

LCQ16: Licensing requirements for money changers

Following is a question by Dr the Hon Priscilla Leung and a written reply by the Secretary for Financial Services and the Treasury, Mr Christopher Hui, in the Legislative Council today (December 9):

Question:

Operators of money changers are required to hold a Money Service Operator Licence (the Licence) granted by the Commissioner of Customs and Excise for operating money changing service. It is learnt that in February this year, the Customs and Excise Department (C&ED) published the revised Money Service Operators Licensing Guide (the Licensing Guide). The revisions concerned include the prohibition on the running of other business on the premises on which a money changer operates (such premises). Recently, the applications for renewal of the Licence made by several money changers operating in the markets under the Food and Environmental Hygiene Department (FEHD) and the Housing Department (HD) were rejected for the reasons that (i) other businesses (e.g. selling of newspapers and snacks) were being run on such premises, and (ii) the tenancy contracts for such premises did not contain a provision specifying the operation of a money changer as one of the permitted uses. Such applicants subsequently made a request to the FEHD and the HD that such a provision be added, but the request was rejected. In this connection, will the Government inform this Council:

(1) of the respective numbers of (a) new and (b) renewal applications for the Licence (i) received and (ii) rejected by the C&ED in each of the past three years; among the rejected applications, the respective numbers of those rejected for the two aforesaid reasons;

(2) as the Licensing Guide has not stipulated that the tenancy contract for such premises must contain the aforesaid provision, of the legal basis for the C&ED to reject the Licence renewal applications on grounds of absence of such a provision in the relevant tenancy contracts; and

(3) whether the C&ED had, before it published the latest Licensing Guide, consulted members of the money changing sector on the revisions concerned and whether the C&ED has, after publishing it, widely publicised the new requirements among such members and helped them adapt to the new requirements; if not, of the reasons for that?

Reply:

President,

Pursuant to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (AMLO), any person seeking to operate a money service

(i.e. remittance and/or money changing) in Hong Kong must apply for a licence from the Commissioner of Customs and Excise (the Commissioner). Section 30(3) of the AMLO stipulates that the Commissioner may grant a licence to an applicant only if the Commissioner is satisfied that the applicant is a fit and proper person to operate a money service and that the premises in relation to the application are suitable to be used for the operation of a money service. The Commissioner has issued the Money Service Operators Licensing Guide (the Licensing Guide) in accordance with the requirements of the AMLO. The Licensing Guide sets out in detail the licensing requirements and application procedures, including the factors for consideration in determining whether the applicant is a fit and proper person and whether the premises in relation to the application are suitable to be used for the operation of a money service.

In respect of the requirements for premises to be used by a money service operator (MSO), the Licensing Guide states clearly that an applicant should ensure that the premises are accessible by the officers of the Customs and Excise Department (C&ED) for carrying out their statutory function of supervising the licensing regime. The premises should not be situated in a wholly residential building. Where the premises are situated in a residential unit within a mixed commercial and residential building, the applicant should have secured the written consent of every occupant of the premises for C&ED officers to enter the premises for conducting inspection. The applicant cannot share the use of the premises with other MSOs for operating money service business. Where other business is being carried out in the same premises, the money service business of the MSO must be clearly partitioned and distinguished from the other business. The business name displayed in the premises must be the same as the business name registered in the Business Registration Certificate. The C&ED has provided detailed explanation of the above requirements when it updated the Licensing Guide in February 2020.

Having consulted the C&ED, a specific response to the respective parts of the question is as follows:

(1) From 2018 to November 2020, the Commissioner received a total of 1 235 new licence applications and 1 642 licence renewal applications. During the same period, the Commissioner rejected 247 new licence applications and 194 licence renewal applications. The main reasons for the refusal of the applications are that the applicants have failed to satisfy the fit and proper test (e.g. in the case where an applicant has been convicted of a criminal offence related to money laundering) and meet the relevant requirements under the AMLO and the Licensing Guide. During the said period, the Commissioner did not reject any application on the grounds that the applicant had been operating other business in its premises, or that the tenancy agreement of the relevant premises had not specified money service business as a permissible use.

(2) As mentioned above, the Commissioner will consider whether the premises in relation to an application are suitable for operating a money service pursuant to Section 30(3) of the AMLO and the Licensing Guide. The Licensing Guide states clearly that an MSO can operate other business in the same

premises as long as the money service business is clearly partitioned and distinguished from the other business, so as to enable customers to clearly identify the MSO and the C&ED officers to enter the premises for compliance inspection. The Licensing Guide does not require that the tenancy agreement of the premises must stipulate money service business as a specified use. However, if the tenancy agreement expressly prohibits the tenant from carrying out other non-specified uses including money service business, then the Commissioner is not in a position to be satisfied that the premises are suitable to be used for the operation of a money service despite the stipulation of the tenancy agreement to the contrary.

(3) The C&ED maintains effective communication with the MSO sector and meets with the Hong Kong Money Service Operators Association regularly to discuss issues relating to licensing requirements, supervisory measures, and updating of the Licensing Guide, etc. The C&ED also organises seminars and small-group meetings for MSOs from time to time in order to enhance their understanding of the licensing requirements as well as other statutory obligations and compliance expectations.