

LCQ22: SJ as the Protector of Charities

Following is a question by the Hon Paul Tse and a written reply by the Secretary for Justice, Mr Rimsky Yuen, SC in the Legislative Council today (April 17):

Question:

The High Court handed down a judgment in February this year that the Chinachem Charitable Foundation Limited (Chinachem Foundation) is the trustee of an estate of tens of billion of Hong Kong dollars and shall strictly abide by the provisions of the will concerned and apply the estate for charitable purposes. The estate includes the assets of the Chinachem Group. On the other hand, according to earlier media reports, the former Director of Corporate Governance of the Chinachem Group (the Director) has pointed out that PricewaterhouseCoopers has assumed three roles at the same time as the estate administrator as well as the auditor and a member of the Chief Executive Officer's office of the Chinachem Group, rendering the Group deviating considerably from good corporate governance and jeopardizing the Group's revenue. It has also been reported that as disclosed by the Director, certain personnel arrangements of the Chinachem Group are not conducive to the discharge of duties by the Chinachem Foundation as the estate trustee. In this connection, will the Government inform this Council whether the Secretary for Justice will, in his capacity as the Protector of Charities, investigate and follow up on whether the trustee of the aforesaid estate has exercised due diligence to protect the assets of the Chinachem Group, which form part of the estate, with a view to enabling the estate to be preserved properly and applied for charitable purposes; if he will, of the follow-up actions to be taken; if not, the reasons for that?

Reply:

President,

Since December 2007, with the agreement of the Department of Justice and the parties concerned, the Estate in question (the Estate) has been administered and preserved by independent interim Administrators appointed by the court. All the interim administrators are professional accountants; the current interim administrators (i.e. three partners of PricewaterhouseCoopers) were appointed by the court in March 2012. In order to effectively discharge their duties as interim administrators, the current administrators have been appointed, whether directly or through agents, as members of the Audit Committee and Executive Committee of the Chinachem Group so as to participate in its affairs. The court is also aware of such arrangements.

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 the Chinachem Charitable Foundation Limited (the 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. 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 and making applications to or seeking guidance from the court on the interim administration of the Estate as may be required.

Details about the administration and preservation of the Estate, including the handling of individual assets (including companies or the Group) and matters of governance are subject to the court's supervision. The Secretary for Justice, in his capacity as the protector of charities, will continue to keep an eye on the administration and preservation of the Estate and will take such follow up actions as may be necessary.

As regards the matters relating to the duties of the Foundation as trustee of the Estate, as mentioned in the reply above, the subject Estate is currently administered and preserved by independent interim administrators. The eventual distribution of the Estate is to be determined by the court after the appeal hearing on the construction of the will. The Department of Justice will continue to assist the court in determining the case in question, and will take such follow up actions in respect of the implementation of the will as may be necessary.

Ends/Wednesday, April 17, 2013