

LCQ19: Chinachem Charitable Foundation

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 (June 3):

Question:

The Court of Final Appeal (CFA) handed down a judgment last month that the Chinachem Charitable Foundation Limited (Chinachem Foundation) was to hold an estate of tens of billion of Hong Kong dollars as a trustee and would not receive the estate as an absolute gift. In addition, as the will indicated that the testatrix wished to "entrust" the supervision of the Foundation to a managing organisation outside the Foundation, CFA would exercise its inherent jurisdiction to establish a scheme for the administration of the charitable trusts. Following the handing down of the judgment, the Secretary for Justice (SJ) told the media that the Department of Justice would discuss with the relevant parties, including the Chinachem Foundation, the arrangements for and the details of the execution of the will. In this connection, will the Government inform this Council:

(1) whether SJ will, in following up the CFA judgment, examine the past position concerning the administration of the estate, including checking and recovering all the unauthorised expenditures;

(2) whether it has initiated investigations to ascertain if the persons concerned have acted with negligence or wilful intent or even in conspiracy to commit a breach of trust in handling the estate; if it has, of the progress of the investigations; if not, the reasons for that;

(3) whether SJ, as the protector of charities, has monitored the operation, expenditure and debt positions of the

Chinachem Foundation; if he has, of the details; and

(4) whether SJ has approached the persons nominated in the aforesaid will for appointment as members of the managing organisation (e.g. the Premier of the State Council) to gain an understanding of whether they are willing to be appointed and to discuss with them how the Chinachem Foundation is to be supervised; if he has, of the details; if not, the reasons for that?

Reply:

President,

Since December 10, 2007, the Estate of the late Mrs Nina Wang referred to in the question (the Estate) has, in accordance with a court order, been administered and preserved by independent interim administrators appointed by the court. All the interim administrators are professional accountants. The judgment of the Court of Final Appeal (CFA) dated May 18, 2015 does not affect the current independent interim administrators' discharge of the abovementioned duties to manage and preserve the Estate in accordance with the court's appointment order until any further court order.

A consolidated reply to part (1) to (4) of the question raised by the Hon Paul Tse is set out in the ensuing paragraphs.

Pursuant to the court's order, the interim administrators are authorised to manage the properties and affairs of the Estate. Their principal responsibilities are to get in and preserve the properties of the Estate, including making enquiries as they deem reasonably necessary or taking out relevant legal proceedings, and requiring any person(s) having custody, control or management of properties of the Estate to deliver or transfer to the interim administrators such properties, so as to ensure that the Estate is properly preserved.

Except with the prior consent of both the Department of Justice (DoJ) and the Chinachem Charitable Foundation Limited (the Foundation) or the court's consent, the interim administrators shall not distribute any part of the Estate, and no unauthorised person shall use any property 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 if and when necessary. In discharge of their duties, the interim administrators shall investigate and take follow up actions against any irregularity known to them which may prejudice the proper preservation and management of the Estate. The interim administrators are also required to submit periodical reports to the court, the DoJ and the Foundation on the conduct of the administration.

The DoJ has, at all times, paid attention to the administration of the Estate and kept contact with the interim administrators, including considering the periodical reports provided by the interim administrators; obtaining further information from the interim administrators; requiring the interim administrators to take follow up actions and provide report as the circumstances require; 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.

By its judgment dated May 18, the CFA held that the Foundation would hold Mrs Nina Wang's Estate as a trustee, rather than receiving it as an unconditional absolute gift. The judgment has clarified the proper interpretation of the Will at law, and provided a legal basis and clear guidance for the future implementation of the Will.

As the protector of charities, the Secretary for Justice (SJ) is necessarily a party to charity proceedings and represents the beneficial interest or objects of the charity. Upon detailed consideration of the CFA's judgment, the DoJ will actively follow up on the detailed arrangements for the implementation of Mrs Nina Wang's Will, including continuing to keep in contact with the Foundation as the trustee of the Estate and approaching other persons concerned, discussing the follow-up actions required and seeking guidance from the court as may be required.

As regards whether SJ has monitored the affairs of the Foundation, including its operation, expenditure and debts, 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, the charity may operate autonomously and decide the manner in which the public is to be informed about its operation. Unless there is sufficient information or evidence which suggests a potential breach of charitable trust or maladministration on the part of any charities, thus prejudicing the beneficial interest of the charities, the DoJ is not a "regulator" as such and would not regulate the daily management and operation of individual charities.

DoJ will continue to closely monitor the interim administrators' work in managing and preserving the Estate and the litigation involving the Foundation, and take such follow up actions as may be appropriate, with a view to protecting and safeguarding the interest of the charity.

Ends/Wednesday, June 3, 2015