

Press Release

LCQ1: Regulation of financial intermediaries

Wednesday, June 17, 2015

Following is a question by the Hon Alice Mak and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (June 17):

Question:

In recent months, quite a number of members of the public have relayed to me that some staff members of financial intermediaries, impersonating staff members of banks, telephoned them to persuade them to refinance their properties. Such financial intermediaries even colluded with finance companies to charge the victims exorbitant intermediary fees. Should the victims concerned refuse to pay the fees, the financial intermediaries would harass and intimidate them incessantly, causing great distress to them and their families. It is learnt that some financial intermediaries could accurately tell the victims' personal particulars when telephoning them, thus winning their trust. So far, I have received 69 such complaints involving a total sum amounting to over \$49 million, indicating that the problem is serious. In this connection, will the Government inform this Council:

(1) whether it has studied if the aforesaid business practices of financial intermediaries are in contravention of the Money Lenders Ordinance, the Trade Descriptions Ordinance or other legislation; if the study outcome is in the affirmative, of the number of prosecutions against such contraventions instituted by law enforcement agencies in the past three years; whether the authorities will step up law enforcement actions in response to such increasingly rampant practices; if they will, of the specific measures; if not, the reasons for that;

(2) given that among the complaints I have received, nearly half of them involved the owners' refinancing of their subsidised sale flats with unpaid premium, whether the authorities will step up publicity to remind owners of subsidised sale flats of the requirement to obtain approval from the Director of Housing before they may refinance their flats with unpaid premium; whether the authorities will further streamline the current procedures of vetting and

approval of refinancing applications; if they will, of the specific measures; if not, the reasons for that; and

(3) whether, in order to combat the aforesaid malpractices of financial intermediaries, the authorities will adopt new measures, including (i) amending the relevant legislation to limit the fees charged by financial intermediaries, (ii) making public the information about the finance companies and financial intermediaries involved in such malpractices, so as to prevent members of the public from inadvertently falling into lending traps, and (iii) requiring banks, other financial institutions and credit reference agencies to review their mechanisms for protecting the personal data of their customers; if they will, of the specific measures; if not, the reasons for that?

Reply:

President,

Hon Mak's question contains three parts. I will first answer parts (1) and (3).

Regarding the issue of financial intermediaries suspected of colluding with money lenders to charge excessive intermediary fees and inducing the public to obtain loans from money lenders, the existing Money Lenders Ordinance (MLO) expressly prohibits a money lender from colluding with any person to charge a fee from a borrower unlawfully. It is also a criminal offence to fraudulently induce any person to borrow money from a money lender by any false, misleading or deceptive statement, or by any dishonest concealment of material facts. Offenders may be liable to fine and imprisonment.

If a financial intermediary engages in a commercial practice prohibited by the Trade Descriptions Ordinance (TDO) such as "false trade descriptions" or "misleading omissions", it commits an offence and may also be liable to fine and imprisonment.

If the acts of a money lender or a financial intermediary involve criminal elements, the Police may deal with the matter and take follow-up actions in accordance with existing legislation such as the Crimes Ordinance.

From 2012 to 2014, the Police instituted 44 prosecutions against money lenders and financial intermediaries under the MLO, with 23 persons being convicted. The Police has also conducted three special operations recently in this regard and arrested a total of 80 persons.

For the implementation of the amended TDO with effect from July 19, 2013 up to end May 2015, the Customs and Excise Department has received a total of 78 complaints involving financial intermediaries and referred appropriate cases to the Police for follow-up under the MLO. The remaining cases were closed as the complainants withdrew the cases, or the complainants were unable to provide adequate information, or the cases did not involve a contravention of the TDO.

It has been proposed that the relevant legislation should be amended to limit the fees charged by financial intermediaries. As stated above, the MLO already clearly provides that it is a criminal offence for a money lender to collude with a financial intermediary to charge a fee from a borrower unlawfully. The TDO covers the unfair trade practices such as "false trade descriptions" and "misleading omissions" of service providers including financial intermediaries. The existing legislation has enabled the law enforcement agencies to prosecute money lenders and financial intermediaries suspected of unlawfully charging fees. There have also been successful convictions in the past in this regard.

The Government will rigorously handle breaches of the relevant ordinances and take enforcement action against malpractices of financial intermediaries. The Investor Education Centre (IEC), the Consumer Council and the Police have taken measures to raise awareness of such fraudulent practices through different channels and to remind the public to understand thoroughly the terms and conditions concerning the fees and charges in any loan agreements or financial contracts.

Loan and debt management has all along been a focus of IEC's key education efforts. The IEC has, starting from this June, launched a series of education activities on borrowing to draw the public's attention to the points to note and the risks involved in borrowing when using property as collateral. By using various channels such as the mass media, outreach talks and other activities, the IEC will continue to promote the importance of smart use of loan

and proper debt management among the public, especially students, the youth and the elderly, and will launch more education activities on loan secured by using property as collateral when necessary. The Police has also produced and aired in the "Police Magazine" Programme a simulated case with the theme of combating loan deception.

Banks and credit reference agencies are required to comply with the Personal Data (Privacy) Ordinance and the Code of Practice on Consumer Credit Data issued by the Privacy Commissioner for Personal Data. The Hong Kong Monetary Authority (HKMA) has also issued clear guidelines requesting banks to have adequate control measures to prevent leakage of customers' personal data by bank staff. Last October, the HKMA issued a circular requesting banks to strengthen their control measures for easier detection of leakage of customer data and minimising the risk of such leakage. The HKMA has also requested all retail banks to appoint an independent assessor (such as their internal audit department) to conduct regular review of their compliance with the relevant guidelines.

As regards part (2) of the question, the Housing Ordinance stipulates that Home Ownership Scheme (HOS) flats are subject to alienation restriction. Unless owners have met the specific requirement (such as payment of premium or obtaining the approval of the Director of Housing, etc.), they are prohibited from selling, letting, mortgaging or in any way alienating or parting with possession of their flats. If flat owners with premium not yet paid wish to refinance their flats, prior approval must be obtained from the Director of Housing. Refinancing will only be approved for cases of financial hardship whereby an immediate sum of money is needed to meet personal or family expenses arising out of unforeseen circumstances. To refinance the HOS flats without paying the premium and without obtaining prior approval from the Director of Housing constitutes a contravention of section 27A of the Ordinance. The person, whether as lender, borrower or otherwise, may be liable to fine and imprisonment.

Information about the alienation restriction of HOS flats and application procedures of refinancing is available on Housing Department (HD)'s website. Flat owners may also lodge enquiries to the HD or call the Government's or the Hong Kong Housing Authority's hotlines. Currently, HOS owners have sufficient access to relevant information.

HD reviews the procedures in processing refinancing applications from time to time to streamline procedures and to facilitate applicants in need. With effect from September 1, 2014, so long as an applicant's solicitor has ensured that the legal charge contains the terms and provisions as required by HD when preparing the legal charge, it is not necessary for the applicant to submit it to HD for approval. With effect from June 1 this year, HD also launched new measures by simplifying the existing procedures and enhancing the application form to help reduce the processing time.

Moreover, HD issued a press release about a successful prosecution case in which a HOS flat owner was found to have breached the Ordinance by charging his flat for obtaining a loan. HD reminded the public that it is an offence for a subsidised housing flat owner to unlawfully mortgage, charge, assign or otherwise alienate their subsidised housing flat without paying the premium, and that such a transaction, together with any related agreement, will also be void and all participants will breach the law.

Ends