

Press Release

LCQ13: Regulation of finance companies and financial intermediaries

Wednesday, December 6, 2017

Following is a question by the Hon Paul Tse and a written reply by the Secretary for Financial Services and the Treasury, Mr James Lau, in the Legislative Council today (December 6):

Question:

Under the law, owners of subsidised sale flats such as those under the Home Ownership Scheme/Private Sector Participation Scheme (HOS/PSPS) and the Tenants Purchase Scheme (TPS) must obtain the prior approval from the Director of Housing (the Director) before they may mortgage or remortgage (refinance) their flats. It has been reported that recently a TPS flat in Ma On Shan, which had been refinanced as many as 12 times, was put up for sale by auction pursuant to a court order because its owner was incapable of repaying the loans from finance companies. Moreover, the Police launched four rounds of operations against unscrupulous financial intermediaries (intermediaries) between September 2015 and August last year, arresting 302 persons and smashing 43 unscrupulous intermediaries in total. However, it has been reported that intermediaries have used more secretive and roundabout practices (e.g. boasting that there will be no charge for unsuccessful applications, renaming intermediary fees as service fees and setting up bogus law firms) to trick members of the public into taking out loans from them. In this connection, will the Government inform this Council:

(1) of the respective numbers of cases, which were recorded by the Housing Department and the Land Registry each year since 2015, of refinancing of HOS/PSPS and TPS flats which had not been approved by the Director beforehand; among such cases, the number of those in respect of which the authorities instituted prosecutions;

(2) whether the authorities have investigated if the owner of the aforesaid flat, which was put up for sale by auction, had obtained the Director's prior approval before proceeding with each refinancing; if so, of the details; if there was no prior approval, whether the finance companies concerned have contravened the law; whether the authorities will explore ways to eradicate the practice of

finance companies granting loans to owners of subsidised sale flats with unpaid premium who have not obtained the Director's prior approval for the refinancing;

(3) whether the Police have investigated the situation that after the Police have stepped up law enforcement efforts, intermediaries have switched to adopting unscrupulous practices that are more secretive and roundabout than before in their operation; if so, of the details; if not, whether the Police will expeditiously conduct investigations and step up prosecutions, so as to prevent more property owners from becoming victims;

(4) as a number of members of the public who suspected they had been defrauded by intermediaries have approached my Member's Office for assistance, saying that the Police have refused to handle their cases, whether the authorities have kept a close watch on the situation where the victims of intermediary frauds have nowhere to turn to for assistance; and

(5) whether the authorities will draw up a policy that the Land Registry must, on receipt of applications for registering entries of encumbrances such as mortgages or charges in the land registration records of flats under TPS, HOS/PSPS and the Green Form Subsidised Home Ownership Scheme with unpaid premium, notify the Housing Department, the Hong Kong Monetary Authority and the relevant departments for ascertaining whether the cases concerned have been approved by the Director and taking appropriate follow-up actions?

Reply:

President,

In consultation with the Transport and Housing Bureau, the Security Bureau and the Development Bureau, our consolidated reply to the question raised by Hon Paul Tse is set out below:

(1) According to the Transport and Housing Bureau, based on the record of Housing Department, there are 1 438 suspected cases of refinancing of subsidised housing flats which had not been approved by the Director of Housing beforehand since April 2015. Twenty of them have been put to

prosecution so far. On the other hand, according to the Development Bureau, the Land Registry is not required under the Land Registration Ordinance (Cap 128) to verify whether a mortgage of subsidised housing flats has been approved by the Director of Housing. Therefore, the Land Registry has no relevant records.

(2) According to the Transport and Housing Bureau, under the Housing Ordinance (Cap 283), upon obtaining prior written approval from the Director of Housing and subject to compliance with specified conditions therein, the owner could mortgage or charge his subsidised housing flat without paying a premium. Otherwise such a transaction will be void. Section 27A of the Housing Ordinance further stipulates that any person purports to enter the aforesaid void mortgage or charge commits an offence and is liable to a maximum fine of \$500,000 and to imprisonment of one year. The Housing Department will not comment on individual cases.

On the other hand, according to the Money Lenders Ordinance (Cap 163), all licensed money lenders must carry on money lending business in accordance with the conditions imposed by the licensing court on their licences. Since December 1, 2016, the licensing court has imposed an additional licensing condition on all money lender licences to reiterate the abovementioned requirement under the Housing Ordinance. Before entering into a loan agreement which involves accepting a subsidised flat as collateral, licensed money lenders are required to obtain from the borrower either the written approval of the Director of Housing to mortgage or charge the relevant flat, or a written confirmation from the Hong Kong Housing Authority that the necessary premium for removing the restrictions on alienation on the relevant flat has been fully paid. If any money lender is suspected to have breached the licensing conditions, the relevant authorities will conduct investigation and consider applying to the licensing court for revoking or suspending the money lender's licence concerned, or consider raising objection to the licensing court when the relevant authorities examine the licence renewal application of the money lender concerned.

(3) According to the Security Bureau, the Police are concerned about crimes arising from money lending activities, especially those involving malpractices by financial intermediaries, and will continue to monitor the evolvement of relevant mode of committing crimes with a view to taking corresponding

actions. Apart from stepping up enforcement efforts and intelligence-gathering, the Police will continue to curb relevant illegal activities by enhancing promotion and education to the public, and strengthening relevant training for officers.

(4) According to the Security Bureau, upon receipt of a report on money lending business suspected to be operating using unscrupulous practices, the Police will conduct investigation in a rigorous manner and initiate prosecution against the suspected offenders where there is sufficient evidence. Regarding the cases mentioned in the question, a member of the public may make a report to the Police if he suspects that he has been lured to borrow money in a deceptive way. The Police will conduct investigation and follow-up having regard to the circumstances of the case.

(5) According to the Transport and Housing Bureau, under the current monitoring mechanism, the Housing Department will examine the relevant land search records when processing applications for refinancing, premium assessment and transfer of ownership for subsidised housing flats. If it is found in the search record that a loan or mortgage record was registered in a subsidised housing flat with unpaid premium, and that the loan or mortgage may involve mortgaging the flat without the approval of the Director of Housing, prosecution team of the Housing Department will consider whether to institute prosecution in accordance with the Prosecution Code of the Department of Justice. In the past five years (i.e. 2012-13 to 2016-17), the Housing Department has checked more than 4 100 land search records on average each year. The Housing Department considers the current monitoring mechanism as appropriate.

Ends