

Press Release

LCQ12: Measures to combat unscrupulous business practices of financial intermediaries

Wednesday, November 2, 2016

Following is a question by the Hon Alice Mak and a written reply by the Acting Secretary for Financial Services and the Treasury, Mr James Lau, in the Legislative Council today (November 2):

Question:

In recent months, quite a number of members of the public have relayed to me that fraudulent cases involving financial intermediaries (intermediaries) have frequently occurred, even with some victims who had been charged exorbitant intermediary fees committing suicide as they could not withstand the stress. Since 2014, I have received more than 240 complaints totalling over \$380 million, reflecting the severity of the problem. To crack down on the money lending malpractices by intermediaries, the authorities proposed more stringent regulatory measures in April this year. Nevertheless, some members of the money lending industry have pointed out that those measures treat the symptoms but not the root cause of the problem, and the authorities should therefore introduce amendments to the Money Lenders Ordinance (Cap.163) (the Ordinance) to step up the regulation of intermediaries. In this connection, will the Government inform this Council:

(1) whether the authorities are currently conducting studies on introducing amendments to the aforesaid Ordinance and setting up a licensing regime for intermediaries; if they are, of the details; if not, the reasons for that;

(2) of the number of prosecutions instituted by law enforcement agencies against illegal practices of intermediaries since 2015; whether the authorities have stepped up law enforcement actions in response to such increasingly rampant practices; if they have, of the specific measures and their effectiveness;

(3) given that Caritas – Hong Kong and Tung Wah Group of Hospitals set up in April this year dedicated telephone hotlines to provide advisory services for people in financial distress, whether the authorities know the number of

enquiries and requests for assistance received by such hotlines so far; and

(4) given that some members of the money lending industry have pointed out that there are credit reference agencies (CRAs) leaking consumer credit data of members of the public to unscrupulous intermediaries, whether the authorities know the legal basis on which CRAs provide consumer credit data of members of the public to money lenders such as banks; whether they have taken measures to ensure proper management of consumer credit data of members of the public by CRAs; if they have, of the details?

Reply:

President,

In view of public concern about the malpractices by financial intermediaries for money lending, the Financial Services and the Treasury Bureau announced in April 2016 that a four-pronged approach would be adopted to address the issue, viz. enhanced enforcement, enhanced public education and publicity, enhanced advisory services to the public and more stringent licensing conditions on money lender licences. Measures to enhance enforcement, public education and publicity and advisory services to the public have been implemented.

The measure to impose additional licensing conditions on money lender licences mainly seeks to facilitate more effective enforcement of the statutory ban on separate fee charging on borrowers by money lenders and their connected parties, as well as promote prudent borrowing through inclusion of a risk warning statement in all advertisements issued by money lenders. The Licensing Court has started imposing the additional licensing conditions when approving applications for renewal of money lender licences and for new licences with the additional licensing conditions to take effect on December 1, 2016, and is processing the Administration's application for imposition of the additional licensing conditions on other existing money lender licences.

My reply to the four parts of the question raised by the Hon Mak is set out below:

(1) Regarding the charging of exorbitant fees on borrowers by financial

intermediaries which is a major issue of public concern, the Money Lenders Ordinance (Cap. 163) (MLO) expressly prohibits the charging of any fees on borrowers by money lenders, their connected parties (e.g. their employees, agents and persons acting for them) and persons acting in collusion with the money lenders. To ensure effective enforcement of the above-mentioned ban on separate fee charging, financial intermediaries and money lenders should not be considered separately as they relate to this issue, in particular since unscrupulous financial intermediaries and related money lenders may resort to different means to conceal their relationship so as to circumvent the ban on separate fee charging on borrowers.

As for the measure to introduce more stringent licensing conditions on money lender licences, it includes, inter alia, the requirement that before a money lender grants a loan, if the borrower has entered into or signed any agreement with a financial intermediary for or in relation to the loan, the financial intermediary must be appointed by the money lender and such appointment must have been reported to the Registrar of Money Lenders by the money lender and included in the Register of Money Lenders for public inspection. A money lender should take appropriate steps to ensure that its appointed intermediary would not charge any fees on the borrowers. The authorities will follow up with the money lender concerned if there is a breach of the requirement in accordance with the licensing conditions, and the evidence-gathering efforts of the Police could be more effective to facilitate prosecution of the financial intermediary concerned. This measure can tackle the malpractices by financial intermediaries more directly and expeditiously than if a new and separate licensing regime is to be introduced to regulate financial intermediaries, and hence is a more appropriate approach to tackle the issue under the existing circumstances.

We are following up on the above measure so as to ensure smooth implementation of the additional licensing conditions on December 1, 2016. We will make public announcement before the implementation date and publicise the new measure through public education activities. We will review the effectiveness of the measure after six months of its implementation and, subject to the review results, will consider if there is a need to introduce any additional improvement measures.

(2) Apart from the above-mentioned express prohibition under the existing

MLO on money lenders, their connected parties (e.g. their employees, agents and persons acting for them) and persons acting in collusion with the money lenders from charging any fees on borrowers, 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. From 2015 to June 2016, six prosecutions were initiated by the Police under the MLO resulting in the conviction of five persons.

If the acts of a financial intermediary involve other criminal elements, the Police will deal with and follow up on the matter in accordance with the other relevant legislation (such as the Crimes Ordinance, Cap. 200 and the Theft Ordinance, Cap. 210). The Government does not maintain any statistics on cases involving financial intermediaries that were or are being followed up in accordance with such other relevant legislation.

The Police are concerned about crimes arising from money lending activities, especially those involving malpractices by financial intermediaries, and have taken a number of enforcement actions against such malpractices. The Police has mounted a number of large-scale enforcement exercises since 2015 during which over 400 people have been arrested. Apart from the prosecution cases mentioned above, the Police is carrying out investigations and gathering evidence for the other cases. Besides, the Police continues to publicise the relevant crime prevention messages through its integrated scam prevention platform "Fight Scams Together", online channels like Facebook and publicity activities at district level, etc.

(3) In late April this year, the Social Welfare Department commenced a 3-year pilot programme by providing subvention to Caritas - Hong Kong and Tung Wah Group of Hospitals respectively for setting up dedicated telephone hotlines to provide assistance to people in financial distress. The objective is to promote public awareness of the availability of advice, counselling and other supportive social welfare services provided by non-governmental organisations, so that people in need can seek timely assistance through proper channels, which may also help reduce their vulnerability to the deceptive tactics of unscrupulous intermediaries. Besides initial emotional support and counselling service, needy people will also receive general advice on channels for seeking further support and assistance from the related authorities or social service units according to their respective needs and circumstances. As at September

30 this year, the two organisations have received and handled 806 enquiries or requests for assistance.

(4) We have consulted the Constitutional and Mainland Affairs Bureau on the issue. The Code of Practice on Consumer Credit Data (the Code) issued by the Privacy Commissioner for Personal Data under section 12 of the Personal Data (Privacy) Ordinance, Cap. 486 (PDPO) sets out a series of measures that a credit reference agency (CRA) should take in its daily operations (including monitoring and reviewing on a regular and frequent basis on usage of the database with a view to detecting and investigating any unusual or irregular patterns of access or use), as well as measures to be taken by CRAs in preparation for the provision of consumer credit reference service (including staff training on the PDPO and the Code) so as to safeguard against any improper access to or mishandling of consumer credit data held by a CRA.

Ends