

LCQ17: Duty of SJ as the Protector of Charities

Following is a question by the Hon James To and a written reply by the Secretary for Justice, Mr Rimsky Yuen, SC in the Legislative Council today (December 5):

Question:

According to the information on the web page of the Department of Justice, the Secretary for Justice (SJ) is the Protector of Charities. Some members of the public have pointed out that as such, SJ has the duty and statutory power to safeguard the interests of all charities. It has been learnt that the estate of a lady amounts to tens of billion Hong Kong dollars, and her will states, "[a]t my death, my entire estate shall be appropriated to the 'Chinachem Charitable Foundation Limited'". In this connection, will the Government inform this Council:

(a) whether it knows the exact amount of the aforesaid estate;

(b) of the role of SJ in the aforesaid case;

(c) of the efforts made by the authorities to ensure that the aforesaid estate is properly conserved and appropriated to the Chinachem Charitable Foundation Limited (Chinachem Foundation) for charitable purposes, and will not be misappropriated for other non-charitable purposes; whether they have assessed the effectiveness of such efforts, as well as if the aforesaid estate has been properly conserved so far and can be appropriated to the Chinachem Foundation for charitable purposes; if they have, of the outcome; and

(d) whether it has assessed if the current management and operation of the Chinachem Foundation can ensure that the vast majority of resources of the Foundation will be used to promote charitable work and operated in a mode which is in the public interest; if it has, of the outcome; if not, whether it will

conduct such an assessment and announce the outcome; whether the authorities will monitor the management and operation of the Chinachem Foundation in order to discharge the duty of SJ as the Protector of Charities?

Reply:

President,

My reply to the various parts of the question is as follows:

(a) In relation to the case in question, the Department of Justice is aware of the approximate value of the Estate. However, the eventual distribution of the subject estate (the Estate) (including the portion bequeathed for charitable purposes) is to be determined by the court after the hearing on the construction of the will. At this stage, independent interim administrators appointed by the court are responsible for the administration of the Estate, the matters concerning the administration of which (including the value of the properties of the Estate already identified) are subject to the court's supervision and are not to be disclosed to the public. Therefore, it is not appropriate for the Department of Justice to disclose information about the approximate value of the Estate outside legal proceedings.

(b) The Secretary for Justice is acting in his capacity as the protector of charities in the case and has taken out legal proceedings to seek guidance from the court on the proper construction of the will in question in order to determine the eventual distribution of the Estate.

(c) Since December 2007, with the agreement of the Department of Justice and the parties concerned, the Estate has been administered by independent interim administrators (all being professional accountants) appointed by the court. Pursuant to the court's order, the interim administrators are authorised to manage the properties and affairs of the Estate.

The principal responsibilities of the interim administrators are to get in and preserve the properties of the Estate, including to make enquiries as they deem reasonably necessary or to take out relevant legal proceedings, and to require any person(s) having custody, control or management of properties of the Estate to forthwith deliver or transfer to the interim administrators such properties, so as to ensure that the Estate is properly preserved. The interim administrators shall not make any distribution of all or any part of the Estate without first obtaining the consent of both the Department of Justice and Chinachem Charitable Foundation Limited (Foundation) to such distribution or the court's consent. The interim administrators are also required to submit periodical reports to the court, the Department of Justice and the Foundation on the conduct of the administration.

In other words, the interim administrators are primarily responsible for the administration and preservation of the Estate. The interim administrators, being officers of the court, owe a duty to the court on matters relating to the interim administration of the Estate and the court may give directions to the interim administrators as may be required.

The Department of Justice at all time keeps an eye on the administration of the Estate and has been in contact with the interim administrators, including considering the periodical reports provided by the interim administrators, approaching the interim administrators to further understand matters relating to the interim administration of the Estate, and assisting the court in legal proceedings taken out by the interim administrators in the course of interim administration as may be required.

As mentioned above, the independent interim administrators are primarily responsible for the interim administration of the Estate. The work of the interim administrators is subject to the court's supervision and the Department of Justice keeps an eye thereon. If necessary, the

Department of Justice will approach the interim administrators to further understand the position concerning the administration of the Estate.

(d) Generally speaking, charities are generally allowed to operate autonomously under their own governing bodies and in accordance with their own rules and regulations. Except otherwise prescribed by statute, it is for the charity to decide the manner in which the public is to be informed about its operation. As the protector of charities, the Secretary for Justice is necessarily a party to charity proceedings and represents the beneficial interest or objects of the charity, but not a "regulator" as such. Unless there is sufficient information or evidence which suggests a potential breach of charitable trust or maladministration on the part of any charities, the Department of Justice will not on its own accord make any enquiries or assessments of the management and operation of individual charities.

Further, as mentioned in the reply under Part (c) above, the Estate in question is currently administered and preserved by independent interim administrators. The eventual distribution of the Estate is to be determined by the court after the hearing on the construction of the will. The Department of Justice will carefully consider the court's judgment to be delivered and will take such follow up actions as may be necessary.

Ends/Wednesday, December 5, 2012