Press Release

LCQ4: Business practices of money lenders and financial intermediaries

Wednesday, November 11, 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 (November 11):

Question:

Some members of the public have complained to me alleging that some staff members of financial intermediaries (intermediaries) tricked them into remortgaging their properties in order to obtain loans to resolve their financial difficulties. Only after signing certain documents did the victims come to realise that such documents contained provisions requiring the signers to pay exorbitant intermediary fees, regardless of whether they eventually took out the loans. It is learnt that some victims have eventually sold their properties as they cannot withstand the harassment and intimidation of the intermediaries. Since last year, I have received more than 140 complaints involving a total amount of as high as over $130 million, indicating that the situation is serious. Some members of the finance industry have pointed out that the problem of unscrupulous business practices of intermediaries is rather serious, and yet the existing legislation is outdated, resulting in a lack of regulation on intermediaries. In their views, the authorities should review the relevant regulatory regime to uphold the reputation of the finance industry of Hong Kong. In this connection, will the Government inform this Council:

(1) whether the authorities will, by making reference to overseas experience, amend the Money Lenders Ordinance to step up the regulation of intermediaries, such as requiring these companies to regularly submit to the regulator reports on their financial positions, and stipulating that the loan and intermediary service agreements must contain a cooling-off period clause; if they will, of the details; if not, the reasons for that;

(2) in the light of the fact that operators in the money lending industry vary in standard, whether the authorities will reform the relevant licensing system, including (i) tightening the licensing conditions (e.g. requiring applicants to meet the minimum registered capital requirement and have sound business and

financial records, licensees to comply with a code of conduct, etc.), (ii) setting up a registration system for practitioners, and (iii) empowering the Money Lenders Registry or a newly established body to perform various regulatory functions, including the formulation and implementation of a code of practice, granting of licences, investigation of non-compliant cases and revocation of licences; if they will, of the details; if not, the reasons for that; and

(3) whether the authorities will provide resources to social welfare organisations with relevant experience to support them in providing disinterested financial management advisory services to members of the public, so as to reduce the cases of members of the public falling into credit traps inadvertently; if they will, of the details; if not, the reasons for that?

Reply:

President,

Hon Mak's question comprises three parts. My reply to parts (1) and (2) is as follows:

Existing licensing regime

Under the existing Money Lenders Ordinance (the Ordinance), a money lender's licence is granted by the Licensing Court. In applying for the grant or renewal of a money lender's licence, a company is required to provide relevant information such as information relating to its directors and major shareholders, information of all bank accounts opened for the operation of business as a money lender, documentary proof of the capability of the company and its directors in managing the money-lending business as well as documentary proof of their financial situation, etc. Such information is provided to the Licensing Court to facilitate its consideration of whether the application will be approved.

The Ordinance also specifies the factors that the Licensing Court shall consider in processing an application for a money lender's licence. The factors include whether the applicant is a fit and proper person to carry on business as a money lender and whether the grant of such licence is contrary to the public interest. No licence will be granted if the applicant fails to satisfy the Licensing

Court that he/she is a fit and proper person to carry on business as a money lender, and that the premises to which the application relates are suitable for the carrying on of the business of money-lending, and that the grant of such licence is not contrary to the public interest.

Moreover, for applications for the grant or renewal of a money lender's licence, the Police may, in accordance with the Ordinance, require the applicant to produce for inspection the relevant books, records or documents or to furnish other relevant information. Where there is a reasonable suspicion that a money lender has committed an offence under the Ordinance, the Money Lenders Registry and the Police may, with the authorisation in writing of the Registrar of Money Lenders or a police officer above the rank of superintendent, enter any premises where the business of the money lender is being carried on to inspect the relevant documents and accounts. The Police have the authority to seize such information. Under the Ordinance, the Police and the Registrar of Money Lenders may object to a licence or renewal application.

The Ordinance also provides for the power of the Licensing Court to revoke a licence. A licence may be revoked if the Licensing Court considers that the licensee has ceased to be a fit and proper person to carry on business as a money lender or that the licensee has been in serious breach of any condition of the licence.

The above illustrates that the existing legislation has empowered the relevant authorities to take into consideration a set of relevant factors when examining the licence or renewal applications.

Regarding the question of a minimum registered capital, it is a means of prudential supervision for ensuring the financial stability of licencees and applicants. However, unlike financial institutions such as banks and insurance companies, money lenders do not accept and handle deposits and premium payments from the public. Such a supervisory tool may not be applicable to money lenders.

Relevant issues on financial intermediary for money lending business

The existing Ordinance has provisions that prohibit any financial intermediaries from fraudulently inducing members of the public to borrow money from a money lender. According to the Ordinance, it is 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 will be liable to a fine and to imprisonment.

Regarding the issue of suspected illegal fee-charging by financial intermediaries, the Ordinance expressly prohibits a money lender from colluding with any person to charge a fee from a borrower. Offenders will also be liable to a fine and to imprisonment.

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

If the acts of a financial intermediary involve criminal elements, the Police may handle and follow up on the matter in accordance with existing legislation such as the Crimes Ordinance.

From 2014 to August 2015, the Police conducted a number of special operations against malpractices of financial intermediaries and arrested 91 persons. In September, the Police mounted an operation codenamed "Keyscroller" to combat illicit activities of money lenders and financial intermediaries, and arrested more than 130 persons.

The information shows that the enforcement actions by the Police against malpractices of financial intermediaries have achieved further results. The Government will continue to rigorously tackle breaches of the relevant ordinances.

We are liaising closely with the Police on its enforcement experience. In the next few months, we will make further analysis of all recent enforcement actions taken by the Police, so as to better identify the difficulties experienced by the Police in enforcing the relevant legislation. At the same time, we will also make reference to the submissions made by Members and interested parties. Depending on the outcome of the analysis, we will not rule out reviewing relevant provisions of the Ordinance with a view to ensuring more effective measures against malpractices of financial intermediaries. We can follow up and discuss the matters concerned at the Panel on Financial Affairs.

As regards part (3) of the question, the Investor Education Centre (IEC), the Consumer Council and the Police have been reminding the public through different means of the points to note when taking out loans. They have also taken measures to raise awareness of 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 a loan.

The IEC has also worked with social welfare institutions to promote debt management in the community. For instance, the IEC co-operated with the Caritas Hong Kong in September and October 2015 in organising two seminars which covered debt management information including risk on money lending, calculation of interest rate, loan products and personal credit report.

In addition, the IEC published posters on pitfalls of money lending and property loans in October 2015, and posted them in the areas managed by the Housing Department, public rental housing, and housing under the home ownership scheme by phases through the Housing Authority. The IEC also continues to enhance public education on money lending through the mass media and the e-newsletters of the Centre.

Ends