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Legislative Council Panel on Financial Affairs

Regulatory and related arrangements to tackle malpractices by financial intermediaries for money lending

PURPOSE

This paper sets out the measures the Government proposes to take to tackle the problem of malpractices by financial intermediaries for money lending.

MALPRACTICES BY FINANCIAL INTERMEDIARIES FOR MONEY LENDING

2. There has been increasing public concern that some financial intermediaries for money lending ("intermediaries") use deceptive tactics to induce prospective borrowers to engage them for arranging loans and charge very high fees in the process. To tackle the problem, the Financial Services and the Treasury Bureau ("FSTB") has been working closely with the Registrar of Money Lenders ("the Registrar") and the Police to develop improvement measures. The following paragraphs set out the issues in light of the Police's enforcement experience and the measures that the Government proposes to take to address the issues.

ENFORCEMENT EXPERIENCE

3. The Police are the enforcement authority in respect of the relevant provisions in the Money Lenders Ordinance ("MLO") (Cap. 163) and other legislations such as the Crimes Ordinance (Cap. 200) and the Theft Ordinance (Cap. 210) against money-lending related malpractices. Under the MLO, it is an offence if an agent or employee of a money

lender demands or receives any fees for or in connection with the money lender's loans to a borrower, and the same prohibition on fee charging applies to any person who acts for or in collusion with a money lender. It is also an offence under the MLO if anyone fraudulently induces another person to borrow money from a money lender or induces a money lender to lend to anyone by any false, misleading or deceptive statement, or by any dishonest concealment of material facts. Besides, malpractices of intermediaries that involve criminal aspects may be caught by the other legal provisions depending on the specific circumstances[1]. Breaching any of the above-mentioned provisions will be liable to criminal sanctions.

4. Although there is no clear indication of any particular profile in terms of age, occupation or education level of the people affected in the past cases, it appears that people in financial distress or with a problematic credit history, and those business operators and homeowners who may find offers of low-interest loans attractive for providing necessary liquidity would be among the prime targets of unscrupulous intermediaries. There are certain common elements in the past cases in that most of the unscrupulous intermediaries have deployed deceptive tactics such as the following –

(a) impersonate as staff members or representatives of a licensed bank, well-known money lender or Government department, or present themselves as a professional service provider, to reduce the prospective borrowers' wariness or mislead them to believe that they have broken some "rules" which need to be rectified by financial means;

(b) make false or misleading offers such as "exceedingly low interest loan" and "free intermediary service for unsuccessful loan applications" to induce prospective borrowers to engage them for arranging loans and sign a contract with them which however may contain terms for charging a high fee under

[1] Any intermediary engaging in a commercial practice prohibited by the Trade Descriptions Ordinance (Cap. 362) such as "false trade description" or "misleading omission" commits an offence and is liable to criminal sanctions.

different pretexts;

(c) make up different excuses to induce prospective borrowers to obtain another short-term loan from a money lender recommended by them for which they would charge a high fee;

(d) induce prospective borrowers to mortgage or re-mortgage their properties as collateral, who would then be forced by them to settle their high intermediary fees by selling the properties; and

(e) withhold the loan amount obtained by borrowers by making up different excuses and then abscond.

5. There have been successful prosecutions in the past, but in many cases the unscrupulous intermediaries and the money lenders involved have used all means to conceal their relationship, thus making the collection of evidence for prosecution more difficult or much more time-consuming. Besides, public awareness needs to be raised to better protect the public from unscrupulous intermediaries. To address the issues, the Government will adopt a four-pronged approach, viz. enhanced enforcement, enhanced public education and publicity, enhanced advisory services to the public, and more stringent regulatory measures. The key features of the proposed measures are set out below.

FOUR-PRONGED APPROACH TO ADDRESS THE ISSUES

Enhanced enforcement

6. In the past two years, the Police conducted a number of special operations against malpractices of intermediaries and arrested about 400 persons including those who were involved in the operation of money lending business or intermediary activities for money lending. To facilitate a more focussed and coordinated approach in enforcement, the Police have already issued internal guidelines ensuring that all reports involving intermediaries must be followed up by crime investigation units since August 2015. The Police will continue to step up enforcement actions against malpractices of intermediaries and conduct

more special operations as and when necessary.

Enhanced public education and publicity

7. Money lenders and banks accept applications for loans from the public direct. It is not a requirement to engage any intermediary to go through the process, and in fact the engagement of intermediaries may involve certain risks to prospective borrowers as reflected in past cases.

8. In the light of a surge in the number of bogus phone calls purportedly from banks in the past year, the Hong Kong Monetary Authority has implemented further measures to enhance protection for bank consumers, which include requiring all retail banks to provide customer hotlines to facilitate the public in verifying the identity of callers and educating the public that callers claiming to be able to provide referral services in respect of retail non-collateralized financial products or services (e.g. personal loans, credit card loans, tax loans) to banks are potentially fraudulent[2]. This measure will also help address the problem with unscrupulous intermediaries to some extent.

9. On the other hand, in order to raise public awareness of the risks involved in applying for a loan through intermediaries and to alert the public of the usual deceptive tactics of unscrupulous intermediaries, we have earmarked additional resources to roll out a series of activities in two phases in 2016-17. Details are explained below.

First phase (from February to November 2016)

10. The key elements of the programme in the first phase include –

(a) distribution of an information pamphlet and poster;
(b) display of the poster at bus shelters and MTR stations;
(c) broadcasting of an Announcement of Public Interest (“API”) on TV and radios;

[2] Since August 2015, the Hong Kong Monetary Authority has required banks to cease the use of referral services offered by intermediaries in respect of retail non-collateralized financial products and services, e.g. personal loans, credit card loans, tax loans.

(d) launching of online public education activities by the Police; and

(e) publication of an article in the *Choice* magazine by the Consumer Council.

11. We have arranged to distribute an information pamphlet which aims to draw the public's attention to the usual deceptive tactics of unscrupulous intermediaries and provides some advice on the points-to-note before engaging any intermediary for applying for a loan. Copies of the pamphlet have been distributed through the Public Enquiry Service Centres of the Home Affairs Department, money lenders and banks from early April 2016.

12. A poster to alert the public to the risks in engaging intermediaries for applying for a loan will be put up at 180 bus shelters in various districts and 86 MTR stations (covering the Island Line, Tsuen Wan Line, Kwun Tong Line, East Rail, West Rail, Ma On Shan Rail and Light Rail) from end April to early May 2016, and copies of the poster will be sent to all owners corporations (including those of the Home Ownership Scheme courts) in Hong Kong.

13. A 30-second API will be broadcast on televisions and radios from May to November 2016. The key message is that the "services" or "offers" of an intermediary for arranging a loan could be a trap in disguise. The video version of the API will also be displayed on the television monitors installed at the lift lobbies of public housing estates under the Housing Authority.

14. On the other hand, staring from February 2016, the Police posted public education materials and a video on social media platforms to alert the public of the usual deceptive tactics of unscrupulous intermediaries. And in March 2016, the Consumer Council published an article on intermediaries in the *Choice* magazine based on the complaint cases they have received, giving advice to the public on the usual deceptive tactics of unscrupulous intermediaries.

Second phase (from late 2016 to Q1 2017)

15. We plan to roll out additional and more focussed public education activities in this phase. We will develop the details in due course taking into account the public reaction to and the effectiveness of the first phase campaign, as well as the progress of implementation of the planned new regulatory measures explained in paragraph 18 below. A key objective of the programme in this phase will be to publicise the new regulatory measures, promote more tips to help the public better safeguard their interest when procuring a loan from money lenders through intermediaries, and highlight the importance of proper debt management. We have commenced discussions with the Investor Education Centre and the Consumer Council on possible collaboration and will work closely with them in working out the detailed programme.

Enhanced advisory services to the public

16. We will 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.

17. For this purpose, the Social Welfare Department will provide additional resources for running a three-year pilot programme to expand the existing hotline services for families and individuals in distress by establishing new dedicated telephone hotlines for assisting people facing financial problems. Besides initial emotional support and counselling service, needy people may also obtain 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. The two existing hotline service operators, Caritas – Hong Kong and Tung Wah Group of Hospitals, would run this pilot programme. The programme is scheduled for commencement in late April 2016.

More stringent regulatory measures

18. It is a common business practice adopted by many money

lenders over the years to advertise their own businesses and / or make use of their agents to reach out to prospective borrowers, and their agents would not charge any separate intermediary fee on the borrowers in the process of procuring, negotiation, obtaining or application of a loan. Any such fee would be paid by the money lenders to their agents direct, and the amount may be reflected in the total interest rate charged by the money lenders on the borrowers for the loan concerned. This commercial practice accords with the above-mentioned provisions in the MLO forbidding separate fee charging by money lenders and their agents, etc. However, it transpires that unscrupulous intermediaries and possibly a small number of money lenders have colluded with each other and tried all means to conceal their relationship so as to circumvent the ban on separate fee charging. Also, past cases reveal that unscrupulous intermediaries have made use of their alleged access to money lenders to lure prospective borrowers into believing in them, but actually in many cases they were not recognised by any money lender as the latter's agent or business partner. To address the problem, we will seek to introduce more stringent licensing conditions on all money lender licences to (I) ensure effective enforcement of the ban on separate fee charging, (II) better protect privacy by requiring money lenders to take appropriate safeguard measures before obtaining or collecting any personal data of prospective borrowers from a third party or using such personal data for business purposes, (III) enhance transparency and disclosure, and (IV) promote prudent money lending. These measures will also better safeguard the interest of the law-abiding money lenders. The key features of the additional licensing conditions are as follows–

(I) Ensure effective enforcement of the ban on separate fee charging

(a) a money lender may grant a loan to a borrower involving an intermediary only if the latter is a person appointed by the money lender concerned (in which case the appointed intermediary should not charge any separate intermediary fee on the borrower), and the money lender should not allow or permit his appointed intermediary to charge the borrower any fee;

(b) for the purpose of (a) above, all money lenders will be required to report the identity of their intermediaries to the Registrar for inclusion in the public register of money lenders for public information;

(c) before entering into a loan agreement with a prospective borrower, a money lender will be required to ask the prospective borrower whether he has entered into any agreement with a third party in relation to the procuring, negotiation, obtaining or application of the loan, and if so, ask him for a copy of the intermediary agreement and state the identity of the third party in the loan agreement which should attach with a copy of the intermediary agreement concerned. This will remove any excuse of alleged lack of knowledge about the involvement of intermediaries by the money lender, and we envisage that one of the key messages to the public in the second phase of public education activities will be to remind them not to engage any intermediary who is not included in the above-mentioned public register, or who charges any separate fees on them, or who fails to provide a copy of the intermediary agreement to them;

(II) Better protection of privacy

(d) a money lender should not obtain or collect personal data of any person from another party or use such data for the purpose of or in relation to the money lender's business (i) without written confirmation from that party that the disclosure or provision of such personal data by that party for the use of the money lender is not in contravention of the relevant provisions of the Personal Data (Privacy) Ordinance ("PDPO") (Cap. 486), or (ii) when the money lender has knowledge, or has reasonable grounds to believe, that the disclosure or provision of the personal data by that party for such use of the money lender is likely to be in contravention of the relevant provisions of the PDPO;

(III) Enhance transparency and disclosure

(e) all money lenders will be required to explain to their prospective borrowers all the terms of the repayment in a loan agreement (including interest rate, amounts of repayment, and possible consequences for any default in repayment, etc.), and keep written, video or audio records which show that they have complied with this requirement;

(f) all money lenders will be required to provide up-to-date information relating to their money lending businesses on request by the Registrar or the Police during the term of their licences; this will facilitate more effective oversight of the money lending industry;

(IV) Prudent money lending

(g) all money lenders should include a “health warning” in their advertisements, namely “You have to repay. Don’t Over-borrow.” so that the public would also be alerted to the potential financial burden they may incur by over-borrowing.

19. Through imposing the additional licensing conditions, the regulation of money lending and related activities will be strengthened as breaching a licensing condition may lead to suspension or revocation of the money lender’s licence. The Police and the Registrar will also take into account the compliance record of a money lender when assessing his application for renewal of his licence.

NEXT STEPS

20. The relevant authority will seek the Licensing Court’s endorsement for imposing the additional licensing conditions. Engagement with the existing money lenders will be conducted in the coming month and their views will be taken into account as appropriate before a submission is made to the Licensing Court in Q3 2016. Subject to the Licensing Court’s endorsement, we aim to implement the additional licensing conditions from Q4 2016.

21. We will review the effectiveness of the new regulatory measures having regard to the operating experience after six months of implementation. Subject to the review results, we will consider if there

is a need to introduce any additional measures. We will not rule out the possibility of reviewing the relevant provisions of MLO.

ADVICE SOUGHT

22. Members are invited to note the measures the Government proposes to take to tackle malpractices of intermediaries for money lending. Members' views on the various measures are welcome.

Financial Services Branch
Financial Services and the Treasury Bureau
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