

Press Release

LCQ1: Regulation of crowdfunding

Wednesday, March 18, 2015

Following is a question by the Hon Starry Lee and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (March 18):

Question:

As pointed out by a study report, crowdfunding has become very popular in recent years. The number of crowdfunding projects worldwide exceeded 1 million in 2012, raising as much as 2.7 billion US dollars and recording an increase of 81% on the previous year. The study report also points out that under the Jumpstart Our Business Startups Act promulgated by the US Congress in April 2012, as long as crowdfunding portals have registered with the US Securities and Exchange Commission, small enterprises may make use of such portals to carry out equity crowdfunding, i.e. raising funds from the public by selling company equities. There are views that the laws of Hong Kong may be unable to appropriately cater for the increasingly common activities of crowdfunding. In this connection, will the Government inform this Council:

(1) whether it has compared the existing legal framework and supporting policies of Hong Kong on crowdfunding activities with those of other cities (including Shanghai, Beijing, New York, London and Singapore); if it has, of the details; if not, whether it will consider conducting such a comparison;

(2) whether it knows the number of crowdfunding projects in Hong Kong and the total amount of funds they raised in each of the past three years; whether the authorities will consider formulating a policy on promoting the development of crowdfunding in Hong Kong; if they will, of the details; if not, the reasons for that; and

(3) whether it will consider reviewing the restrictions on crowdfunding activities under the Securities and Futures Ordinance and drawing up a code of practice and guidelines on crowdfunding activities, so as to regulate the sharing of risks and returns by investors; if it will, of the details; if not, the reasons for

that?

Reply:

President,

(1) Crowdfunding activities may come in different forms. The more common forms include equity crowdfunding. At present, parties engaging in equity crowdfunding activities in Hong Kong (e.g. where the activity involves an offer to the public to purchase securities, including shares, debentures or interests in collective investment schemes) may be subject to the provisions of the Securities and Futures Ordinance (SFO), and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (C(WUMP)O). Specifically, depending on the specific structure and features of the relevant arrangement, it is an offence for a person to issue any advertisement, invitation or document which contains an invitation to the public to acquire securities, unless the issue has been authorised by the Securities and Futures Commission under the SFO or an exemption applies. It is also an offence to issue a document offering shares in or debentures of a company to the public which does not comply with the prospectus disclosure or authorisation for registration requirements under the C(WUMP)O, unless an exemption applies.

We note that the approach by which different places handle equity crowdfunding activities varies. According to our understanding, equity crowdfunding in Singapore may be deemed as a securities offering under the Securities and Futures Act and unless an exemption applies, entities making an offer of securities to investors in Singapore are required to lodge and register a prospectus with the Monetary Authority of Singapore.

In recent years, the United Kingdom (UK) and the United States (US) have made amendments to their laws to provide for crowdfunding activities. For instance, the US Congress promulgated in April 2012 the "Jumpstart Our Business Startups Act" to exempt equity crowdfunding from the relevant securities laws, including allowing small enterprises to raise funds from general investors through crowdfunding platforms registered with the US Securities and Exchange Commission, provided that certain requirements relating to investor protection have been met. We however understand that the relevant work to implement these new measures is still in progress. As for the UK, the

amendment rules relating to equity crowdfunding came into force in April 2014. Enterprises are allowed to raise funds from retail investors fulfilling certain financial conditions through equity crowdfunding platforms, provided that the relevant requirements have been met.

In the Mainland, under the existing Securities Law, any public offer of securities requires the approval by the China Securities Regulatory Commission or relevant ministries of the State Council. Normally, small and medium enterprises which choose to finance through equity crowdfunding do not fulfill the existing requirements for public issuance. Therefore, equity crowdfunding may only opt for non-public issuance under the current legal framework. In this regard, the Securities Association of China has proposed a set of Administrative Measures on Private Equity Crowdfunding Financing and is conducting a consultation, with a view to providing clearly that equity crowdfunding should adopt non-public issuance and that such activities should be subject to self-regulation.

(2) and (3) We do not have information relating to the crowdfunding projects and the total amount of funds they raised in the past three years.

We have been monitoring the development of crowdfunding activities in Hong Kong. However, we are also aware of the potential risks involved in crowdfunding activities. For example, as the International Organisation of Securities Commissions pointed out in its relevant staff working paper released in February 2014, for equity crowdfunding investing mainly in start-up projects or businesses, there is a 50% chance of the default of a start-up project or business in the first five years of its existence.

In his 2015-16 Budget, the Financial Secretary announced the establishment of a steering group to study how to develop Hong Kong into a financial technology hub together with industries, research and development institutions as well as regulatory authorities. We will set up the steering group as soon as practicable to conduct the relevant studies, including studying issues relating to crowdfunding.

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