

LCQ6: 612 Humanitarian Relief Fund

Following is a question by the Hon Holden Chow and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (January 6):

Question:

In June 2019, someone established a 612 Humanitarian Relief Fund (the 612 Fund) to raise funds through online crowdfunding so as to provide relief in terms of money, etc. for those injured and arrested in the movement of opposition to the proposed legislative amendments. As at the end of May last year, the total income of the 612 Fund stood at over \$140 million. A trustee of the 612 Fund indicated a few months ago that \$15 million of the Fund would be set aside to provide funding for certain defendants who had already been granted legal aid to additionally engage a second counsel as their legal representative. In this connection, will the Government inform this Council:

(1) whether it has monitored if the 612 Fund is operating legally, including if the Fund has received funding from outside the territory for conducting unlawful activities such as those endangering national security;

(2) given that the online fundraising activities conducted by the 612 Fund are not subject to any regulation, whether the Government will introduce legislation to regulate such kind of fundraising activities; and

(3) given that the aim of legal aid is to ensure that no one who has reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong is denied access to justice because of a lack of means, whether the authorities will discharge the legal aid granted to those defendants who have been subsidised by the 612 Fund to engage legal representatives, so as to ensure the proper use of public funds?

Reply:

President,

Over the ten months or so since June 2019, Hong Kong had seen a spate of violent and illegal acts. Rioters extensively blocked roads, wantonly vandalised shops and public facilities, and hurled a large number of petrol bombs. There were even rioters who tied up, falsely imprisoned and assaulted members of the public who held different views. The violence of the rioters had resulted in the injuries of many, including police officers. Among which, a member of the public was hit in his head by a brick hurled by rioters and subsequently died, while another was seriously injured after being set ablaze by rioters. I strongly condemn these violent acts.

Having consulted the Financial Services and the Treasury Bureau and the Legal Aid Department (LAD), my consolidated reply to the Member's question is

as follows:

(1) Different organisations have been crowdfunding online under various pretexts. Some have been found by the Police to be involved in criminal offences. The Police have arrested the people involved and frozen their relevant assets for further investigation. Members of the public should be mindful of the risks of being deceived by fraudsters through crowdfunding.

Any funds raised must be used in compliance with the law. Law enforcement agencies will, in light of the actual circumstances, monitor and keep an eye on the operation of such funds. Enforcement actions will be taken against illegal acts in accordance with the law. Illegal acts may involve the following offences: (a) in breach of the offence of money laundering under the Organized and Serious Crimes Ordinance or the Drug Trafficking (Recovery of Proceeds) Ordinance, with a maximum penalty of 14 years' imprisonment; (b) in breach of the offence of fraud under the Theft Ordinance, with a maximum penalty of 14 years' imprisonment; and (c) in breach of the National Security Law by providing pecuniary or other financial assistance or property for the commission by other persons of the offences stipulated therein, including violating the offence of collusion with a foreign country or with external elements to endanger national security under Article 29, with the maximum penalty of life imprisonment.

The Hong Kong Special Administrative Region Government will not comment on the operation of individual self-proclaimed funds. Before participating in the fundraising activities of such self-proclaimed funds, members of the public should have a clear understanding of their background and claimed objectives to avoid being deceived or suffering losses.

(2) As for the question on regulating online fundraising activities, the Secretary for Financial Services and the Treasury pointed out in his replies to similar questions in June and October 2020 that, depending on the purposes and nature of these activities, such activities may be subject to the provisions of the relevant legislation. For example, online fundraising activities which involve financial services-related activities such as an offer to the public to purchase securities or a lending element may be subject to regulation by the relevant legislation such as the Securities and Futures Ordinance (Cap.571), the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Money Lenders Ordinance (Cap. 163), etc. Depending on the purposes of the online fundraising activities, the relevant legislation applicable to fundraising activities may also be applicable to activities on online platforms that raise funds for use in Hong Kong. The Government also notes that while the regulation on fundraising activities and platforms in other places may vary, the relevant regulatory requirements are generally based on the nature of the fundraising activities and the use of funds collected, rather than the means of fundraising. The Government will continue to keep in view and make reference to the latest development on regulation of online fundraising activities in other places.

(3) The LAD is the department responsible for enforcing the Legal Aid Ordinance (Cap. 91). Generally speaking, any person who applies for

legal aid must pass both means test and merit test as stipulated in the Legal Aid Ordinance. If both tests are passed, the LAD may, in accordance with the established criteria, assign lawyers in private practice who are on the Legal Aid Panel to act on his behalf.

When assigning legal aid cases to lawyers in private practice, the LAD will consider the aided persons' interests and, having regard to the type and complexity of the case concerned, decide whether a particular case requires the assignment of an additional legal representative, usually a second counsel, to assist the assigned solicitor and counsel to handle the case. If a legal aid recipient requests the LAD to assign a second legal representative, the LAD will consider the suggestion having regard to the complexity of the case concerned. The fees payable to the legal representatives assigned by the LAD (including the second counsel) are borne by the LAD. In criminal cases, the situation where the LAD assigns a second counsel is rare.

According to the LAD, apart from the above situation, a legal aid recipient or a counsel assigned by the LAD, with the former's consent, may suggest engaging an additional counsel who is not assigned by the LAD to assist in the case. These counsel are less senior or less experienced, and are yet to be qualified for being assigned legal aid cases. They are engaged on a pro bono basis or only receive honorarium for assisting in handling these cases, with a view to gaining experience. Such practice for training young counsel has been established in the field and senior counsel often subsidise such honorarium. As pointed out by the LAD, double payments would not exist in legal aid cases. According to the LAD, as with established practice, it will monitor and consider the development and circumstances of individual cases, and decide whether to continue providing legal aid to the recipients on the premise that the recipients' interest and the proper use of public fund are balanced.

Thank you, President.