

Press Release

LCQ20: Regulation of financial intermediaries

Wednesday, November 9, 2016

Following is a question by the Hon Wu Chi-wai and a written reply by the Acting Secretary for Financial Services and the Treasury, Mr James Lau, in the Legislative Council today (November 9):

Question:

At present, financial intermediaries are not subject to the regulation by the Money Lenders Ordinance (Cap. 163) and the Hong Kong Monetary Authority (HKMA). In reply to a question of this Council in 2014, the Government indicated that "there is currently no justification from the perspective of maintaining the stability of our banking and financial systems for considering placing the businesses of money lenders under the regulation of HKMA". However, incidents about financial intermediaries employing unscrupulous business practices have still occurred one after another in recent years. For example, some companies with the description of "accounting affairs firms" in their Chinese names seek to promote loan services under the guise of offering financial assessment services to clients, and they charge exorbitant handling fees. There are views that the Government should expeditiously amend the Money Lenders Ordinance to plug the regulatory loopholes, so as to prevent members of the public from falling into credit traps inadvertently. In this connection, will the Government inform this Council:

(1) of the respective numbers of cases in the past three years in which various law enforcement agencies conducted investigations into and instituted prosecutions against the illicit acts of financial intermediaries, and set out the respective numbers of prosecution and conviction cases by the provisions involved (such as section 29(10) of the Money Lenders Ordinance and provisions relating to "false trade description" or "misleading omissions" in the Trade Descriptions Ordinance (Cap. 362));

(2) given that the Government will impose additional licensing conditions on money lenders' licences by stipulating that a money lender must (i) ask the intending borrower to state whether or not he has entered into or signed any agreement with a third party (the third party agreement) and (ii) state in writing,

in the loan agreement, the intending borrower's reply, and if that reply is in the affirmative, the money lender must not grant any loan unless the third party is a person appointed by the money lender, whether the authorities will consider formulating effective measures to ensure that both money lenders and financial intermediaries will strictly comply with such requirements, and whether the authorities will mandate the incorporation of provisions on cooling-off periods into loan agreements; if they will, of the details; if not, the reasons for that; and

(3) given that no major amendment has been made to the Money Lenders Ordinance since its enactment in 1980, whether the Government will, with the protection of borrowers as its prime consideration, review existing regulatory policies and amend the Ordinance, so as to place all the businesses of money lenders and the financial intermediaries concerned under the scope of regulation of HKMA; whether it will set regulatory standards, stipulate that the licensee must be a "fit and proper person", and carry out work such as on-site examinations?

Reply:

President,

My reply to the three parts of the question raised by the Hon Wu is set out below:

(1) From the commencement of operation of the amended Trade Descriptions Ordinance (Cap. 362) in July 2013 up to September 2016, the Customs and Excise Department (C&ED) has received 211 complaints against financial intermediaries, of which 167 complaints involved false trade descriptions; 27 complaints involved misleading omissions; 14 complaints involved aggressive commercial practices and three complaints involved wrongly accepting payment. Regarding the progress of the cases, no offence of the Trade Descriptions Ordinance was found in 44 cases, and C&ED is still following up on 38 cases. The C&ED has referred the remaining 129 cases to the Police for further action.

The existing 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 money lenders. 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 2012 to June 2016, 50 prosecutions were initiated by the Administration under the MLO resulting in the conviction of 28 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 Administration does not maintain any statistics on prosecutions or convictions against financial intermediaries.

The Police are concerned about crimes arising from money lending activities, especially those involving malpractices by financial intermediaries. In order to step up enforcement in combating illegal practices by unscrupulous financial intermediaries, the Police mounted a number of large-scale enforcement exercises in 2015 and the first eight months of 2016 during which over 400 people were arrested.

(2) In view of public concern about the malpractices by financial intermediaries for money lending in recent years, 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. One of the objectives of imposing additional licensing conditions on money lender licences is to facilitate more effective enforcement of the statutory ban on separate fee charging as mentioned in part (1) above. The additional conditions imposed require, inter alia, that before a money lender grants a loan, if the borrower has entered into or signed any agreement with a third party (e.g. financial intermediary) for or in relation to the loan, that third party must have been 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 also take appropriate steps to ensure that its appointed third party would not charge any fees on the borrowers.

One of the additional licensing conditions also requires a money lender to establish and maintain a proper system so as to ensure that its appointed third parties shall be informed of and shall facilitate the money lender's observance of the licensing conditions and the provisions of the MLO.

The Licensing Court has started imposing the additional licensing conditions when approving applications for renewal of money lender licences and those 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 the other existing money lender licences.

To facilitate the implementation of the new measure, the Registrar of Money Lenders has issued guidelines on the operation of the additional licensing conditions for money lenders' reference. We will publicise the new measure through public education activities prior to the implementation.

(3) The new measure can tackle the above-mentioned malpractices more directly and expeditiously than amending the MLO, and hence is a more appropriate approach under the existing circumstances. We will closely monitor the implementation of the new measure. In case there is any breach of the requirements, the authorities will follow up with the money lender concerned in accordance with the licensing conditions, and the Police could gather evidence more effectively to facilitate prosecution of the financial intermediary concerned.

Under the MLO, money lender licences are granted by the Licensing Court. The MLO also specifies the factors to be considered by the Licensing Court in processing an application for a money lender licence, including whether the applicant is a fit and proper person to carry on business as a money lender. No licence shall 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.

We will review the effectiveness of the additional licensing conditions after six months of their implementation and will consider if there is a need to introduce any additional improvement measures (such as stepping up on-site inspections and the provision of a cooling-off period) in light of the review

results.

According to the Banking Ordinance (Cap. 155), the Hong Kong Monetary Authority (HKMA) is responsible for the supervision of authorised institutions with a view to managing the potential risks of the banking system and maintaining the stability of the financial system. We consider that there is currently no justification from the perspective of maintaining the stability of our banking and financial systems for considering placing the businesses of money lenders under the regulation of the HKMA.

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