

LCQ1: Regulation of online crowdfunding activities

Following is a question by the Hon Alice Mak and a reply by the Secretary for Financial Services and the Treasury, Mr Christopher Hui, in the Legislative Council today (June 17):

Question:

In recent years, quite a number of people have solicited donations from members of the public through online platforms (online crowdfunding) for purposes such as supporting charity, funding litigations and even sponsoring activities that undermine the interests of Hong Kong (e.g. "mutually destructive" acts such as urging the authorities of foreign countries to impose sanctions on Hong Kong, as well as making preparation for "liberating Hong Kong"). Furthermore, some online crowdfunding initiators were arrested earlier on for suspected unlawful acts of fraud (i.e. misappropriation of the fund raised through crowdfunding), money laundering, etc. While application for a permit from the authorities is currently required for conducting fundraising activities at public places, online crowdfunding is not subject to any regulation, thereby giving lawbreakers opportunities to take advantage of the loopholes. In this connection, will the Government inform this Council:

- (1) whether it knows how overseas countries currently regulate online crowdfunding activities and platforms in order to curb illegal activities;
- (2) whether it will enact legislation to make provisions in respect of online crowdfunding activities on matters such as the making of applications, vetting and approval of such applications, permitted fundraising purposes and limits on the amounts to be raised, as well as the sources, uses and movements of the donations, so as to prevent the funds so raised from being used for supporting violent and illegal activities, and to prevent lawbreakers from committing money laundering, frauds and other unlawful acts in the name of crowdfunding; and
- (3) whether online crowdfunding activities conducted on platforms with servers situated in overseas places for raising funds to be used in Hong Kong are regulated under the existing legislation; if so, of the details; if not, whether it will study regulating such activities?

Reply:

President,

With the rapid development of the internet and social media, crowdfunding activities have become increasingly prevalent internationally and locally over the past few years. According to a paper published by the

International Organization of Securities Commissions (IOSCO), "crowd-funding" typically refers to the use of small amounts of money, obtained from a large number of individuals or organisations, to fund a project, a business or personal loan, and other needs through an online web-based platform.

The main types of crowd-funding that are related to financial services typically involve equity crowd-funding, meaning that investors invest in a project or a business which is usually a start-up, through the online platform, in return for future interests or profits. In addition, crowd-funding can also be used for peer-to-peer lending (P2P lending), so it is not equity but loans, meaning that investors participate in the crowd-funding activity as lenders, and the online platform matches lenders with borrowers to provide unsecured loans in return for interests.

However, there are others who use crowd-funding as the means to achieve purposes other than for financial services, such as raising funds for charitable purposes through online platforms, or receive physical goods or services through pre-sale crowd-funding.

In consultation with the Companies Registry, the Securities and Futures Commission (SFC) and Hong Kong Police Force, our consolidated reply to Hon Alice Mak's question is as follows.

Regarding parts (1) and (2) of the question, depending on the purposes and nature of the crowd-funding activities, they are under the respective ambit of relevant existing regulations. For example, where the crowd-funding activity involves an offer to the public to purchase securities, they may be subject to the provisions of the Securities and Futures Ordinance (SFO) (Cap. 571), and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (C(WUMP)O) (Cap. 32). A document offering shares in or debentures of a company to the public is subject to prospectus registration requirements under the C(WUMP)O unless an exemption applies. Even where an exemption applies to an offer of investment, such as where the offer is only made to professional investors, crowd-funding platform operators may still be subject to the SFC's licensing requirements if it is an investment-based crowd-funding.

On the other hand, if there is a lending element in the crowd-funding activity, the provisions under the Money Lenders Ordinance (MLO) (Cap. 163) may apply. Under the MLO, the term "money lender" means every person whose business is that of making loans or who advertises or announces himself or holds himself out in any way as carrying on that business. A money lender is required to hold a licence unless the loans are exempted under the MLO. The above requirements are equally applicable to physical companies or online lending businesses. Apart from obtaining a money lender licence, the crowd-funding lending platform must also comply with the requirements under the MLO and the licensing conditions, which include requirements on the information to be set out in the loan agreement, the borrower's right to information, advertisement, presentation of interest rates, etc.

Whether it is online or held in public places, if the crowd-funding

activities involve money laundering, frauds and other unlawful acts, the Hong Kong Police Force will investigate and prosecute in accordance with the existing laws and regulations.

We note that while the regulations on crowd-funding activities and platforms in overseas countries and regions vary, the relevant regulatory requirements are generally based on the nature of the crowd-funding activity (e.g. whether it involves equity trading), rather than only targeting the means of fund raising (e.g. online or offline). We will continue to monitor and make reference to the latest development overseas.

On part (3) of the oral question, the existing regulations on crowd-funding activities in Hong Kong may be applicable to overseas online platforms that raise funds for use in Hong Kong. As mentioned in our reply to parts (1) and (2) of the question, these relevant regulations include the SFO, C(WUMP)O and MLO etc. For instance, in relation to equity crowdfunding, the SFC monitors primarily through complaints received, whether any of the overseas crowdfunding operators target the Hong Kong public or have conducted any regulated activities in Hong Kong without the SFC's licence or offered investments to the public of Hong Kong without the SFC's authorisation. On the other hand, if the lending activities on the overseas crowd-funding platforms constitute the making of loans by a money lender in Hong Kong under the MLO as explained above, the regulatory regime of the MLO would apply.

Thank you President.