore, the Committee released its draft recommendations in November 2014. In light of the draft recommendations, the Ministry of Law and Advisory Committee undertook further discussions and reviews, and the final recommendations were released on 29 May 2015 at the Institute of Policy Studies Moneylending Conference. There were 15 recommendations, namely:

1) Limitations on the amount of interest that can be charged, namely:
    a. An upfront administrative fee of not more than 10% of the loan principal,
    b. Interest of not more than 4% per month,
    c. Late interest of not more than 4% per month,
    d. A late fee of not more than $60 per month, and
    e. Total borrowing costs to be capped at 100% of the loan principal.
2) Borrowers earning less than $20,000 a year would be subject to an aggregate unsecured borrowing cap of $3,000. As for all other borrowers, they should be subject to an aggregate unsecured borrowing cap of six times their monthly salary.
3) The moratorium on the grant of new moneylending licences should be lifted.
4) The Ministry of Law engage the voluntary welfare organisations which counsel distressed borrowers to undertake further research on moneylending borrowers. This is aimed to ascertain if there are borrowers who should not be borrowing from licensed moneylenders.

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15 Correct as at 6 July 2015.

16 Ministry of Law, 18 June 2014 Press Release, 'Advisory Committee on Moneylending to provide recommendations on regulatory regime', https://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/advisory-committee-on-moneylending-to-provide-recommendations-on.html.

5) The Moneylenders Association of Singapore should work closely with the voluntary welfare organisations that assist distressed debtors, to explore the feasibility of introducing a formalised debt restructuring regime.
6) No recommendations were made in respect of the location of moneylenders, although the Registry of Moneylenders should monitor the situation and ensure it is not aggravated.
7) The issue of aggregating credit information on borrowers be given consideration by policy makers.
8) Borrowers who are excluded from local casino premises be identified to moneylenders.
9) All moneylenders be required to keep to a set of standardised loan contracts and practices.
10) All moneylenders be required to incorporate as companies with a minimum paid-up capital of $100,000, and submit annual audited accounts.
11) The advertising restrictions be removed to allow moneylenders some limited advertisement in the newspapers, subject to stringent regulation of their advertising activities.
12) A set of guidelines for acceptable debt collection practices be created.
13) Before granting a loan, moneylenders be required to explain to borrowers the effects of late repayment on their overall debt, with concrete examples set out in dollar terms and explained to the borrower.
14) Loans to businesses that have been registered for at least two years will not be subject to the proposed controls on borrowing costs or the aggregate unsecured borrowing cap.
15) The Registry improve the collection of data from moneylenders.[17]

These recommendations are strongly in line with the recommendations in this Report, which will be outlined in Part IV below. The Ministry of Law accepted 12 of the 15 recommendations. It rejected number 11, the removal of advertising restrictions on the basis that it could lead to increased borrowing. In addition, two other recommendations, the lifting of moratoriums on the granting of new licences and the creation of debt collecting guidelines, will be reviewed at a later stage.[18]

Licensing

All moneylenders must be licenced, unless they are an exempt or excluded moneylender.[19] Under the Act, there is a broad definition of moneylender as "any person, other than an excluded moneylender, who lends a sum of money in consideration of a larger sum being repaid shall be presumed, until the contrary is proved, to be a moneylender".[20]

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17 The Advisory Committee on Moneylending, *Final Report*, 2015.

18 The Ministry of Law, Press Release 29 May 2015, 'Government Welcomes Committee Recommendations to Strengthen Singapore's Moneylending Regulatory Regime', https://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/government-welcomes-committee-recommendations-to-strengthen-sing.html.

19 Moneylenders Act 2010 (Sg), s 5(1).

20 Moneylenders Act 2010 (Sg), s 3.

There is a $600 non-refundable application fee for a licence[21] and an annual licence fee of $1,320[22] which must be paid to the Registrar of Moneylenders ('Registrar').[23] Licenses are valid for 12 months[24] and the licensee must provide security of $20,000 for each place of business.[25] The Registrar *may refuse* to issue or renew a licence on a number of grounds, including that the applicant does not normally reside in Singapore, is below the age of 21, has been convicted of an offence involving dishonesty or moral turpitude, does not have sufficient experience or qualifications, or is not of good character.[26] Any party who is aggrieved by the decision of the Registrar to refuse to issue or renew a licence may appeal the decision to the Minister within 14 days.[27]

The Registrar may suspend or revoke an issued licence if he or she is satisfied that the licensee has:

- ceased carrying on a moneylending business;
- provided false information, wilfully omitted information or produced documentation that was false or misleading, in connection with the application for or renewal of a licence;[28]
- contravened a condition of the licence;
- conducted the moneylending business in an unsatisfactory or improper manner; or
- carried out moneylending at a place that has not been approved or contravened any condition or approval of the place of business.[29]

Prior to revoking or suspending the licence, the Registrar must write to the licensee and inform them of the intention to revoke or suspend, and provide them with a date (not less than 21 days after the date of the note) that this will come into effect. The licensee then has the opportunity to show cause as to why the revocation or suspension should not take effect.[30] If the licensee has shown cause and the Registrar decides to revoke or suspend the licence, the licensee must be informed of this decision in writing with a specified date (not less than 14 days after the date of the notice) that this will come into effect.[31] The licensee may appeal this decision to the Minister within 14 days of receiving the notice.[32]

In addition to the licensee obligations under the Act and Rules, there are the Registrar's Conditions for the Grant of a Moneylenders License ('Licence Conditions'). These conditions include that the licensees conduct their activities within the framework of Singapore law, no fees can be collected from a

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21 Moneylenders Rules 2009 (Sg), r 5(1).

22 Moneylenders Rules 2009 (Sg), r 5(2). An additional $1,320 is required for every additional place of business; Moneylenders Rules 2009 (Sg), r 5(3).

23 Moneylenders Act 2010 (Sg), s 8.

24 Moneylenders Act 2010 (Sg), s 5(6).

25 Moneylenders Act 2010 (Sg), s 5(5)(c). For more details about the approved place of business requirements and the security deposit, see Moneylenders Act 2010 (Sg), ss 10 & 11.

26 Moneylenders Act 2010 (Sg), s 7. The Registrar *must not* issue or renew a licence in a number of situations, which are outlined in Moneylenders Act 2010 (Sg), s 7(2)(a)-(d).

27 Moneylenders Act 2010 (Sg), s 7(3).

28 Moneylenders Act 2010 (Sg), s 9(1)(a)(ii). If a licensee undertakes any of these actions they are guilty of an offence and liable for a fine not exceeding $40,000 and imprisonment of up to 12 months or both; Moneylenders Act 2010 (Sg), s 15(1).

29 Moneylenders Act 2010 (Sg), s 9(2).

30 Moneylenders Act 2010 (Sg), s 9(3).

31 Moneylenders Act 2010 (Sg), s 9(4).

32 Moneylenders Act 2010 (Sg), s 9(5).

borrower before granting a loan and the full amount must be provided to the borrower, the borrower's annual income must be verified from 'independent and reliable' documents, every moneylending place of business must be managed by a different person who is adequately qualified, the licensee must have a telephone landline used exclusively for moneylending activities, and must not disclose any information about the borrower without their consent or ask borrowers to reveal any of their passwords. The licensee must also keep the registrar informed about any legal action that has been commenced against them and submit quarterly reports in a format and manner as may be required by the Registrar.[33] A breach of a license condition is an offence, and the licensee shall be liable for a fine not exceeding $20,000.[34]

General Lender Obligations

The Act provides a wide range of obligations and prohibition on licensees, with varying potential penalties. For example, there are general obligations regarding how the lender must run their business. This includes a prohibition on solicited loans; licensees are not entitled to grant a loan, grant approval for a loan, or deliver a document enabling people to apply for a loan without the borrower having first applied to the licensee in writing.[35] The licensee must also have a sign stating 'Licensed Moneylender' immediately outside their place of business[36] and must inform borrowers of the terms of the loan in writing, including all interest, fees and penalties and any securities.[37]

The bulk of the general lender obligations focus on borrower knowledge and loan transparency, with an aim of ensuring that borrowers understand the loan they are entering into with the lender. For example, the licensee must provide the borrower with a signed copy of the loan.[38] In addition, the borrower must be provided with a statement of account automatically every six months and, whenever requested, the loan documentation and a statement of account; receipts for every cash payment must also be provided.[39] The licensee must keep accounts relating to the moneylending business for a minimum of 5

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33 Licence Conditions, 1-19. The Notices are issues by the Monetary Authority of Singapore to Commercial Banks are available on the MAS website. Notice 632 is about Residential Property Loans and Notice 642 is about Motor Vehicle Loans., 19. The Registrar and Ministry of Law have provided all licensees with additional information Anti-Money Laundering & Counter-Financing of Terrorism (AMLCFT) Regulation of Moneylenders, this is available on the IPTO website.

34 Moneylenders Act 2010 (Sg), s 15(2).

35 Moneylenders Act 2010 (Sg), s 17; there is a potential penalty of up to $20,000 fine, a maximum of 6 months imprisonment or both.

36 Moneylenders Act 2010 (Sg), s 18; there is a potential penalty of up to $5,000 fine.

37 Moneylenders Act 2010 (Sg), s 19; there is a potential penalty of up to $20,000 fine, a maximum of 6 months imprisonment or both.

38 Moneylenders Act 2010 (Sg), s 20; there is a potential penalty of up to $20,000 fine, a maximum of 6 months imprisonment or both for the first occasion, and up to $40,000 fine and 12 months imprisonment or both for the second occasion. In addition, the loan is not enforceable and no money can be recovered in a court of law

39 Moneylenders Act 2010 (Sg), s 21; there is a potential penalty of up to $20,000 fine, a maximum of 6 months imprisonment or both for the first occasion, and up to $40,000 fine and 12 months imprisonment or both for the second occasion. As above, the loan is also not enforceable and no money can be recovered in a court of law. For more details on the information that must be required in these statements see Moneylenders Rules 2009 (Sg), r 13.

years, including sums of all money received and paid.[40] The licensee must not make a false, misleading or deceptive representation or dishonestly conceal any material facts to fraudulently induce a person to borrow money or agree to terms on which money is to be borrowed.[41] The licensee must also inform the borrower of a number of factors before granting any loan, including the effective interest rate expressed as a percentage per annum, how the interest will be computed, the date or day when the interest will be credited to the loan account as payable, how any late interest will be computed, whether any permitted fees will be charged and, if so, what they are or how they will be computed, and in the case of a term loan, the frequency, amount, proportions and total number of instalment payments.[42] To ensure that the loan is appropriate for the borrower's needs, there are also obligations on the licensee to obtain certain information before granting any loan, including the name, date of birth and personal identification number (if the borrower is an individual)[43], and the name, place of business, contact details and names of relevant persons (if the borrower is a body corporate, partnership or unincorporated association).[44]

Limitations on Lending and the Cost of Credit

The Minister may through subsidiary legislation prescribe the amount of costs, charges and expenses that can be imposed by a licensee. Any amount above the prescribed level is not recoverable from the borrower and, if already paid, it is recoverable as a debt from the licensee or set-off against the amount outstanding on the loan.[45] In addition, the court has the power to reopen transactions if they are deemed to be 'unconscionable or substantially unfair'.[46] Whilst this provision has not been frequently used by borrowers, it was successfully invoked in *Kua Hui Li v Prosper Credit Pte Ltd* [2014] SGHC 108 to set aside a loan contact with interest of 791.61% annually.

The limitations on the cost of credit are included in the Moneylenders Rules 2009, and apply to all borrowers with an income of less than $30,000 per annum. The current rate of interest is 13% for secured loans[47] and 20% for unsecured loans.[48] The interest rate is an 'Effective Interest Rate', which is the effective annualised interest rate computed according to the following formula:

$$\textit{Effective interest rate} = (1 + i)^n - 1$$

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40 For more details on the information that must be required in these statements see Moneylenders Rules 2009 (Sg), r 14.

41 Moneylenders Act 2010 (Sg), s 27; there is a potential penalty of up to $30,000, a maximum of 12 months imprisonment or both.

42 Moneylenders Rules 2009 (Sg), r 8.

43 Moneylenders Rules 2009 (Sg), r 9(1)(a)(i).

44 Moneylenders Rules 2009 (Sg), r 9(1)(a)(ii)-(iii). The penalty for breaches of s 9(1)(a) is a conviction and fine of up to $10,000 for an individual and $20,000 for a body corporate.

45 Moneylenders Act 2010 (Sg), s 22.

46 Moneylenders Act 2010 (Sg), s 23(1).

47 Moneylenders Rules 2009 (Sg), r 11(2)(a).

48 Moneylenders Rules 2009 (Sg), r 11(2)(b).

where *i* is the periodic interest rate expressed as a decimal fraction and *n* is the annualised total number of times interest is payable on the loan.[49] The lender is only entitled to charge the following fees – a late payment fee, a fee for the variation of a contract, a cheque dishonour fee, a fee for an unsuccessful debit from the borrower's account, an early redemption fee, and legal fees for recovering the loan.[50] The borrower must be informed if the licensee intends to charge any of these fees, and no other fees or charges can be added to the account.

There are also additional limitations on lending to low-income borrowers who are Singaporean citizens or permanent residents. In these circumstances, if the borrower earns less than $20,000 or has total assets of less than $2,000,000, the total amount lent (including any outstanding loans provided) cannot equal more than $3,000.[51] If the borrower earns between $20,000 and $30,000 per annum, the unsecured loans cannot total more than two months' salary.[52] This increases to four months' salary for borrowers earning between $30,000 and $120,000 (or having assets of over $2,000,000).[53] The penalty for breaching these sections is a conviction and fine of up to $10,000 for an individual, and a fine of up to $20,000 for a body corporate.[54] These limitations are however per *lender* and not per *borrower,* and therefore if a borrower visits multiple lenders, they can easily become over-indebted.

Limitations on Advertising

Under the Moneylenders Act 1959, there were very stringent restrictions on the advertising of moneylending products in Singapore.[55] Under the current regime, advertisements are allowed, subject to limitations in the Act. For example, licensees cannot knowingly or recklessly issue or publish any advertising or marketing material in any form, or any business letter, circular or other document, which contains any information which is false or misleading in a material particular.[56] The Registrar has the power to issue notices concerning the advertising and marketing of moneylending licensees, with the current notice available on the IPTO's website. This provides significantly more flexibility for the advertising of moneylending products than the Moneylending Act 1959. It states that licensees are entitled to advertise loans for moneylending products in business or consumer directories, both in print and online, internet websites belonging to the licensee, and within the approved place of business.[57]

All other forms of advertising are prohibited.[58] Specific mention is made to the following forms of advertising, which are completely prohibited – websites engineered to include keywords related to gambling, paid-for internet links, print directories where more than 10% of the listings are from licenced

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49 Moneylenders Rules 2009 (Sg), r 1A.
50 Moneylenders Rules 2009 (Sg), r 12.
51 Moneylenders Rules 2009 (Sg), r 19(1). See also r 19(2) for lending to multiple borrowers.
52 Moneylenders Rules 2009 (Sg), r 20(1)(a).
53 Moneylenders Rules 2009 (Sg), r 20(1)(b).
54 Moneylenders Rules 2009 (Sg), rr 19(3) & 20(5).
55 Second reading speech, 18 November 2008, [13].
56 Moneylenders Act 2010 (Sg), s 16(1).
57 Directions of the Registrar under section 16(3) read with section 26(1) of the Moneylenders Act regarding the advertising & marketing of licenced moneylenders ('Advertising & Marketing Directions'), 2.1(a)-(c).
58 Advertising & Marketing Directions, 2.3.

moneylenders, online directories which consist of only licenced moneylenders, online advertisements that are not on the licensee's business website or an online directory, advertisements near the licensee's approval place of business but extending beyond the immediate exterior wall of the building, advertising by SMS, and listings and advertisements which are *not* under the categories for moneylenders, moneylending or financial services.

There are also restrictions on the content of the advertisement, and licensees must ensure that the advertisements are 'clear and easily understood by the audience being addressed … must not contain information that may mislead or deceive members of the public'.[59] The advertisement must not contain a material misrepresentation, omit a material fact, contain information which cannot be verified, create an unjustified expectation about the results that can be achieved by the loan, or contain graphics that could convey an inaccurate representation. If an advertisement is found to contain misleading or false information, the licensee may be subject to a $20,000 fine, six months imprisonment or both.[60]

Moneylenders must also not advertise or market loans in a way that attempts to induce or attract people to borrow money either to gamble or to pay off gambling loans. Advertisements cannot be made at, or appear in websites or publications of casinos or clubs that offer gambling opportunities.[61] Apart from the licencing details, advertisements must not include any statements suggesting that the business has been approved by any government agency.[62] The Registrar has the power to issue notices to all moneylenders to alter, withdraw, remove or discontinue any advertisement. The licensee is required to respond to this within the stated timeframe or it will constitute non-compliance with a direction of the Registrar under s 26(3) of the Act,[63] which is punishable by a fine of not less than $20,000 and potentially licence revocation.[64]

Remedies and Penalties

From a civil perspective, all loans granted by an unlicensed moneylender are unenforceable and any money paid by the borrower is not recoverable in a court of law.[65] This has created issues of debtors utilising certain provisions of the Moneylenders Act in an attempt to avoid repayment of otherwise valid loans, as will be discussed in more depth in Part III below.

The penalties associated with moneylending increased dramatically from the Moneylenders Act 1985 to the Moneylenders Act 2008. These penalties were further enhanced under the Moneylenders (Amendment) Act 2010. If a person engages in unlicensed moneylending, they are guilty of a criminal offence under section 14 of the Moneylenders Act. In the case of a body corporate, a conviction for

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59 Advertising & Marketing Directions, 3.1.

60 Moneylenders Act 2010 (Sg), s 16(4); see also Advertising & Marketing Directions, 5.2. There are however requirements on information that advertisements must include, see Advertising & Marketing Directions, 3.3(a)-(f).

61 Advertising & Marketing Directions, 3.4.

62 Advertising & Marketing Directions, 3.5.

63 Advertising & Marketing Directions, 4.1.

64 Advertising & Marketing Directions, 5.1.

65 Moneylenders Act 2010 (Sg), s 14(2).

unlicensed moneylending will result in a fine of not less than $50,000 and not more than $500,000.[66] In the case of a person, a conviction of 'unlicensed moneylending' will result in a fine of not less than $30,000 and not more than $300,000, a term of imprisonment no more than 4 years, and caning of no more than 6 strokes.[67] If a person is convicted of unlicensed moneylending on a second or subsequent occasion, the fine remains the same but the imprisonment term is increased to a maximum of 7 years and a caning of no more than 12 strokes.[68]

The offence of unlicensed moneylending under section 14 also includes anyone who is found to 'assist' with the unlicensed moneylending. This is given an exceptionally broad definition and includes collecting or demanding payment of a loan on behalf of a moneylender, receiving, possessing, concealing or disposing of any funds or other property associated with unlicensed moneylending, allowing their premises to be used for unlicensed moneylending, lending or providing SIM cards or other property to be used for unlicensed moneylending, promoting or advertising unlicensed moneylending, or providing the contact details of people to an unlicensed moneylender.[69] To be found guilty of assisting in the contravention of unlicensed moneylending, the person has to be aware of, or have reasonable grounds to believe, that unlicensed moneylending is occurring.[70]

In addition to the offence of unlicensed moneylending under section 14, there is also an offence of harassing or besetting borrowers under section 28, which carries different penalties. The latter offence applies to an unlicensed moneylender who "displays or uses any threatening, abusive or insulting words, behaviour, writing, sign or visible representation"[71] or "commits any act likely to cause alarm or annoyance to his borrower or surety, any member of the family of the borrower or surety, or any other person"[72]. A conviction under section 28 results in imprisonment of a term not exceeding five years, and fine of not less than $5,000 and not more than $50,000.[73] If a person is convicted on a second or subsequent occasion, the imprisonment term is increased to a minimum of 2 years and a maximum of 9 years and a fine of $6,000 to $60,000.[74] The offender will also potentially be subjected to a caning of between 3 and 18 strokes, the specific number dependent on whether damage was caused to property or persons and whether it is a first or subsequent offence.[75] The court has developed a number of benchmark sentences for offences under section 28 – for example property damage by fire is 18 months imprisonment and three strokes of the cane per charge.[76]

In addition to the criminal penalties, where the Minister is satisfied that funds are a result of illegal lending activities, they may freeze the proceeds of the unlicensed moneylending.[77]

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66 Moneylenders Act 2010 (Sg), s 14(1)(a).
67 Moneylenders Act 2010 (Sg), ss 14(1)(b)(i) & 14(1A)(a).
68 Moneylenders Act 2010 (Sg), ss 14(1)(b)(ii) & 14(1A)(b).
69 Moneylenders Act 2010 (Sg), s 14(3A)(a)-(g).
70 See wording of Moneylenders Act 2010 (Sg), subs 14(3A)(a)-(g).
71 Moneylenders Act 2010 (Sg), s 28(1)(a).
72 Moneylenders Act 2010 (Sg), s 28(1)(b).
73 Moneylenders Act 2010 (Sg), s 28(1)(ii)(A).
74 Moneylenders Act 2010 (Sg), s 28(1)(ii)(B).
75 Moneylenders Act 2010 (Sg), s 28(3).
76 *Public Prosecutor v Nelson Jeyaraj S/O Chandran* [2010] SGDC 384.
77 Moneylenders Act 2010 (Sg), 15C. See also Moneylenders Act 2010 (Sg), Part IIA more generally.

Part III: Findings

Section A: Findings from Literature Review

This section will summarise the findings of the literature review, including analysis of the primary and secondary sources relevant to moneylending in Singapore.

Using the Moneylenders Act to Avoid Debt Repayment

The vast majority of the civil cases analysed focused on debtors' attempts to avoid repaying loans by alleging that the transaction in question was an unlicensed loan, and therefore unenforceable by the courts. This included a range of commercial transactions such as 'friendly loans' between long-term acquaintances,[78] trading relationships,[79] letters of credit,[80] leasing agreements,[81] an Option and Deed of Settlement,[82] and a Convertible Bond Agreement.[83] Loans were also held to be outside the scope of the Act, and therefore enforceable in instances where the 'lender' had not previously provided loans to any other parties, and therefore was not held to be in the 'business' of moneylending.[84]

Whilst the majority of cases were held to be legitimate commercial arrangements and therefore enforceable against the debtor, there were some instances where the lender could not rebut the presumption under section 3 of the Moneylenders Act. For example, in *Henny Sutanto v Suriani Tani (alias Li Yu) and Another* [2005] SGHC 82, it was held that a series of loans between two people which had interest charged[85] consistently at 3% did not rebut the presumption and therefore were not enforceable against the borrower. Again in *Letts Charles v Soh Kim Wat (alias Soh Kim Leng)* [2007] SGHC 202, a 'friendly loan' between two people at an interest rate of 9% was held to be a moneylending transaction. In this case the judge was also critical of the fact that the plaintiff charged the defendant $8,000 for a $200,000 advance as 'fees and charges'. This was held to be a 'thinly veiled' attempt to charge interest above the legally specified level of 20%. Finally, in *Lena Leowardi v Yeap Cheen Soo* [2014] SGHC 44, the loan was held to be covered by the Moneylenders Act as the plaintiff had lent the third party a number of structured loans totaling $1.2 million, thus fulfilling both the "system and continuity" and "all and sundry" tests.[86]

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78 *Subramaniam Dhanapakiam v Ghaanthimathi* [1991] SLR 432.

79 *City Hardware Pte Ltd v Kenrich Electronics Pte Ltd* [2005] 1 SLR(R) 733.

80 *Pankaj s/o Dhirajlal v Donald McArthy Trading Pte Ltd and Others* [2006] 4 SLR 79; [2006] SGHC 131 (High Court); *Donald McArthy Trading Pte Ltd v Pankaj s/o Dhirajlal* [2007] 2 SLR 321 (Court of Appeal).

81 *Orix Capital Ltd v Personal Representative(s) of the Estate of Lim Chor Pee (deceased) and Others* [2009] 4 SLR 1062; [2009] SGHC 201.

82 *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Limited and another, Interveners)* [2010] SGHC 270 (High Court); *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and others and another appeal* [2011] SGCA 50 (Court of Appeal).

83 *Real Estate Consortium Pte Ltd v East Coast Properties Pte Ltd and another* [2010] SGHC 373.

84 *Agus Anwar v Orion Oil Ltd* [2010] SGHC 6.

85 Cf *Subramaniam Dhanapakiam v Ghaanthimathi* [1991] SLR 432 where the interest was volunteered.

86 *Lena Leowardi v Yeap Cheen Soo* [2014] SGHC 44.

Using the Moneylenders Act to avoid debt repayment has been discussed previously. For example, Booysen's article in the *Singapore Academy of Law Journal* discussed the issue of borrowers attempting to avoid repayment of their debts by alleging that the lender is an unlicensed moneylender, and therefore the loan is unenforceable by the courts. Booysen highlights that this was one of the key factors behind the 2008 Moneylenders Act amendments, which came into force in 2009.[87]

Moneylending Victims becoming Moneylending 'Runners'

There was a concerning number of criminal cases that involved moneylending 'victims' who become indebted to loan sharks, and who were subsequently converted into runners or in some way involved in the moneylending business in order to repay their loans.[88] Regardless of the unfortunate circumstances of these victims, the court has taken a strong stance against it, largely in line with the legislative intent of the Moneylenders Act. For example, in *Public Prosecutor v Nelson Jeyaraj s/o Chandran* [2011] SGHC 33, Steven Chong J stated at [55]-[56]:

> Indeed, debtors-turned-runners who have first-hand experience of what it is like to be hounded by loansharks should know better than to revisit such hardship upon third parties in a bid to escape their own predicament.
>
> In line with Parliament's aim of curtailing harassment offences, I find that no mitigating weight should be accorded to the argument that the offender only committed harassment to avoid harassment of himself and his family. Many harassment acts are carried out by such debtors-turned-runners. If the Court were to impose lenient sentences on the basis of sympathy for their conundrum, the inadvertent effect would be to further encourage the continued exploitation of easy prey.

This is clear in a number of cases where the fact that the moneylender had been a victim themselves was not considered a mitigating factor by the court when sentencing.[89]

There is however some level of flexibility in the court's approach to sentencing. For example, Chao Hick Tin JA in *Public Prosecutor v Ong Chee Eng* [2012] SGDC 62 states at [16]-[17]:

> When the vulnerable are forced to borrow, sometimes they are unable to repay. Trapped, they are forced to turn to crime – loan shark harassment is an option. Such moral dilemmas are on

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87 Booysen (n 1).

88 For example, see *Public Prosecutor v Choi Guo Hong Edward* [2007] 1 SLR 712; [2006] SGHC 226; *Public Prosecutor v Nelson Jeyaraj S/O Chandran* [2010] SGDC 384; *Public Prosecutor v Abdullah Bin Abdul Rahman* [2011] SGDC 380; *Public Prosecutor v Lee Kun En* [2011] SGDC 317; *Public Prosecutor v Chen Jun Chang Vincent* [2012] SGDC 365; *Public Prosecutor v Ong Chee Eng* [2012] SGDC 62; *Ong Chee Eng v Public Prosecutor* [2012] SGHC 115; *Leaw Ming Guan Derrick v Public Prosecutor* [2012] SGDC 296; and *Public Prosecutor v Lee Kun En* [2012] SGHC 31; *Public Prosecutor v Quek Li Hao* [2013] SGHC 152.

89 *Public Prosecutor v Choi Guo Hong Edward* [2007] 1 SLR 712; [2006] SGHC 226; *Public Prosecutor v Nelson Jeyaraj S/O Chandran* [2010] SGDC 384; *Public Prosecutor v Abdullah Bin Abdul Rahman* [2011] SGDC 380; *Public Prosecutor v Lee Kun En* [2011] SGDC 317; *Public Prosecutor v Chen Jun Chang Vincent* [2012] SGDC 365; *Leaw Ming Guan Derrick v Public Prosecutor* [2012] SGDC 296; and *Public Prosecutor v Lee Kun En* [2012] SGHC 31; *Public Prosecutor v Quek Li Hao* [2013] SGHC 152.

stage often splashed in black and white. But reality is usually in shades of grey. The plight of the vulnerable was recognised by Parliament, and received sympathetic attention. As MP Sin Boon Ann noted (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at col 2080):

> ... I think more efforts can be put in by the Government through its public education and counselling programmes. At the moment, illegal moneylending operates very much on the fringe of society. People who are involved in money lending, whether as borrowers or runners, almost to a person, I am confident to say, have personal problems that require help … [A]lthough Parliament sympathises with debtors who turn harassers, they are still to be punished. The expression of legislative compassion nevertheless suggests that: (a) while the vulnerable are still to be punished for their role in perpetuating the loan shark scourge, the *severity* of their punishment might depend on their individual circumstances; and (b) that the court will be entitled, within the range of discretion accorded under the law, to impose such punishment as is consonant with the offender's culpability.

There are some examples of decreases in benchmark sentences because of mitigating factors associated with being a victim of moneylending. For example, in *Ng Teng Yi Melvin v Public Prosecutor* [2013] SGHC 267, Chao Hick Tin JA reduced the accused's sentence from the benchmark of six months to only four weeks on the basis that he was caught in the moneylending cycle, he was young, he had attention deficit hyperactivity disorder, and he was a first-time offender. A more sympathetic approach was also taken in *Ong Chee Eng v Public Prosecutor* [2012] SGHC 115 (again from Chao Hick Tin JA) where an 84 month imprisonment sentence was reduced to 60 months due to the mitigating circumstances of the defendant, with His Honour stating at [41] that it was important the defendant was 'punished severely but he should not be crushed'. This interesting issue was widely discussed in the interview process and is therefore analysed further in Section B below.

The High Number of Prosecution Appeals Against Moneylending Sentences

The analysis of the criminal cases reveals a high level of prosecution appeals against sentences for offences associated with moneylending, particularly from 2010 onwards.[90] This is likely to be linked to the increase in illegal moneylending activities. For example, the Police Intelligence Department and Parliamentary Debates 2010 showed that from 1998 to 2009, reported cases of moneylending increased from 2,319 to 18,645. As outlined in *Ooi Joo Keong v Public Prosecutor* [1997] 2 SLR 68, when an offence is prevalent or becoming prevalent, the courts may give a stiffer sentence to show its disapproval and to act as a deterrent. The high level of prosecution-based appeals were designed to set high benchmark sentences, as well as send a strong message to people involved in moneylending that their actions will not be tolerated.

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[90] See, for example, *Public Prosecutor v Abdullah Bin Abdul Rahman* [2011] SGDC 380; *Public Prosecutor v Nelson Jeyaraj s/o Chandran* [2011] SGHC 33; *Public Prosecutor v Lee Kun En* [2011] SGDC 317 (District Court); *Public Prosecutor v Lee Kun En* [2012] SGHC 31 (High Court); *Public Prosecutor v Lee Pit Chin* [2013] SGHC 157; *Public Prosecutor v Quek Li Hao* [2013] SGHC 152.

Secondly, a significant number of these prosecution appeals are successful and result in increased sentences. One example of this is in *Public Prosecutor v Nelson Jeyaraj s/o Chandran* [2011] SGHC 33. The original sentence of 12 months imprisonment per charge (36 months in total) was appealed by the prosecution, who sought a deterrent 24 month sentence per charge. When determining the prosecution's submissions, the judge summarised the legislative changes to the Moneylenders Act related to harassment offences resulting in property damage. Steven Chong J highlighted that the penalties have evolved from discretionary imprisonment not exceeding 12 months and/or a fine to mandatory imprisonment not exceeding five years and a fine and mandatory caning of not less than 3 strokes. The legislative changes clearly indicate parliament's intention to have more severe and deterrent penalties in place for moneylending offences (at [38]-[43]). The appeal was successful and the sentence increased to 18 months per charge (54 months in total). In *Public Prosecutor v Lee Kun En* [2012] SGHC 31, the 12 month sentence for assisting moneylending activities was doubled on appeal to 24 months, with the judge emphasising the harmful and serious nature of illegal moneylending and the effects it has on debtors and their families, as well as innocent flat owners who suffered from the property damage. In *Public Prosecutor v Quek Li Hao* [2013] SGHC 152, it was held that the District Court judge failed to give sufficient weight to the need for specific deterrence and placed undue weight on the accused's personal circumstances, therefore the sentences of seven months per charge were increased to 12 months.

Treating the Cause not the Symptoms of Moneylending Offences

Whilst it is important to be strict on moneylending offences and to ensure sentences act as a deterrent for potential future offenders, the case analysis undertaken highlights an important need to treat the cause not just the symptoms associated with the huge increase in illegal moneylending. The complexity of the situation was highlighted very well by Chao Hick Tin JA in *Ong Chee Eng v Public Prosecutor* [2012] SGHC 115. After discussing this issue, His Honour states at [13]

> Addressing the root cause of loan shark offences ultimately requires socio-economic and political decisions that lie outside the courts' remit. For example, it is only Parliament that can decide how much welfare the poor should receive, or how widespread and available licensed moneylending should be. The problem of loan shark offences also has to be seen from many angles.

This is further discussed by Chao Hick Tin JA in the same case at [17]-[18],

> Underlying Parliament's empathy may be the recognition that more, perhaps, could be done by society for the group of people who have to seek help from loan sharks. As Nominated MP Audrey Wong observed (*Singapore Parliamentary Debates*, *Official Report* (12 January 2010) vol 86 at cols 2099–2100):
>
> > While the Government has assured Singaporeans that the poor and needy in our midst will be looked after … perhaps our current efforts to educate and reach out to the truly needy and desperate are still insufficient to help this minority of people who resort to borrowing from illegal means. As living costs continue to rise and the wages of the

> lowest-earning in our population may not keep pace with the inflation rate, I am concerned that we may see more financially desperate Singaporeans who may still go to loansharks or work for them despite the risks.
>
> ... As for debtors who end up working for loansharks as runners and repeat offenders – I know there are many repeat offenders who go to jail for loanshark activities and repeat their behaviour when they are out of jail – the new stricter laws may act as a deterrent but I believe the truly desperate would still continue to run the risk of the harsher punishment ...
>
> Naturally the circumstances of those who help loan sharks, either as runners or harassers, are diverse. For present purposes, it suffices for me to make the point that it is important to distinguish between those who, out of genuinely desperate financial need brought about by events not within their control (*eg* sudden sickness and prolonged retrenchment), borrow from loan sharks whom they are then forced to work for, and others who are perhaps less deserving of sympathy.

This shows a thoughtfully nuanced appreciation of the difficult situation of many of the people who are charged and convicted of moneylending offences. There are references to the 'multipronged' approach of parliament in combating these issues, including the support available to vulnerable people who get into financial difficulties. This issue was discussed in the interviews conducted and will be considered in further depth below.

A particularly concerning example of a vulnerable individual being caught up in moneylending is *Nur Azilah Bte Ithnin v Public Prosecutor* [2010] SGHC 210. In this case the accused was a young girl who pleaded guilty to seven counts of harassment associated with moneylending and agreed to have another six charges taken into consideration for sentencing purposes. She was 16 years old when she committed the moneylending offences. She was from a poor family and had been forced to leave home; she then became victim to moneylenders who offered her small amounts of money to harass debtors into paying back their loans. Despite these extenuating and strongly mitigating factors, the accused was originally sentenced to 48 months imprisonment.

This sentence was appealed and Chao Hick Tin JA of the High Court instead sentenced her to reformative training, stating at [23], "I would not belittle the seriousness of the offences which the [accused] committed, the interests of society would be better served if she was given the chance to rehabilitate". This appears to be a much more appropriate outcome for the circumstances, but it seems concerning that, had an appeal not been made, a 16 year old girl from a highly disadvantaged background would have served a four year term of imprisonment for these offences. It highlights the ability of moneylenders to take advantage of highly vulnerable individuals, as well as a potential lack of adequate societal support to prevent these issues from arising.

Section B: Findings from Stakeholder Interviews

The stakeholder interviews provided a rich and unique source of information about the moneylending industry in Singapore. Once again, I would like to thank everyone who agreed to be interviewed – all the participants were very generous with their time and expertise. Unfortunately it was beyond the scope of this Report to include all the helpful comments, ideas and suggestions provided by the interviewees. I have therefore limited discussion to the six key issues.

Further Research Needed

The most common comment from the interviewing process was the desperate need for further research, particularly empirical research, into the moneylending industry and its borrowers. Many interviewees highlighted the complex and diverse nature of moneylending in Singapore, stating that it is very difficult to know who is borrowing this sort of credit and why. The heterogeneous nature of moneylending firms and borrowers in Singapore was also noted in the fieldwork research component and is further discussed below. To effectively regulate an industry, it is important to understand the nature of the firms working in it *and* the nature of customers using these services. It is clear from the interviews conducted that there is a distinct lack of understanding about moneylending borrowers, and their financial needs and motivations. This is significantly more complicated than obtaining data and statistics from lenders. It should involve quantitative research with borrowers about their borrowing activities and financial needs, as well as qualitative interviews to further investigate their motivations, repayment history etc.

Other countries have experienced similar issues with their short-term credit market, and have responded by undertaking research on the industry and its borrowers. For example, the United Kingdom has recently undergone a review of the country's payday lending regulation. Part of this involved a referral of the industry to the Competition & Market's Authority (CMA). Prior to undertaking its review, the CMA conducted a thorough and detailed analysis of the market and its borrowers.[91] This type of research would be of significant benefit to Singapore. The questions that should be asked include:

- The demography of people who borrower from moneylenders – age, family status, education level, income level etc.;
- Details of the loans taken – size, interest rates and late penalty fees;
- Why the borrower accessed moneylending services – was is for illegal/illicit purposes (including gambling) or is it a general inability to pay their living expenses or outstanding debts;
- Which borrowers repaid on time and, alternatively, which borrowers were subject to late payment fees;
- What type of alternative financial products, if any, borrowers have access to; and
- Where would people go if they could not access licensed moneylenders (i.e. family and friends, credit cards, illegal lenders etc).

[91] See Competition and Markets Authority, 'Research into the Payday Lending Market', January 2014, https://assets.digital.cabinet-office.gov.uk/media/5329df8aed915d0e5d000339/140131_payday_lending_tns_survey_report_.pdf.

This information will be an invaluable tool for understanding the licensed moneylending industry, the borrowers who use these products, and the relationship between licensed moneylending and the illegal loan market.

Treating the Cause and the Symptoms

The need to treat both the cause and symptoms of moneylending in Singapore was discussed in the literature review findings in Section A, but this issue has also arisen as an important theme in the interviews. There are a wide variety of reasons why people turn to licensed moneylenders, as well as loan sharks. What is clear however is that increasing numbers of people in Singapore are becoming reliant on moneylending products, and when unable to repay the existing loans, become trapped in a debt cycle where small loans can quickly spiral into thousands of dollars. Whilst the motivations and needs of these borrowers are not yet clearly understood and further research is required, a large number of the interview participants commented on the need to engage with these people and treat the cause of reliance on moneylending as a form of credit, as opposed to only addressing the symptoms.

This will require a multi-pronged approach. Whilst an increased focus on moneylending regulation may assist to remove some of the more harmful aspects of the industry, there are severe limitations on the impact that will have. It is unlikely to address the fact that many low-income people in Singapore will experience credit problems and need to access short-term finance to assist them in times of need. There is a real risk that if the moneylending market is regulated too heavily, fewer people will be able to access credit from licensed moneylenders and may therefore turn to other places, including illegal loan sharks, to fulfill their borrowing needs. As well as focusing on law reform, the government should undertake a campaign to educate people on the moneylending market and provide increased support to people who are experiencing financial difficulties. Some recommendations on how this can occur are discussed in Part IV below.

Business Models Creating Problems, Not Just Interest Rates

Whilst there is obviously very legitimate concern about potentially exploitative interest rates being charged by some moneylenders, a number of interviewees confirmed that focusing only on the rate of interest being charged can mean that other harmful practices are side-lined. Regulating moneylending requires different considerations to the regulation of mainstream and large lending. Due to its unique nature, moneylending is a relatively costly form of credit provision, particularly when lending to individual borrowers on low incomes. Due to the structure of moneylending loans and the needs of borrowers, these loans are generally for reasonably small amounts over a short period of time, thus justifying a higher level of interest when compared to a large bank loan over a long term. For example, a $500 loan at 25% *per month* (the standard length for this type of loan) will over period of one month create $125 ‘profit’ for the lender. This can be compared with a $10,000 personal loan for a period of a

year at 15% *per annum* (the standard length for this type of loan) and a processing fee of $150,[92] which creates $1,650 'profit' for the lender. Whilst the cost of credit obviously needs to be factored into the equation, it is clear from these two examples that moneylending has a very different business structure to mainstream lending and, to a certain degree, justifies higher interest rates.

When looking at these complicated issues, guidance can be sought from the approaches taken by other countries. For example, the 2013 amendments to the Australian interest rate cap system explicitly recognised the administrative costs associated with small amount lending, and allowed lenders to charge an establishment fee on top of interest of 4% per month. The Australian system introduced three different consumer credit definitions – small amount credit contracts (SACCs), medium amount credit contracts (MACCs), and short-term credit contracts (STCCs). A STCC is a loan for under AUD$2,000 with a length of 15 days or less. No interest can be charged on these types of loans, meaning that they have effectively been banned under the new legislation. SACCs are unsecured loans of AUD$2,000 or less with a length of 16 days to 1 year. The lender is only entitled to charge an establishment fee of 20% of the adjusted credit amount and interest of 4% per month (48% per annum). No other fees, charges or interest are permitted on the loan. MACCs are loans for AUD$2,001 to $5,000 for a period of 16 days to 2 years. The lender is entitled to charge interest of 4% per month (48% per annum) and an establishment fee of up to AUD$400. The structures of these loans are outlined in Table 1 below.

In additional to the Australian interest rate restrictions, the total fees and charges must equate to no more than the adjusted credit amount, meaning that consumers will only ever be required to repay twice the amount they have borrowed. The 'establishment fee' for SACCs and MACCs are once-off fees designed to allow lenders to recoup the administrative costs associated with these types of short-term financial products. All loans which are not STCCs, SACCs or MACCs have an interest rate of 48% with no additional fees or charges permitted. Any interest, fees or charges above the stated amounts are prohibited and cannot be recovered by the lender.[93]

Table 1: The Australian Interest Rate Cap

	STCC	**SACC**	**MACC**	**Other Loans**
Maximum interest rate	0%	48% per annum (4% per month)	48% per annum (4% per month)	48% per annum (4% per month)
Maximum establishment fee	$0	20% of credit amount	$400	$0
Example Loan	Lending has been effectively banned	$1,000 over one month = $1,240 repaid, made up of a $200	$3,000 over three months = $3,760 repaid, made up of a $400	$6,000 over six months = $7,440 repaid, made up of no

[92] These figures were taken from personal loans offered by OCBC Personal Banking on 13 January 2015 - http://www.ocbc.com.sg/personal-banking/loans/fixed-repayment-extra-cash-loan.html.

[93] For further information on the Australian system, see J Gardner (2014) 'The Challenges of Regulating High-Cost Short-Term Credit: A Comparison of UK and Australian Approaches', CHASM Briefing Paper, University of Birmingham.

		establishment fee (being 20% of $1,000) and $40 interest (being 4% of $1,000)	establishment fee (a set $400) and $360 interest (being 3 x 4% of $3,000)	establishment fee and $1,440 interest (being 6 x 4% of $6,000)

Unfortunately, a significant minority of moneylenders working in Singapore appear to be taking advantage of the vulnerable position of many of their customers, and offering loans that are inappropriate for the customer's financial position and solely designed to maximise the level of profits obtained by the lender. This practice must be stopped. As discussed above, higher rates of interest are justifiable only when the loan is appropriate for the borrower's needs, can be repaid on time, and is for a short period of time. The interview responses confirmed the initial research findings that an unacceptable level of loans currently provided did not meet criteria and therefore are predatory to some extent.

It is important that regulatory approaches to moneylending respond to the harmful business models being used by the lenders, as opposed to merely limiting interest rates. In fact, a stringent approach to interest rates has the potential to create increased problems and encourages avoidance techniques.[94] As will be discussed further in the fieldwork findings in Section C below, moneylenders have found numerous ways to avoid the interest rate cap in place for low-income borrowers. Firstly, many lenders are ignoring the interest rate restrictions and are lending to people below the threshold at 'standard' rates. Secondly, a unique lending model has been created in an attempt to avoid the negative impact of the interest rate cap. Lenders who are abiding by the cap have created a five-day loan product where the borrower has to repay a fifth of the outstanding amount each day for five days. In the likely event that a borrower misses a payment, they are subject to significant late payment fees. On 4 December 2014, the Strait Times reported the case of cleaner Goh Chin Ann, who, on a monthly income of $1,000, borrowed $400 from moneylender Credit88. The loan contract stated he needed to pay back the outstanding amount the next day or face a late payment charge of $600. The borrower therefore sought loans from other moneylenders to avoid this and the initial amount quickly snowballed to the point that he owed thousands of dollars to multiple lenders.[95]

Many interviewees were very open about the fact that these loans are clearly designed to avoid the interest cap, and the President of the Moneylenders Association of Singapore has told the Straits Times

[94] For discussion of avoidance in the United States, see N Martin and J Schwartz, 'The Alliance Between Payday Lenders and Tribes: Are Both Tribal Sovereignty and Consumer Protection at Risk?' (2012) *Washington and Lee Law Review* 69(2), pp 751-805 and Australia, see Z Gillam, *Payday Loans: Helping Hand or Quicksand?* (2010) A Report for the Consumer Action Law Centre. For a historical analysis see JR Collins, 'Evasion and Avoidance of Usury Laws' (1941) *Law and Contemporary Problems* 8(1), pp. 54-72.

[95] J Lim, 'Caught in Moneylenders' Web of Late Fees', *The Strait Times*, 4 December 2014, http://business.asiaone.com/news/caught-moneylenders-web-late-fees.

that "the only way for moneylenders to earn a profit from low-income borrowers is through late fees".[96] If a moneylender does not engage in one of these avoidance techniques, the vast majority cannot afford to lend at this exceptionally low rate. This leaves people who learn less than the statutory threshold with limited options and at risk of becoming financially excluded, or turning to illegal lenders for funds.

Due to these issues, it is important that regulation of this area address the underlying harmful business practices as opposed to only the interest rates. For example, there has been a recent review in the United Kingdom of the regulation of small-amount loans. After reports of loans of 6,000% APR were released, the Financial Conduct Authority (the government regulator of consumer credit) was given the task of implementing a cap on these types of credit products. It recognised three main harmful aspects of the loans in question – the large level of interest being charged, the significant penalties for late payment of loans, and the 'snowball' effect, where a small amount of money unpaid can grow quickly into a large amount. In light of these issues, a total cap on credit in the UK was implemented as follows:

1) A cap on the amount of interest that can be charged at 0.8% per day;
2) Default and penalty charges for late repayment capped at £15, plus the 0.8% per day interest; and
3) A total borrowing cap of 100%, meaning that borrowers who do not repay on time will only ever have to repay double what they borrowed.

These were designed to allow a healthy and competitive lending market to continue, whilst also removing the most harmful business models and predatory lending practices.

The Relationship between Civil and Criminal Moneylending

The interviews, particularly with criminal and civil lawyers working in this area, highlighted the complex nature of the moneylending laws in Singapore and the complicated relationship between civil and criminal laws. There are three main areas where this arose, firstly the potential prosecution of people who are found to have engaged in unlicensed moneylending in civil cases, secondly the difficulties prosecuting licensed moneylenders for harassment of debtors, and thirdly the blurred lines between legal and illegal lending.

For example, the cases on moneylending tend to draw a strong and distinct line between civil moneylending cases (generally about attempts to avoid repayment of debts, as discussed above) and criminal cases (prosecution of people committing offences under the Moneylenders Act). This distinction is not however present in the legislation, and if a party is found to be an illegal moneylender in a civil case, they are open to prosecution for the criminal offence. For example in *Henny Sutanto v Suriani Tani (alias Li Yu) and Another* [2005] SGHC 82 and *Letts Charles v Soh Kim Wat (alias Soh Kim Leng)* [2007] SGHC 202, it was held that the lender could not rebut the presumption in under section 3 of the Moneylenders Act and therefore were held to be a moneylender. As the parties did not have a license, they were engaging in unlicensed moneylending[97] and, if prosecuted and convicted, would be

[96] Ibid.
[97] As per Moneylenders Act 2010, s 5.

subject to penalties of imprisonment for up to four years and a fine of between $30,000 and $300,000 per offence, or in the case of a body corporate a fine of between $50,000 and $500,000.[98]

There is however no indication that the authorities have taken criminal actions against these lenders or any other lenders engaging in similar transactions, meaning that the relationship between civil unlicensed moneylending and criminal unlicensed moneylending may be more complicated than it appears. This was confirmed by the interview process, and it appears that there is no mechanism in place for the consequences of these civil cases (the finding of unlicensed moneylending by the civil courts) to be 'fed' to the prosecuting authorities. This could be the desired outcome, and there may be good reasons why people and businesses found to be engaging in unlicensed moneylending in the civil court system are not prosecuted in the criminal system, but it appears that the issue has not been considered by the authorities. For the sake of legal clarity and certainty, further directions and clarification in this area are necessary.

As a further example of the complex interaction between the civil and criminal aspects of moneylending, one area that caused a significant concern was the minority of licensed moneylenders who appeared to operate more like illegal lenders when it came to fees, charges, treatment of borrowers, debt recovery etc. The fact that these firms had a licence meant that they were shielded from a number of provisions designed to protect people from predatory lending practices. For example, under section 28 of the Moneylenders Act, it is an offence for an unlicensed moneylender to harass a debtor or beset their property – but this only applies to *unlicensed* lenders, not to licensed moneylenders. It seems obvious that if the aim of this section is to prevent general behaviour (i.e. harassment), it should apply to all people and not just unlicensed moneylenders? This is particularly important in light of the reports provided by numerous interviewees of licensed lenders acting in inappropriate manners, including entering private property and harassing/threatening borrowers for repayments.[99]

Thirdly and finally, the interview process clearly highlighted that unlike a number of other countries, the line between legal and illegal lending in Singapore is often blurred. This is likely to be linked, at least in part, to the complex nature of the current legal regime. Many illegal lenders advertise in ways to make people believe they are legitimate businesses, including providing fake or copied licence information to potential borrowers. As outlined by many interviewees, the complexity also means that people can become caught in the harmful web of illegal moneylending without realising it. One interviewee provided documents related to a case where an accused person believed that they were borrowing from a licensed moneylender, whereas they were actually an illegal lender falsely using the contact details and license number of a legitimate lender. When she was unable to repay the loan due to astronomical interest and late payment charges, the illegal lender told her the only way she could avoid losing her home was to help him with his business. She reluctantly agreed to hand over her SIM and provide access to her bank account details. During the course of assisting the lender, she began to suspect that the lender was in fact illegal, but was scared to report him to the authorities in case she was also charged.

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98 See Moneylenders Act 2010, s 14(1).

99 This is also noted in the literature, see for example Amir Hussain and Lim Yi Han, 'Debate over Licensing Debt Collection', *Strait Times*, 7 March 2015.

As outlined in Part II above, the Moneylenders Act includes both the criminal and civil regulation of moneylending in the country. This is quite an unusual approach, and most other jurisdictions considered have an entirely separate regime for the commercial and civil regulation of moneylending and other forms of consumer credit, and the criminalisation of illegal moneylending.[100] This separation creates three categories of lending – (1) licensed and legal lending, (2) unlicensed lending or lending in breach of the license conditions, which is subject to civil and regulatory penalties and finally (3) illegal lending which is subject to criminal sanctions. This can be contrasted with the Singaporean system where there are only two categories – (1) licensed and legal lending and (2) unlicensed and illegal lending, which is potentially subject to both criminal sanctions and regulatory penalties. This dual categorisation may be the reason why some of the complexities are arising, as there is no clear line between civil and criminal unlicensed moneylending.

'Double Punishment' in Section 14

A number of interviewees, particularly the criminal lawyers who defended people accused of moneylending offences, expressed concern at the way in which penalties under section 14 adversely impacted offenders with limited financial means. As outlined in Part II above, people charged with assisting unlicensed moneylending are subject to a term of imprisonment not exceeding 4 years and a *mandatory fine* of between $30,000 and $300,000. This can be contrasted with the arguably more serious offence of harassing or besetting a borrower under section 28, which has a penalty of a term of imprisonment not exceeding five years and a much lower fine of not less than $5,000 and not more than $50,000.

When speaking with the relevant interviewees, it appears that the mandatory fine associated with section 14 offences was designed as an additional punishment for those people who were making considerable profits from unlicensed moneylending. The fine would therefore act to 'disgorge' these profits from the lenders. Unfortunately, as outlined in the findings in Section B above, the people who are generally prosecuted for section 14 offences are not the moneylenders themselves, but the 'runners'.[101] The runners are very often moneylending borrowers who have been unable to repay their outstanding debts and therefore are coerced by the moneylenders to help running the business in exchange for (generally small) reductions in the amount owing on their loan.[102] These people clearly have very limited means and cannot afford to repay their illegal loans, and so are highly unlikely to be able to pay a large mandatory court fine. The fine is subsequently converted into a further imprisonment sentence, effectively limiting the discretion of the judge to tailor a sentence appropriate for the offence at hand and resulting in a 'double punishment' for the majority of people charged under

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100 See for example – Australia with the National Consumer Credit Act and the National Consumer Credit Protection Regulations 2010 for civil regulation and the Queensland Criminal Code for criminal regulations.

101 One notable exception to this is the case of *Ho Sheng Yu Garreth v Public Prosecutor* [2012] SGHC 19 where two people who were carrying out a moneylending business and making a profit were prosecuted and convicted.

102 See, for example, *Ng Teng Yi Melvin v Public Prosecutor* [2013] SGHC 267.

section 14. Even though judges have almost uniformly ordered the lowest level of fine possible,[103] it still has a significant impact on the prison sentences given by the courts, especially as the fines are per charge and cannot be served consecutively.

The literature review of criminal cases involving moneylending offences was unable to find one case where a person charged with moneylending offences was able to repay the fine associated with the conviction. During the interview process (which included criminal defence lawyers, the Attorney-General's Chambers and judicial figures), only one instance was reported where an accused had paid their fine. So whilst a large mandatory fine may appear to be a good idea as a way to recoup profits made by illegal moneylenders from their illicit activities, it does not appear to be working in this manner and means that people far down the moneylending chain are spending longer in prison than the legislation and benchmark sentencing guidelines mean for them to spend. In light of this finding, it is recommended that the mandatory fine aspect of section 14 be amended in some form. This could be by lowering the amount in line with the penalties associated with section 28 or by making the fine discretionary, dependent on the extent to which the accused has profited from the crimes committed. There is a particularly strong case for this reform in light of the fact that if the Minister is satisfied funds are the proceeds of unlicensed moneylending, they may make an order as such and freeze the proceeds of the unlicensed moneylending.[104]

Increased Flexibility in the Prosecution of People Assisting Moneylenders

The legal regime associated with licensed moneylending works against a vibrant and ongoing illegal lending market, often occurring physically outside of Singapore but, through the use of information technology, impacting the lives of many Singaporean residents. On one hand, this requires a very tough stance and strict enforcement of laws to ensure that potential criminals are deterred from becoming involved in these activities. This 'tough' approach is evident in the significant increases in the penalties associated with moneylending offences and the high benchmark sentences for section 28 offences created by the courts, as discussed in Part II above.

On the other hand, the issues associated with illegal moneylending also justify a flexible and understanding approach to people who may innocently enter the criminal world. The interview process confirmed the findings of the case analysis – that there are a concerning number of criminal cases that involve moneylending 'victims' who become indebted to loan sharks and subsequently become runners or get involved in the moneylending business as a way to repay their loans.[105] In order to provide a

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[103] See, for example, *Public Prosecutor v Shu How Huat* [2011] SGDC 325; *Public Prosecutor v Koh Suat Lay* [2012] SGDC 398; *Leaw Ming Guan Derrick v Public Prosecutor* [2012] SGDC 296; *Public Prosecutor v Tan Chiah Khing* [2012] SGDC 35; *Sathish Kumar s/o Seger v Public Prosecutor* [2012] SGDC 344; Cf *Public Prosecutor v Lee Pit Chin* [2013] SGHC 157.

[104] Moneylenders Act 2010 (Sg), 15C. See also Moneylenders Act 2010 (Sg), Part IIA more generally.

[105] For example, see *Public Prosecutor v Choi Guo Hong Edward* [2007] 1 SLR 712; [2006] SGHC 226; *Public Prosecutor v Nelson Jeyaraj S/O Chandran* [2010] SGDC 384; *Public Prosecutor v Abdullah Bin Abdul Rahman* [2011] SGDC 380; *Public Prosecutor v Lee Kun En* [2011] SGDC 317; *Public Prosecutor v Chen Jun Chang Vincent* [2012] SGDC 365; *Public Prosecutor v Ong Chee Eng* [2012] SGDC 62; *Ong Chee Eng v Public*

strong deterrent to the people making money from illegal moneylending, it is important to locate and prosecute those players who are 'higher up' the food chain. It is understood that this is quite difficult in practice, as the people behind the lending are often physically located outside of Singapore, but something that should be strived for nonetheless.

Leaw Ming Guan Derrick v Public Prosecutor [2012] SGDC 296 is an example of the previous inflexibility in the approach to prosecution. In this case the accused needed money to settle his phone bill and some gambling debts, so borrowed funds from an illegal moneylender. He was unable to repay, so reluctantly agreed to be a runner in exchange for repayment of the debt. This involved handing over SIM cards and making ATM transfers, and later, helping people open bank accounts. When the accused no longer wanted to work as a runner, he contacted the Ex-Ahlong hotline and came into see the police about the illegal loan network. The accused pleaded guilty to the 3 charges of assisting unlicensed moneylending. He was sentenced to a total of 6 months imprisonment and a fine of $90,000 (in default 9 weeks imprisonment); the fact that he contacted authorities and assisted police appears not to have had a significant impact on his sentence. Cases like this may act as a deterrent for other runners or people involved in moneylending to come forward, report the activities to authorities, and potentially provide access to people higher up the lending chain.

Prosecutor [2012] SGHC 115; *Leaw Ming Guan Derrick v Public Prosecutor* [2012] SGDC 296; and *Public Prosecutor v Lee Kun En* [2012] SGHC 31; *Public Prosecutor v Quek Li Hao* [2013] SGHC 152.

Section C: Findings from Fieldwork

The fieldwork aspect of the research provided some of the most enlightening and surprising results. Whilst most outcomes supported previous research findings, some parts of the fieldwork provided previously unseen glimpses into the moneylending industry – especially in light of the large percentage of operating businesses that were visited or contacted by phone. As outlined above, the research assistants 'mystery shopped' 35 businesses by phone and personally visited 66 (out of the 172 licensed businesses operating in Singapore at the time). It does not appear that this, or any other similar exercise, has been undertaken before in Singapore. Therefore the fieldwork component provides a rich, previously unseen, source of information about how moneylending firms are actually operating.

Fieldwork Process

When calling and visiting the research assistants posed as either a student with part-time employment who needed a small loan for textbooks or a full-time employee on a low wage (approximately $2,000 per month) needing money for living expenses. They asked the businesses a range of questions including (a) interest rate charged, (b) late fees and charges, (c) limitations on lending criteria, (d) documentation needed for an application and (e) frequency of repayment. The research assistants were also asked to note any interesting comments or information given and whether the firm was located in a 'business' or 'residential' area, as well as their general 'feel' of the business. For some businesses, one research assistant took in the 'Notes to Borrowers When Obtaining Loans from Licensed Moneylenders' available on the IPTO website.[106] The document clearly states that if a borrower earns less than $30,000, interest rate restrictions apply. The research assistant then documented the responses provided by firms to the production of this information sheet.

The research assistants were chosen on the basis of maturity and experience. Safety was of upmost concern. They were both given training on how to approach businesses and to ensure they were safe at all times. The research assistants were advised not to enter any business that appeared unsafe or if they had any other concerns, and to leave a business straight away if anyone was making them feel uncomfortable. Because of these limitations, a small number of businesses which were scheduled to be visited were omitted from the research.

Interest Rates, Fees & Charges and Repayments

The interest rates charged by different lenders varied quite dramatically. The interest was generally on a monthly basis and ranged from 5% per month to approximately 120% per month. The most commonly cited levels of interest were 18%, 25% and 30% per month. A large number of lenders provides 'ranges' of interest levels (for example, 20-50%, 5-35% and 15-30%) and the specific amount was dependent on a variety of factors, including the borrower's annual income, the amount borrowed and length of the loan. One lender stated that they did not charge any interest, but only a 'contract verification fee' and late

[106] Found at IPTO, 'Notes to Borrowers When Obtaining Loans from Licensed Moneylenders', http://www.ipto.gov.sg/content/dam/minlaw/ipto/assets/documents/LinkClick04.pdf.

fees, the details of which could not be provided until after the loan had been approved. This type of business model is concerning as there is a lack of transparency about the overall cost of the loan, and the 'no interest' aspect could easily entice inexperienced borrowers.

Similar to the situation with interest rates, the fees and charges varied from lender to lender. Whilst almost all firms charged some sort of late penalty, these were exceptionally wide-ranging in their amounts and approaches. By far the most common late payment cited was $50 per day, which would equate to $350 per week, approximately $1,500 per month and over $18,000 per year. Some lenders charged lower rates, such as $30 or $40 per day, but these would still add up to a considerable amount if the borrower was unable to repay their loan for a period of time. Much larger fees were also reported, including firms charging 100% of the principal amount lent (which could be up to $500) per day, 40% of the principal amount (approximately $200) per day, the weekly instalment amount (generally around $150-$200) per day, or a fee of $150 plus default interest per day. There was also a disturbing and distinct trend of many lenders not providing this information upfront and stating that it was dependent on income levels, or that this information could only be provided when the loan was approved.

The frequency of repayment for some loans also creates significant concern. By far, the most common repayments were on a weekly basis. As most people in Singapore are paid on a monthly basis, weekly repayments do not appear to have a rational basis for the majority of borrowers, especially when combined with the exceptionally high late charges issued by many moneylenders. A number of lenders also required twice weekly repayments, which creates even more of a concern. A disturbing number of firms also provided exceptionally short loans solely to people earning less than $30,000 per annum, which needed to be repaid on a daily basis. This will be discussed in more detail below. Some lenders did however recognise this issue and showed genuine attempts to assist borrowers, stating that the repayment schedule and timing would be figured out in according to when and how their income was received.

Compliance with Regime

There was an alarming lack of compliance with the interest rate restrictions set in place for borrowers earning less than $30,000 per annum. A large number of lenders openly told the research assistants that they would not offer a lower rate for low-income borrowers, which is clearly in breach of the Moneylender Rules.[107] The production of the IPTO Information Sheet (stating that there was a legal interest rate in place) produced a wide range of responses, including that the information was incorrect, it did not matter because no moneylending company in Singapore provides a lower rate for people learning less than $30,000, and that 'different' loans were available for these borrowers although refusing the provide the details for these. The lowest interest rate record from the interview process was 4% *per month* (48% on an annual basis), followed by 18% *per month* (216% on an annual basis) – indicating that if these lenders lent to people earning less than $30,000, they would in breach of the 20% *annual* interest rate cap.

[107] Outlined in Moneylenders Rules 2009 (Sg), r 11(2)(a) and (b). See discussion in Part II above.

Whilst many firms had income restrictions that meant they would not lend to people earning less than this amount (see below), there were still a number of lenders who continued to provide loans to these low-income borrowers. The most common loan structure offered for these people was a daily plan, where the money must be repaid in five days over daily installments. Whilst the lenders would only receive a few dollars in interest from this account, it is likely that they recouped these losses through the use of penalty fees and charges if the borrower was unable to keep up with the strict repayment schedule. Whilst this lending structure may suit some people who earn income on at a daily rate (for example, taxi drivers and hawker stand operators), it is likely to be unsuitable for the vast majority of borrowers and therefore result in them being charged very high penalty fees and potentially getting into a cycle of debt.[108]

It is unclear how this lack of compliance has been allowed to occur, but it is likely to be associated with lack of borrower awareness and advocacy ability, uncertain boundaries regarding how different government bodies work together to regulate and enforce compliance in the moneylending industry, and the absence of a dedicated consumer protection body. The reason why the regulation of moneylending is not based within the Monetary Authority of Singapore is also unclear, as it is the key body for financial services regulation. The Registrar of Moneylenders in based in the Ministry of Law, and is in charge of the administrative aspects of moneylending, including ongoing education of lenders. It is however not an appropriate body to enforce or investigate complaints of breaches of moneylending laws or irresponsible lending activities. Whilst the Ministry investigates every allegation of illegal activity, it cannot take action on behalf of a borrower to obtain an appropriate remedy for them. If a borrower has a complaint about their loan or how they have been treated by a moneylender, there is no clear process for them to obtain redress. In addition, because of the characteristics of 'standard' moneylending borrowers, they are less likely to make a complaint about potential breaches of the law and/or effectively advocate for themselves when dealing with unethical lenders. Redress to court is also of limited effectiveness; the loans are usually for such small amounts of money that court processes are prohibitively expensive. An independent, borrower-accessible body with the power to investigate complaints and make orders rectifying the situation, such as an Ombudsman Service, would help to fill this void and allow people wronged by breaches of the moneylending laws to obtain a remedy. Alternatively, the jurisdiction for moneylending could be transferred to the Monetary Authority of Singapore, which has authority for mainstream financial services in Singapore.

Limitations on Lending

It was quite common for moneylending firms to have limitations on lending criteria, but the specifics of the criteria varied significantly. The most common income level was $2,500 per month, and a considerable number of firms refused to lend to people who earn below that amount, which excluded people earning less than $30,000 per annum. Other common income levels included $500 per month, $1,200, $1,500 or $1,800 per month. Many lenders also had restrictions on people who were students or working part-time, regardless of the income received. Other lenders had restrictions on the amount

[108] For a further discussion of this, see Section B above.

of money lent, including a maximum of the borrowers' monthly salary or twice the borrowers' monthly salary. A significant number of borrowers, particularly those based in the more 'traditional' areas in Little India and Chinatown, refused to lend to new customers and only accepted applications from established customers or referrals.

Almost all lenders required borrowers to fulfill strict documentation requirements before they would be offered a loan. This is a very positive sign, as it helps to prevent identity fraud. The most common information sort was National Registration Identity Cards and/or Singpasses, Central Provident Fund Contribution Slips, three months of payslips, utilities bills and bank account statements.

Unlicensed/Suspended Licensed Lenders

As outlined above, the research assistants called or visited two businesses which had suspended licenses, and seven businesses which advertised on the directory.stclassifieds.sg website but were not on the List of Licensed Moneylenders. The responses received from these businesses varied greatly. One firm which had their licensed suspended, commented that they only lend to existing customers but did not state that they were unable to lend at that time. They were also situated at the same address as another lender who was not on the List of Licensed Lenders, indicating the potential for unlicensed lending activity. Another venue that had their license suspended told the researcher of this when visited. The lender stated that when the suspension ended, they would be able to provide credit, and gave full information on fees and charges associated with the loan.

One alarming finding from the fieldwork was the level of unlicensed lender activity and how 'legitimate' a number of these firms appeared to outsiders. Upon visiting these licensed lenders, the researchers commented that it was difficult to tell the difference between the two types of moneylenders. This is very concerning, especially considering the severe criminal penalties associated with assisting unlicensed moneylenders. It also lends strong support for continuing to hold that *borrowing* from an unlicensed moneylender should **not** be an offence. If the law was changed in this regard, it is likely that a number of people would 'innocently' commit the offence as they were unaware the business was unlicensed, and in some cases actively believed that it had a licence. This is supported by the interviews from the criminal lawyers who had defended people charged with assisting unlicensed moneylenders, some of whom thought that they were merely working for a licensed firm in exchange for partial repayment of their outstanding loan.

Complexity of the System

Part II briefly summarised the complex myriad of rules associated with moneylending in Singapore, and the complexity of the legal system has already been discussed in depth in Section B above. It should be clear from the length and depth of these sections that the legal regime is difficult to understand and navigate. As outlined above, there is a disturbing lack of compliance with the required interest rate caps on lending to borrowers earning less than $30,000, and this may be, at least in part, because lenders are unaware of their legal obligations. This finding is supported by the stakeholder interviews. The

Moneylending Association of Singapore indicate that they are doing their best to provide member firms with support and education on the current rules and legal developments, but there are a range of difficulties being encountered. In addition, membership of the Association is not a mandatory requirement for lenders and therefore it is difficult to determine the level of education and understanding of firms that are not Members. It is possible that there is opportunity for an increased role by the Association and enhanced focus on self-regulation through the use of a Moneylenders Conduct of Conduct or best practice guidelines, although significant structural amendments would have to occur in the industry for this to be successful. The IPTO provides a range of useful information for moneylenders on their website, but it is clear that further work must be done to ensure all businesses operating in this area and fully aware of their legal requirements.

Transparency Concerns

Healthy competition is a crucial part of all consumer credit regimes – borrowers should easily be able to compare and contrast different loans to determine what is most suitable for their needs. Unfortunately, it is very difficult (and in some cases impossible) for borrowers to do this in Singapore. Whilst some lenders were forthcoming about their fees and charges, many were not, and some even refused to provide this information until the borrower had applied for a loan. It was concerning to note that a large number of lenders (in excess of 25 firms) refused to provide details of their loan structure, interest rates or any other fees or charges until after the borrowers application had been accepted and/or adequate identification had been provided. This creates a huge lack of transparency about the cost of loans, as well as significant difficulties for borrowers who may try and compare different lenders and products to determine what is best for their credit needs.

One clear recommendation from the fieldwork process is the requirement that all firms clearly advertise their interest rates, fees and charges. Whilst it is not currently a requirement under the Moneylenders Act to provide information about the cost of the loan until the lender receives a formal loan application, there are significant benefits for ensuring that this information is available a lot earlier. On entering a moneylending business, borrowers should be able to know how much the loan will cost them without having to ask an employee, provide identification or complete an application form. Ideally, this information would be clearly advertised in multiple languages on the business premises. This requirement will enhance industry competition and consumer empowerment, as well as decrease trade to unscrupulous lenders who may try and take advantage of inexperienced borrowers. Cost disclosure is a common legal requirement in a number of other countries, so something that Singapore should consider including in the moneylending legal regime.

Location of Moneylenders

During the fieldwork process, the research assistants were asked to note whether the moneylending firm they visited was located in a ‘residential’ (i.e. surrounding by housing) or a ‘business’ (i.e. a commercial building, such as a shopping mall) area. For firms contacted by phone, the assistants were asked to look at the address and determine whether it was residential or business. If this could not be

decided accurately from the street address, it was left blank and no answer was recorded. When the results were collated, the addresses of 90 moneylending firms were considered, and out of these 48 were based in primary 'residential' areas and 42 were in primarily 'business' areas. This means that over half (53%) of the moneylending firms that were mystery shopped were based amongst housing. There were also specific places were a large number of firms were concentrated in one area, including where there were high levels of elderly residents or poor families. These results are not conclusive, as they are based on the assistants' 'feel' of the area and not specific zoning restrictions, but they do provide a useful overview of where moneylending firms are choosing to base themselves.

General Fieldwork Findings

The research assistants reported a strong variety of lenders operating in the industry, and this fact is supported by the statistical findings regarding different lending practices. On one hand, many lenders were described as 'professional' or 'professional looking', as well as being 'friendly' and 'helpful' to borrowers – with the feeling that they were genuinely there to assist people with their financial needs. In addition, some lenders advised the researchers to avoid obtaining a loan with them if they had other options, stating they charged a high rate and that if the borrower could not repay it could become very expensive for them. Another lender advised one research assistant to avoid the daily plan (for borrowers with an income level of less than $30,000, discussed above) unless they were confident that they could manage the repayments. On the other hand, there were concerns about predatory practices, for example by lenders who wanted to get the potential borrower to sign a loan document before giving them details of the interest rate and/or penalty charges. In addition, many lenders refused to give loans to new customers and would only provide credit to existing customers and potentially referrals. One business visited was very suspicious as to how the research assistant knew about their contact information, therefore was clearly unaware that this information was published on the List of Licensed Moneylenders and openly available on the internet. Whilst lenders are entitled to make these business decisions, it shows the level of heterogeneity in the industry.

Working with a strongly heterogeneous group of firms clearly creates significant challenges for any government trying to regulate an industry. Whilst it is easy to be swayed by horror stories of predatory lenders who take advantage of poor people desperate for credit, it must be recognised that there are a wide range of people operating moneylending businesses, many of whom comply with their legal obligations and provide an important service for people unable to obtain loans from mainstream financial providers. Any form of drastic 'lowest common denominator' regulation should therefore be avoided and, instead, a nuanced approach is taken which specifically targets the harmful practices and businesses models currently operating in the industry.

Part IV: Conclusion, Recommendations and Further Research

Recommendations

This section summarises the recommendations already discussed, as well as providing a number of further suggestions for how to support borrowers, particularly those on low incomes, to ensure that they do not become reliant on moneylenders or involved in illegal activities.

Regulation of Licensed Moneylending

The majority of recommendations in this Report focus on how licensed moneylending is regulated, aiming to strengthen the legal regime in this area. Firstly, the moneylending system should be simplified, making it easier for lenders to comply with their legal obligations and avoiding some of the difficulties currently being experienced. The length of the Part I highlights the complexity of the current regime, and possibly explains the low compliance levels of many moneylenders operating in the market. Whilst the form and content of the simplified system would need to be the basis for further research and potentially public consultation, a number of specific suggestions can be made, including:

- There should be a clarification of the relationship between civil and criminal moneylending laws, and possibly the creation of two separate legal regimes;
- The amended legal regime should have an increased focus on transparency, ensuring that borrowers are fully aware of the cost and consequences of obtaining a loan from a moneylender. This includes a requirement for lenders to clearly advertise all interest rates, fees and charges, including penalty and default rates, on their premises and on all websites. This way borrowers will be able to make an informed and educated decision on their lending choices before they are in a contract with a moneylender; and
- In light of the evidence of improper, and potentially illegal, debt collecting practices, it is also important for the legislature to tackle debt collecting and ensure that strict and enforceable guidelines, in line with the Protection from Harassment Act 2014, are a part of the moneylending legal regime.

Secondly, it is very important that any interest rate implemented is set at an appropriate level so that people, particularly those on low incomes or with limited access to affordable alternative finance, can continue to access legal credit. Whilst an extremely low interest rate for lower income borrowers may seem beneficial, it has the potential to create many unforeseen, often negative, consequences. These include avoidance techniques by lenders, the development of harmful business models to overcome the interest rates, financial exclusion of people on low incomes and, most importantly, forcing people in desperate need of credit to turn to illegal lenders.[109] When determining an appropriate level of interest,

[109] See, for example, an article in the Malaysia Chronicle on 4 April 2015 outlining if you live in Singapore and earn less than $20,000 your borrowing choices are limited to either a licensed moneylender or an illegal lender – 'Who to Borrow from: Ah Longs or Licensed Moneylenders', http://www.malaysia-

it is important to look closely at the moneylending market in Singapore. Drawing comparisons with countries that have very difficult economic structures and moneylending markets (such as the highly competitive and commercialised Hong Kong market – where 10% of all borrowing occurs from moneylenders, often large scale, multi-branched companies) can be dangerous as it could mean that moneylenders in Singapore cannot sustain profits by lending below the interest rate, and therefore may leave the market. Section B of this Report provided summaries of the interest rate regimes in Australia and the United Kingdom as potential models for Singapore to consider.

Thirdly, in conjunction with any interest rate cap implemented, there needs to be limitations on fees and charges associated with loans. Whilst there are already restrictions on the *type* of fees and charges that borrowers can be subjected to, there are no restrictions on the *amount* of these charges. This provides an exceptionally easy way for lenders to avoid interest rate caps, as well as make excessive profits from borrowers, particularly those who have difficulties repaying their debt obligations. Whilst lenders should obviously be entitled to charge fees for late payments, bounced cheques etc., these should be limited to a realistic pre-estimate of their loss and not designed as a way to make additional money from borrowers or avoid the interest rates in place.

Finally, one of the biggest challenges experienced by moneylenders is the difficulty accessing the risk posed by borrowers, and obtaining accurate and up-to-date information about customers' financial positions and existing indebtedness. Whilst the Moneylenders Association of Singapore has tried to develop its own system of information gathering, it is limited in scope and application. One solution to this is for the government to initiate a real time database, which would allow moneylenders access to information about people's existing debt and borrowing records, thus allowing them to lend in a more appropriate manner. This development would also assist with over-indebted levels, as the lending restrictions (discussed above) could be applied for each borrower, as opposed for each lender, which provides more meaningful and accurate restrictions on the amount of money people can borrower. The creation of a central recording system should however occur in conjunction with an increased focus on lender education to increase levels of compliance with the legal regime. These actions will produce a number of potential benefits, including decreasing over-indebtedness, accurately recording borrowing and lending information, increasing compliance and enforcement of the industry, and decreasing the number of people defaulting on their loan obligations. It is recognised that there may be some privacy issues associated with the creation of such a system of information gathering, and further research would be needed on how to create a database which balanced the benefits against potential privacy intrusions.

Regulation of Illegal Moneylending

Whilst the focus of this report is obviously on licensed moneylending, it has become clear that this issue is deeply interconnected with loanshark activity in Singapore. The research therefore naturally developed to include an analysis of the illegal lending regime, and a small number of recommendations

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chronicle.com/index.php?option=com_k2&view=item&id=488181:who-to-borrow-from-ah-longs-or-licensed-money-lender&Itemid=3#.VSLUKuH_rBw.

can be made. In general, it is crucial to analyse the competing interests associated with the punishment of people involved in illegal lending. On one hand, it is important that harsher restrictions on licensed moneylending activity do not result in a significant increase in illegal activities. On the other hand, the legislature should balance the deterrent aspect of the illegal moneylending regime against compassion and understanding of the difficult situation in which many people, particularly those on low incomes, find themselves.

In light of the importance of maintaining a balanced approach, this Report makes a number of recommendations. Firstly, the compulsory financial penalties for section 14 offences should be replaced with a discretionary approach, so that the judge can tailor a punishment to suit the defendant's situation and the financial incentives they have obtained from engaging in illegal lending. As outlined above, the compulsory financial penalty regime is not fulfilling its stated aim and is instead adversely impacting the people lowest down on the moneylending 'food chain', effectively resulting in a double punishment. Secondly, the law should not be amended so that borrowing from an illegal moneylending is a criminal offence in and of itself. Loan sharks operating in the industry are increasingly using highly sophisticated ruses and often pose as licensed lenders, therefore the implementation of a criminal offence of borrowing from an illegal lender is likely to result in many people unknowingly committing this crime.

Finally, it is important that there is a more flexible approach to prosecuting people for moneylending offences, particularly if they assist the authorities in finding people higher up the moneylending business or if they turn themselves into police. The Attorney-General Chambers had previously taken a very tough stance on moneylending crimes in Singapore, in response to a sharp spike in unlicensed lending activity and to lower levels of loanshark activity in the country. This appears to have been successful, with reduced numbers of crimes currently being report. It is therefore appropriate to now show a more compassionate and flexible approach. Many judges have recognised the diverse situations that moneylending runners come from and the need for a compassionate approach towards those in difficult situation. For example, Chao Hick Tin JA in *Ong Chee Eng v Public Prosecutor* [2012] SGHC 115 at [18] stated, 'it suffices for me to make the point that it is important to distinguish between those who, out of genuinely desperate financial need brought about by events not within their control … borrow from loan sharks whom they are then forced to work for, and others who are perhaps less deserving of sympathy', but their ability to take these circumstances into account is limited. This is an important distinction that should be further emphasised in the criminal sentencing approach to these offences. The Attorney-General Chambers seems to be taken this approach currently, and hopefully it will continue.

Supporting Borrowers in Singapore

The two previous sections have focused on regulating the *supply* of credit, but it is also important to tackle the reasons why there is such an increase in *demand* for short-term credit. It is clear that increasing numbers of people are turning to moneylending, both licensed and illegal, for their borrowing needs but unclear why this is happening. The government should therefore recognise this issue and provide adequate support for vulnerable borrowers in Singapore. This support has two main parts – firstly, helping people manage their finances to prevent getting into problem debt and secondly, services

for people who do become overly indebted to help them regain control of their finances. These support organisations and services are not designed to give indebted borrowers an 'easy way out', but instead provide them with support and assistance so that they can take control of their financial situation. Similar programs are currently run in a number of other countries, including the Money Advice Service and StepChange Debt Charity in the United Kingdom, and the Financial Counsellors Association in Australia. These organisations provide assistance to people who are suffering financial difficulties so that they can repay their existing debts without obtaining further credit. A number of interviewees commented on the fact that in many people in Singapore borrow money when they have financial difficulties, because they do not want to ask for help and/or be perceived as 'failing' in the management of their own financial affairs. If the borrower cannot then repay the loan, they will need to take out further credit and can become stuck in a harmful debt cycle. Whilst Credit Counselling Singapore provides excellent care to many people in need, it currently does not have a debt restructuring program for moneylending borrowers,[110] and also does not have the capacity to assist everyone in financial difficulties; further support is therefore crucial.

Secondly, there needs to be increased government support to prevent people from turning to illegal moneylending. In Singapore, there are limited borrowing options for people on low incomes or with impaired credit histories. Whilst this can result in positive outcomes and reduce people getting into unnecessary debt, it leaves others vulnerable if they suffer an unforeseen but unaffordable financial shock. In this situation the borrower may feel like there is no choice but to turn to an illegal lender. The creation of non-for-profit lending services, government grants, financial hardship programs and increased support for credit counselling services, would all make significant inroads to reducing the demand for illegal loans and therefore decrease the market available to loan sharks. This should be complemented with increased information warning to people to stay away from illegal moneylenders, including advice on where people can go if they need to borrow money. It appears many Singaporeans falsely believe that only people who are involved in illegal or illicit activities, such as gambling or drugs, turn to illegal moneylenders. This is sadly far from the truth. One interviewee suggested getting 'ordinary' people who had become caught in illegal moneylending to share their stories in order to educate and warn others that people from all walks of life can become involved in the world of illegal loan sharks.

Thirdly, increased grassroots style education is needed so that people can more accurately and confidently distinguish between licensed and illegal moneylending. Whilst there are a number of limitations on advertising of licensed moneylending, as discussed Part I, many people are unaware of these and therefore will not realise the important distinction between legal and illegal lending – for example, the fact that businesses offering loans by SMS are likely to be unlicensed. Loans sharks are becoming increasingly calculating in their approach and often pose as licensed lenders, slightly amending the addresses and phone numbers of legitimate businesses to trick people into obtaining loans with them. Education is therefore a key way to tackle these activities - the education must however be directed at an appropriate audience, recognising that many people who rely on

[110] Although there are hopes that this will change shortly – Imelda Saad, 'Debt Restructuring Programme for Debtors of Licensed Moneylenders', *Channel NewsAsia* 22 November 2014, http://www.channelnewsasia.com/news/singapore/debt-restructuring/1488140.html.

moneylenders may not have access to the internet or television services, and may struggle with their literacy and numeracy skills.

Further Research

Whilst this Report has covered a wide range of previous unexplored issues, further research, particularly empirical research, is required to obtain a better understanding of the needs of borrowers and the actions of firms. Whilst the potential areas of future research are almost endless, this section provides suggestions for three concrete research projects going forward.

How and Why People Use Licensed Moneylenders

Many interviewees highlighted the complex and diverse nature of moneylending in Singapore, indicating the difficulties experienced when trying to determine who is borrowing this sort of credit and why. This is particularly important when combined with the strongly diverse nature of moneylending and the wide variety of different lenders and lending models operating in the industry. There is no mechanism at the moment to collect information on these issues. Further research on how and why people use licensed moneylenders is therefore critical for the development of an appropriate and responsive legal regime. This could also involve a requirement for lenders to collect desired information and report it back to the Registrar of Moneylenders for collation and review. Potentially the most important question that will arise from this research is what borrowers would do if they no longer had access to credit from licensed moneylenders, as this is a very likely outcome of some of the proposed Advisory Committee recommendations. If borrowers can find alternative and less expensive ways of meeting their credit needs, then the limited access will be a positive outcome. If however borrowers default on bills, go without essentials such as food, or potentially turn to illegal lenders, then the government should be very cautious about implementing strong restrictions on licensed moneylenders as it could exacerbate the financial difficulties already being experienced by many low-income borrowers.

This research should be complemented with an increased focus on data collection and retention in the current system. At the moment there is no mechanism to collect information on borrowers, including their income levels, age, education, amount of money borrowed, previous debts etc. In addition to the qualitative empirical research, statistical information would be very useful. Collection would be relatively simple and could involve a requirement for lenders to collect desired information and report it back to the Registrar of Moneylenders for collation and review.

How and Why People Use Unlicensed Moneylenders

There are significant, and potentially very valid, concerns that a notable decrease in the availability of licensed moneylenders would result in increased illegal lending. The relationship between licensed moneylending and loan shark activity Singapore is however complex; it remains uncertain whether a decrease in licensed moneylending will result in an increase in illegal lending. The research conclusions

from other jurisdictions are mixed on this issue,[111] and regardless are of limited value to the Singaporean situation due to the unique nature of both the moneylending and the illegal lending market in the country. The only way that a potential link between the two can be validly explored is by talking with borrowers who have become involved in illegal moneylending, both as borrowers and as runners. Obtaining access to appropriate people to interview will involve some logistical difficulties and will require working with a range of organisations, such as the Attorney-General's Chambers and Credit Counselling Singapore. It will however be a very worthwhile exercise. Being aware of the motivations of people who borrow (both knowingly and unknowingly) from unlicensed moneylenders will be crucial to understand how to best regulate licensed moneylenders, whilst also minimising the potential harm that could be caused from decreased access to legal loans.

The Structure and Business Models of Moneylending Firms

In a similar vein to the lack of information available on moneylending borrowers, there is also an absence of information available on moneylending firms. The fieldwork component of the research highlighted that the industry is exceptionally heterogeneous, but there is very little statistical information available to go further into the industry. It would be useful to have accurate data on how much firms are lending out, what interest levels they are charging, their fees and penalties regime, the amount of profit they are making etc. This would be exceptionally useful information for developing an appropriate cap on interest and potentially fees and charges. It also appears that the majority of lenders are based in residential areas, but it is unclear why this is occurring and what impact it has on their client base. Further information could be sought on this information to determine whether zoning restrictions may be a useful way to encourage responsible lending and borrowing in the moneylending market.

The Relationship between Moneylending and Other Forms of Consumer Credit

It is important to understand how other forms of credit are regulated, as this will have a significant impact on the experiences of moneylending borrowers. The two main competing credit products are pawnbroking and credit cards, both of which will be briefly discussed to highlight how they can impact the situation of moneylending borrowers and the relationship that exists between the different types of consumer credit. Borrowers in Singapore can also obtain small amounts of cash is through pawnbroking, which is defined as 'providing goods to businesses by way of security for the repayment of an advanced sum of money'.[112] The pawnbroking business in Singapore has increased significantly since the global financial crisis – from $2 billion in 2009 to over $7 billion in 2013.[113] Whilst there is likely to be some overlap in customers between pawnbroking and moneylending, these two financial products attract different types of borrowers with varying credit needs. Whilst moneylending generally services the

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111 See for example, iff (2010) *Study on Interest Rate Restrictions in the EU* and Japanese report, ZEW for the European Commission. D Gibbons, (2012) *The Lessons from Moneylending Regulation in Japan*, Centre for Responsible Credit.

112 See definition of pawnbroker in Pawnbrokers Act 1994 (Sg), s 3.

113 R Scully, 'Pawnbrokers beam as industry gleams', *Straits Times*, 21 December 2013.

needs of low-income individuals, some of the most successful pawnbroking businesses have started up in wealthy areas to cater for the needs of 'asset-rich but cash-poor' clientele who need a quick influx of cash but who do not want to wait for the processing times associated with lines of credit from banks.[114] Jeremy Grant highlights that the rates of interest for pawnbroking are often not significantly higher than that offered at mainstream banks. For example, a 'typical' pawnbroker in Singapore charges an EIR of 17%, compared with 15.4% offered at a United Overseas Bank.[115]

The second potential alternative to moneylending is credit card usage, which has also increased considerably in the recent years. Singapore now has the highest number of credit cards per consumer in Asia, averaging 3.3 cards per person.[116] The average monthly credit card balance per borrower has also grown considerably, increasing from $3,275 in 2002 to over $5,000 a decade later.[117] There is some overlap between credit card users and people accessing moneylending services. Whilst credit cards are generally utilised by wealthier individuals, they are increasingly being used by people with lower incomes. Three out of four people in Singapore have a credit card,[118] and 37% of credit card users in Singapore have incomes of less than $40,000 per annum.[119]

Conclusion

It is clear that many dedicated, hardworking people are looking into the moneylending industry in Singapore, and the government should be applauded for the proactive approach taken to regulating this area. Further work is however needed. This Report, drawing on a years' worth of research into the moneylending industry in Singapore, has started the process and can be used to complement the important work that has already been undertaken by the Ministry of Law and Advisory Committee on Moneylending. The Recommendations from this Report are largely in line with those made by the Advisory Committee, but extend and cover both the criminal regime on illegal lending and generally supporting borrowers in Singapore. The challenge is now to create a moneylending system that recognises the need to adequately protect vulnerable borrowers from the exploitative actions of some businesses, whilst also ensuring ongoing access to credit by those people who have no alternatives and therefore may be tempted to enter the unsavoury world of illegal lending.

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114 ibid.

115 Jeremy Grant, 'Pawnbrokers shine in Singapore as middle class feel the pinch', *Financial Times*, 1 November 2013.

116 Jeffrey Oon, 'Singapore top in Asia in credit cards owned per person: survey', *Yahoo Finance Singapore*, 13 April 2012.

117 Siow Le Sen, 'Credit card delinquencies fall; number of customers double since 2002', *The Business Times*, 13 October 2012.

118 Oon (n 116).

119 DataMonitor, *Payment Cards in Singapore* (2011).