

LCQ6: Chinachem Charitable Foundation

Following is a question by the Hon Paul Tse and a reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (January 31):

Question:

The Court of Final Appeal (CFA) handed down a judgment in May 2015 that the Chinachem Charitable Foundation Limited was to hold as a trustee the late Ms Nina Kung's estate of tens of billions of dollars which was dedicated to charitable purposes. In response to the relevant questions I raised in June 2015 and February 2016, the former Secretary for Justice (SJ) said that as the protector of charities, he would actively follow up the arrangements for and the details of the implementation of Ms Kung's will and would eventually, as directed by the CFA, submit a scheme on using the estate for charitable purposes (the Scheme) to the Court for approval. He expected the Department of Justice (DoJ) to complete the formulation of the Scheme by around mid-2016. Before that, the estate would continue to be administered by the independent interim administrators appointed by the Court. However, the DoJ has not published the Scheme so far. Moreover, since the inauguration of the current-term Government, the former SJ resigned after serving for only six months; and his successor is embroiled in a scandal involving unauthorised building works found in her residence, and she has also been granted exceptional approval by the Chief Executive to continue with her handling of six ongoing arbitration cases and her teaching commitments concurrently, raising public concern whether she can handle official matters wholeheartedly in the near future. In this connection, will the Government inform this Council:

(1) whether the DoJ has completed the formulation of the

Scheme and submitted it to the Court; if so, when the DoJ submitted the Scheme; if not, of the reasons for that, and how much additional time the DoJ will need to finish the formulation of the Scheme, which commenced two and a half years ago; if the work cannot be finished shortly, whether the authorities have studied if SJ's performance in exercising the function as the protector of charities has highlighted the DoJ's lack of operational efficiency, falling short of public expectations and failure in fulfilling the last wish of Ms Kung;

(2) given that the estate has all along been under the administration of accountants serving as the interim administrators since the aforesaid judgment was handed down by the CFA in May 2015, whether the authorities have assessed if the management fees charged by the accountants are reasonable and if Ms Kung's estate has been gnawed by the relevant expenses; and

(3) whether it has assessed if public confidence in the Government's implementation of policies will be affected by the fact that Ms Kung's estate of tens of billions of dollars has not been put to charitable uses for a number of years?

Reply:

President,

Thank you for the Honourable Member's question. Mrs Nina Wang passed away in April 2007 leaving a home-made Chinese will dated July 28, 2002. In May 2012, the Secretary for Justice (SJ), as the protector of charity, commenced proceedings in the Court of First Instance seeking the Court's adjudication on the proper construction of the Will, in order to ensure proper management and ultimate distribution of the Estate.

The Court of Final Appeal handed down its Judgment on

May 18, 2015 and unanimously ruled that the Chinachem Charitable Foundation Limited (the Foundation) should hold the entire estate as a trustee and would not receive any part of the estate as an absolute gift.

According to the Court of Final Appeal judgment, a scheme should be prepared and submitted to the High Court for approval after consultation between the Foundation and SJ as the protector of public charity.

Following the Judgment of the Court of Final Appeal, the Department of Justice (DoJ) has been liaising with the Foundation through meetings and correspondence to exchange views on the preparation of the Scheme and related matters for administering the Estate. However, as parties had to work out the details of the arrangements for the establishment of a managing organisation to supervise the Foundation and the Chinese prize (an international prize and fund similar to the Nobel Prize), the parties had taken more time to consider the Scheme in detail. The DoJ had also sought advice from independent legal advice on the relevant legal issues. The scheme had been amended a few times, with the latest draft being drawn up in May 2017 and awaiting the Foundation's reply. During the relevant period, parties had discussed and sought directions from the Court in respect of the costs matter arising from the preparation of the scheme. As of now, the DoJ and the Foundation are still discussing the details of the latest draft Scheme, and we are still awaiting their substantive reply. It is estimated that some more time is required. We hope to reach further consensus with the Foundation in respect of the contents of the latest draft scheme as soon as possible. Once it is done, the DoJ will submit the draft Scheme to the Court. The DoJ is aware of the public's expectation to utilise the funds of the Estate for charitable purposes as soon as possible. In view of this, the DoJ has been actively working on the drafting of the Scheme as well as liaising with the Foundation accordingly, including to continue to explore the

setting up of a supervising managing organisation jointly formed by the Secretary-General of the United Nations, the Premier of the People's Republic of China Government as well as the Chief Executive of the Hong Kong Special Administrative Region as intended in the Will. The DoJ will continue to closely monitor its progress. To ensure that the Scheme can be drafted and implemented as soon as possible and the Estate be administered in accordance with the testamentary intention of Mrs Wang, the DoJ will take timely actions as may be appropriate, including seeking guidance from the Court.

Currently, the administration of the Estate is vested with the interim administrators appointed by the Court. The DoJ has also filed a caveat against a grant of probate or administration to preserve the status quo pending a scheme to be set up under the court's supervisory jurisdiction.

The current interim administrators are professional accountants appointed by the Court. 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 legal proceedings to ensure that the Estate is properly preserved. Besides, the relevant work also includes handling matters arising from the operation of the Chinachem Group. As the Chinachem Group is a big business conglomerate comprising numerous companies with multiple areas of business, the relevant work activities can be very complicated. The interim administrators have been overseeing the Chinachem Group and made efforts to improve its governance structure, to ensure the smooth operation of various lines of corporate business. In discharge of their duties, the interim administrators would investigate and take follow-up actions against any irregularity known to them which might prejudice the proper preservation and management of the Estate. The interim administrators are also required to submit periodical reports to the Court, SJ and the

Foundation on the conduct of the administration.

Being "officers of the Court", the interim administrators owe a duty to the Court on matters relating to the interim administration of the Estate. The Court may also give directions to the interim administrators if and when necessary. The work of the interim administrators will continue to be monitored by the Court, including the consideration of the periodical reports and other relevant materials provided by them.

The DoJ has, at all times, been paying close attention to the administration of the Estate and has been in frequent 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, requesting the interim administrators to take follow-up actions and provide reports as the circumstances require, assisting the court in legal proceedings taken out by the interim administrators, and seeking directions from the court in the course of interim administration as may be required. The DoJ will continue to closely monitor the interim administrators' work in managing and preserving the Estate and the litigation involving the Chinachem Group and Foundation, and take such follow-up actions as may be appropriate.

Regarding the fees of the independent interim administrators, they have been prescribed by the Court in the appointment order and are subject to the Court's scrutiny. The DoJ and the Foundation have also been monitoring the fees charged by the interim administrators. Should the DoJ and the Foundation consider the amount to be too high or unreasonable, an application may be made to the Court for taxation of the fees, in order to ensure that the interim administrators' fees remain reasonable.

As the protector of charity, SJ will actively follow up on the detailed arrangements for the implementation of the Will in light of the blueprint laid down in the Court of Final Appeal judgment, including continuing to keep in contact with the Foundation as the trustee of the Estate and to work closely with the interim administrators, discussing the follow-up actions required, closely monitor the management and preservation of the Estate of Mrs Nina Wang, and take such follow-up actions as may be appropriate, including the seeking of guidance from the court as may be required with a view to protecting and safeguarding the interest of the charity.

Thank you, President.

Ends/Wednesday, January 31, 2018