

Press Release

LCQ2: Financial intermediaries using confusing names

Wednesday, December 16, 2015

Following is a question by the Hon Kenneth Leung and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (December 16):

Question:

It has been reported that some companies with the description of "會計事務所" (accounting affairs firms) in their Chinese names promote loan services on behalf of financial intermediaries or financial companies under the guise of offering financial assessment services to clients, and they charge exorbitant handling fees. Some members of the accounting profession have relayed to me that the names of those companies can easily lead people into mistaking them for firms of certified public accountants (practising) registered under the Professional Accountants Ordinance and the business practices of such companies have also tarnished the professional image of the accounting profession. In this connection, will the Government inform this Council:

(1) whether the authorities have measures in place to regulate the aforesaid financial assessment services so as to ensure their independence and professionalism; if they do, of the specific measures; if not, whether they will consider amending the relevant ordinances to safeguard the rights and interests of borrowers;

(2) of the respective numbers of cases in which investigations were conducted into and prosecutions instituted in respect of the illegal acts of financial intermediaries by law enforcement agencies in the past three years; the number of companies involved in such cases which used the description of "accounting affairs firms" or similar wording in their names; and

(3) whether it will enhance public education to teach the public how to differentiate between financial intermediaries and practice units registered under the Professional Accountants Ordinance; if it will, of the specific plans; if not, the reasons for that?

Reply:

Acting President,

My reply to Hon Leung's question, which contains three parts, is as follows:

(1) and (2) To protect borrowers, the existing Money Lenders Ordinance (the Ordinance) provides that 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 are liable to a fine and to imprisonment. A person who, under the pretext of an "accounting affairs firms" or providing "financial assessment", fraudulently induces a member of the public to borrow money from a money lender may breach the relevant provision of the Ordinance.

On 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 are also liable to a fine and to imprisonment.

From 2012 to end November 2015, there were 45 prosecutions under the Ordinance, resulting in the conviction of 24 persons.

Any financial intermediary engaging in a commercial practice prohibited by the Trade Descriptions Ordinance such as "false trade descriptions" or "misleading omissions" commits an offence and is liable to a fine and to imprisonment.

If the act of a financial intermediary involves other criminal aspects, the Police will take up the case and follow up in accordance with existing legislation such as the Crimes Ordinance.

The above ordinances serve to protect people intending to borrow money from money lenders.

The Police are concerned about crimes arising from money lending activities, especially those involving financial intermediaries, and have taken a

number of enforcement actions against such malpractices. From August to October 2015, the Police received 235 reports that concern financial intermediaries, out of which 61 are classified as criminal cases. The Police do not maintain figures of companies with the description of "accounting affairs firms" or similar wording in their names.

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 with a view to better identifying the difficulties experienced by the Police in enforcing the relevant legislation. We will also make reference to the submissions made by Members and interested parties and arrange meetings with various stakeholders as appropriate. Subject to the outcome of the analysis and the actual circumstances, we will not rule out the possibility of reviewing relevant provisions of the Ordinance if that is needed to ensure more effective measures against malpractices of financial intermediaries.

(3) It is an offence to falsely pretend to be a corporate practice registered under the Professional Accountants Ordinance (PAO). Section 42 of the PAO prohibits a body corporate which is not a corporate practice from advertising or representing itself as qualified to practise as a practice unit, or using in its name certain descriptions which are reserved for professionals (including "certified public accountant" or the characters "會計師") with the intention of causing, or in a way which may reasonably cause, a person to believe that it is a practice unit registered under the PAO. Any body corporates, including financial intermediaries, which contravene that provision commit an offence.

In order to safeguard the interests of the accounting profession and the public, the Hong Kong Institute of Certified Public Accountants (HKICPA) has been making efforts in helping members of the public distinguish practice units registered under the PAO from those who are not. HKICPA's efforts include public education activities such as media interviews, advertisements, discussion fora, feature articles, etc. HKICPA also keeps and regularly updates a register of certified public accountants for public inspection so as to enable any member of the public to ascertain whether he is dealing with an accountant registered with the HKICPA.

Section 29(2) of the PAO stipulates that unless a person is a certified

public accountant (practising) or a corporate practice registered by HKICPA, the person shall not hold any appointment as a statutory auditor in Hong Kong or render any relevant audit services. On the other hand, the PAO does not impose any restrictions that other accounting-related work must be performed by accountants or practice units registered under the PAO. A company which carries out accounting-related work other than statutory audits does not contravene the PAO if it operates in the name of "accounting affairs firm".

If the non-accounting businesses of a company under the name of an "accounting affairs firm" are involved in illegal activities, e.g. fraudulently induce any person to borrow money from a money lender, such activities would be dealt with under relevant ordinances. The Government will maintain close liaison with HKICPA and listen to the views of various sectors on the relevant issues.

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