For discussion
on 5 February 2018

Legislative Council Panel on Financial Affairs

Review of the effectiveness of the new regulatory measures to tackle money lending-related malpractices

PURPOSE

This paper sets out the outcome of a review of the four-pronged approach implemented in 2016 to tackle the malpractices by financial intermediaries in relation to money lending ("intermediaries").

BACKGROUND

2. There had been increasing public concern in the past few years that some fraudsters, claiming themselves to be "intermediaries", used deceptive tactics to induce prospective borrowers to engage them for arranging loans and charge very high fees in the process. These unscrupulous "intermediaries" might deploy deceptive tactics such as the following –

(a) to 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' alertness;

(b) to make false or misleading offers such as "exceedingly low interest loan" and "no fee for unsuccessful loan applications" to induce prospective borrowers to engage them for arranging loans and sign contracts with them which might contain terms for charging a high fee under different pretexts;

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

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

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

3. To address the problems, the Government implemented a four-pronged approach in 2016, namely –

(a) imposition of more stringent licensing conditions on money lenders with effect from 1 December 2016;
(b) enhanced enforcement by the Police;
(c) enhanced public education and publicity; and
(d) enhanced advisory services to the public.

The Government also undertook to conduct a review of the four-pronged approach by end 2017 to facilitate consideration of whether any further measures would be necessary.

LATEST DEVELOPMENTS

4. The number of licensed money lenders has been increasing in the past few years. From 2014 to 2016, the total number of licensed money lenders increased from 1 309 as at end 2014 to 1 848 as at end 2016, i.e. a growth of about 600 licensees within two years. Nevertheless, the growth moderated since the implementation of the four-pronged approach. As at 31 December 2017, the number of licensed money lenders is 1 994, i.e. a growth of around 150 licensees in a year.

5. Starting from 1 December 2016, all money lenders are required by more stringent licensing conditions to report their appointment of intermediaries to the Companies Registry ("CR") for inclusion in the Register of Money Lenders for public inspection. As at 31 December 2017, 309 (or 15% of all) licensed money lenders have appointed intermediaries. There were around 3 000 such appointments registered with the CR and shown on the Register of Money Lenders for public inspection. These some 3000 appointments involved 990 appointed intermediaries[1], i.e. some intermediaries were appointed by multiple licensed money lenders. As at 31 December 2017, the lists of appointed intermediaries uploaded on CR's website have already been downloaded for almost 140,000 times.

6. It should be noted that given the variety of business models of

[1] They may either be body corporates, partnerships or individuals.

different money lenders, not all of the appointed intermediaries and money lenders concerned are involved in the money lending business of personal loans that are more directly related to the issues of public concerns. A considerable number of appointed intermediaries are primarily involved in vehicle financing or corporate and business lending such as acquisition of machinery.

REVIEW OUTCOMES

(a) More stringent licensing conditions on licensed money lenders

7. More stringent licensing conditions have been imposed on all licensed money lender licensees since 1 December 2016 in order to (a) ensure effective enforcement of the statutory ban on separate fee charging on borrowers by money lenders and their connected parties[2] and oversight of the money lending industry; (b) ensure better protection of privacy; (c) enhance transparency and disclosure; and (d) promote prudent borrowing. Details are set out at Annex.

Site inspections

8. Overall compliance with the more stringent licensing conditions is satisfactory. Since the imposition of the more stringent licensing conditions in December 2016 and up to December 2017, the CR has conducted 498 site inspections, covering about a quarter of all the licensed money lenders.

9. For cases where non-compliance were identified, the CR has taken prompt follow-up actions. As at 31 December 2017, the CR has issued 182 advisory letters to the money lenders concerned to require rectification within a specified period. The CR has also conducted 149 follow-up site inspections to check if the money lenders concerned have completed rectification. If the money lenders still failed to rectify the non-compliance, the CR will issue warning letters and arrange for a third site inspection. As at 31 December 2017, the CR has issued 21 warning letters. Depending on the severity of the non-compliance, the CR will also consider making an objection to the Licensing Court upon the licence renewal application of the money lender concerned.

10. In terms of the nature of non-compliance, the majority was in relation to recording (a) explanations given to the borrowers concerned of the terms and conditions of the loan agreements and (b) borrowers' responses as to

[2] Section 29(10) of the Money Lenders Ordinance (Cap. 163)("MLO") prohibits the charging of any fees on borrowers by money lenders, their employees, agents and persons acting for them and persons acting in collusion with them.

whether the relevant borrower had entered into any agreement with intermediaries, the particulars of the intermediary involved and the relationship between the money lender and the intermediary in the loan agreement. The remaining non-compliance cases concerned the money lenders' failure to attach the intermediary agreement to the loan agreement, or attach to the loan agreement the intermediary's confirmation on no charging of fees.

11. So far, the follow-up actions taken by the CR are effective as the money lenders concerned have rectified the irregularities as requested. The CR will continue to conduct site inspections on the premises of licensed money lenders.

Monitoring of money lenders' advertisements

12. Another more stringent licensing condition requires all money lending advertisements published by money lenders to include a warning statement, which has proven to be an effective means in raising public awareness.

13. The CR has been monitoring media advertisements by money lenders to ensure their compliance. Similar to the approach adopted for site inspections, where any non-compliance is identified, the CR will issue advisory letters to the money lenders concerned, requiring rectification. For those licensees which fail to rectify the non-compliance within the specified period, the CR will issue warning letters to them. Depending on the severity of the non-compliance, the CR may issue warning letters directly to the money lenders without issuing any advisory letters. As at 31 December 2017, the CR has issued 97 advisory letters and 14 warning letters.

14. It is observed that most of the non-compliance cases concerned the font size, font type and colour of the warning statement on printed advertisement (including newspaper advertisements, advertisements in MTR stations, etc.). So far, compliance rate after the issue of warning letters has been 100%. The CR will continue to monitor the compliance of money lenders as regards the requirements on money lending advertisements.

(b) Enhanced enforcement by the Police

15. The number of complaints against unscrupulous intermediaries received by the Police has significantly dropped since the imposition of the more stringent licensing conditions in December 2016. In 2017, the Police received 144 complaints suspected to involve unscrupulous intermediaries. This number is significantly lower than the 597 complaints filed in 2016. All

complaints alleged to involve unscrupulous intermediaries are followed up by the crime investigation units of the Police. All 144 complaints have been scrutinized and about half of them involved criminal elements.

16. The Police has also conducted a number of targeted enforcement exercises against unscrupulous intermediaries in the past year, resulting in the arrest of some 200 people. There was a conviction case in November 2017 where nine persons charged of conspiracy to defraud and to launder money were sentenced to imprisonment of four to six years. Three other cases are scheduled for trial in March 2018.

17. The Police and the CR hold regular liaison meetings to exchange information on their respective enforcement efforts. The Police has shared intelligence and observations on the *modus operandi* of the unscrupulous intermediaries. In particular, the Police has observed the more prevalent use of the following *modus operandi* in recent cases –

(a) instead of charging the borrower a fee for arranging the loan, fraudsters tried to swindle the loan money after the borrowers had successfully obtained a loan; and

(b) fraudsters would make up different pretexts to deceive the borrowers to pass them the borrowed money and then abscond. For example, some borrowers were lured to open investment accounts after obtaining a loan. Other pretexts included for improvement of credit records which allegedly could enable the borrowers to obtain another loan at a lower interest rate.

The Police has also observed that during the loan application process, some borrowers did not disclose the involvement of intermediaries to money lenders.

(c) Enhanced public education and publicity

18. In order to raise public awareness of the malpractices by intermediaries for money lending, we have rolled out a series of public education and publicity activities since 2016 as set out below-

(a) broadcasting Announcements of Public Interest on television and radio, as well as on television installed on franchised buses and at the lift lobbies of public housing estates;

(b) collaborating with the Consumer Council on an online publicity campaign targeting young people as well as featuring articles on the

Choice magazine;

(c) distributing publicity leaflets to all households through water bills and printing warning messages on envelops of the Rating and Valuation Department's bills;

(d) placing territory-wide advertisements at MTR stations and bus stops, posting roadside banners in all 18 districts, and distributing posters and leaflets through the network of the 18 District Offices;

(e) collaborating with the Police to publicise the relevant crime prevention messages through its scam prevention platform "Fight Scams Together", online channels like Facebook and also publicity activities at the district level; and

(f) collaborating with the Investor Education Centre to arrange the Financial Education Truck to tour around different districts to promote the message of prudent borrowing and proper debt management.

19. In the light of the changing *modus operandi* of some fraudsters mentioned in paragraph 17 above, we will incorporate new messages in our public education activities this year to raise public awareness of the different deceiving tactics.

(d) Enhanced advisory services to the public

20. Since April 2016, two non-governmental organisations ("NGOs") have been engaged to provide dedicated hotlines for assisting people facing financial problems. The dedicated hotlines serve as a convenient channel for people in financial distress to seek assistance and independent advice on how to handle their financial problems and be less vulnerable to the inducement by unscrupulous intermediaries.

21. Each of the dedicated hotlines has been receiving about 100 calls a month on average. The majority of the callers were in financial or mental distress because of indebtedness. In such cases, the two NGOs would provide emotional support and make referrals to their related social services units for counselling. In cases where the callers suspected that they had been approached by fraudsters or had been deceived by unscrupulous intermediaries, the NGOs would advise the callers to report to the Police where appropriate.

22. Given the public education and publicity efforts, callers nowadays are more vigilant to unscrupulous intermediaries. When they are approached

by dubious person inducing them to apply for loans, they would step back and seek assistance first, say by consulting with their family members or calling the dedicated hotlines, before making any decision.

FURTHER ENHANCEMENT MEASURES

23. While the four-pronged approach has generally been effective in addressing money lending-related malpractices, we consider that the following further enhancement measures can be explored.

(a) Improved proforma

24. One of the additional licensing conditions requires the money lender to ask the prospective borrower if any intermediary is involved in relation to the loan. The CR has provided a sample form for ease of compliance. To ensure that the prospective borrower would honestly disclose any involvement of intermediary, it is suggested that a statement[3] may be added to the sample form to remind the prospective borrower that it is for the protection of his/her interest that he/she should make an honest disclosure.

25. Moreover, in view of the fact that the majority of non-compliance with the additional licensing conditions was in relation to the record-keeping of explanations of the terms and conditions of loans, the CR may develop a new sample record form to facilitate compliance by money lenders.

(b) Notes to Borrowers

26. The CR may produce "Notes to Borrowers" that may be given to prospective borrowers by money lenders at first contact or as soon as practicable before entering into a loan agreement. In particular, in view of the latest *modus operandi* as mentioned in paragraph 17 above, borrowers should be reminded not to pass any borrowed money to any suspicious third parties.

(c) Consent of loan referees

27. Money lenders are currently required to take steps to ensure that personal data received will not be used or disclosed unlawfully. To further protect the public, we will explore the imposition of an additional licensing condition that if there is a referee involved in a loan, a money lender is

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[3] The statement may read, “disclosure of information on any third parties involved in relation to this loan is for the protection of your interests. You should make full and honest disclosure of the information so as to avoid any significant financial losses.”

required to obtain such referee’s consent through the borrower.

ADVICE SOUGHT

28. Members are invited to note the review outcomes. Members’ views on the proposed further enhancement measures as set out in paragraphs 24 to 27 are welcome.

Financial Services Branch
Financial Services and the Treasury Bureau
29 January 2018

Annex

More stringent licensing conditions on money lender licence

More stringent licensing conditions imposed on all money lender licences since 1 December 2016 include –

(a) Requiring all money lenders to undertake due diligence checks before entering into loan agreement with a borrower to ensure that, where a third party is involved in the process, that third party is an appointed intermediary of the relevant money lender and does not charge the borrower any fees;

(b) requiring all money lenders to take steps to ensure that when collecting or receiving personal data from another person, the money lender will not take part in any unlawful disclosure or use of personal data; and

(c) requiring all money lenders 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.

(d) requiring all money lenders to include a risk warning statement in their advertisements, namely “Warning: You have to repay your loans. Don’t pay any intermediaries”, so that the public would also be alerted to the risk of over-borrowing and reminded not to pay intermediaries.

To promote compliance by money lenders, the CR promulgated a set of Guidelines on the operation of the additional licensing conditions which have been uploaded onto the website of the CR for easy reference. The CR has also set up a dedicated telephone hotline for answering any enquiries from money lenders as regards the additional licensing conditions.