

LCQ20: Monitoring the administration of an estate for charitable purposes

Following is a question by the Hon James To and a written reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (December 12):

Question:

At its meeting held on July 20, 2015, the Panel on Administration of Justice and Legal Services of this Council discussed the administration of the estate of the late Ms Nina Kung. In addition, the Government disclosed early this year that it had drawn up in May 2017 the latest draft of the administration scheme on using the estate for charitable purposes (the Scheme) and was awaiting a response from the Chinachem Charitable Foundation (the Foundation). In this connection, will the Government inform this Council:

(1) given that a government representative undertook at the aforesaid meeting to provide the Panel with the information on the arrangements for the interim administration of the estate and a breakdown of its properties insofar as it was allowed under the law, of the reasons why the Government has not yet provided such information, and whether it will do so immediately;

(2) whether it knows the following information on the estate:
(i) the current total value, (ii) the respective total amounts of fees collected so far by the interim administrators of the estate, the managers recruited from outside and other persons involved in the administration of the estate (please specify), and (iii) the amounts of money used for charitable purposes in each of the past three years; and

(3) whether the discussions conducted between the Government and the Foundation on the Scheme have been concluded;

(i) if not, whether the Government has set a deadline; at what time the latest the Government will seek the Court's directions to ensure that the Scheme will be confirmed and implemented expeditiously; whether it will consider taking measures to enhance the administration of the estate (e.g. appointing government officials to sit on the Board of Governors of the Foundation); and

(ii) if so, whether the Government has submitted the Scheme to the Court?

Reply:

President,

A reply to the questions raised by the Hon James To in relation to the matters concerning the administration of the Estate of the late Mrs Nina Wang is as follows.

(1) and (2) At the meeting of the Panel on Administration of Justice and Legal Services on July 20, 2015, Members asked the Department of Justice (DoJ) to provide information on (a) arrangements approved by the Court concerning the interim administration of the Estate; (b) background, qualification and remuneration of each member of the Executive Committee (Exco) of the Chinachem Group; and (c) a list of the properties of the Estate.

The Secretary for Justice had explained in detail the arrangements approved by the Court concerning the interim administration of the Estate in her reply to the questions raised by the Hon Paul Tse at the meeting of the Legislative Council on January 31 early this year. Since December 10, 2007, the Estate has, pursuant to a Court order, been administered on an interim basis by independent interim administrators appointed with the sanction of the Court of First Instance. The current interim administrators are Mr Christopher Chan, Mr Jong Yat-kit and Mr Wong Tak-wai of PricewaterhouseCoopers.

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.

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.

DoJ will continue to closely monitor the interim administrators' work in managing and preserving the Estate and the litigation involving the Chinachem Group and

the Chinachem Charitable Foundation (the Foundation), and take such follow-up actions as may be appropriate.

DoJ has sought updates on the Estate from the parties concerned. With their consent, information which can be disclosed is set out below:

The core assets of the Estate comprise the assets of the companies in the Chinachem Group with a net asset value of about HK\$137 billion as at August 31, 2018 based on the relevant unaudited combined management accounts. According to the judgment of the Court of Final Appeal dated May 18, 2015, the Chinachem Group was valued in 2012 at over HK\$82 billion.

Since the Chinachem Group is not a listed company, after having sought the views from the concerned parties, apart from the net asset value disclosed above, it would not be appropriate for us to disclose the breakdown of its properties which contain sensitive and confidential information.

The Chinachem Group is managed by its Exco and its current members are as follows (set out in the alphabetical order of the surnames in English (save for the interim administrators)):

- (1) Mr Chan Kam-por (Group's Chief Financial Officer);
- (2) Mr Donald Choi (Group's Chief Executive Officer);
- (3) Dr Kung Yan-sum (Chairman of Exco meetings);
- (4) Mr Derek Leung (Chief Treasury Officer, Head of Lands/Valuation of the Group);
- (5) Ms Liu Yuan-chun (Group's Director of Human Resources);
- (6) Mr Ng Shung-mo (Group's Head of Sales);
- (7) Mr Wong Hung-han (Deputy Head of Leasing and Chief Operating Officer of the Group);
- (8) Mr Osborn Edward (Representative of the interim administrators);
- (9) Mr Christopher Chan (one of the interim administrators); and
- (10) Mr Jong Yat-kit (one of the interim administrators).

During the period from 2015 to 2018 (up till November 30, 2018), the Chinachem Group has in each year made donations for charity purpose to different charitable organisations and other entities in the amounts of about HK\$9.7 million, HK\$5 million, HK\$4 million and HK\$3 million respectively, the aggregate sum being over HK\$22 million.

As for 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. As the relevant order was made at a hearing not open to public, it is inappropriate for DoJ to provide further details of such information in the absence of any order of the Court directing disclosure.

DoJ and the Foundation have also been monitoring the fees charged by the interim administrators. Should 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.

(3) By its judgment of May 18, 2015 concerning the Will of the late Mrs Nina Wang, the Court of Final Appeal held that the Foundation is to hold the Estate as a trustee rather than receiving it as an unconditional absolute gift. As the work in implementing the Will is still ongoing, the said judgment does not affect the current independent interim administrators' discharge of the abovementioned duties to manage and preserve the Estate pursuant to the Court's appointment until any further Court order. Therefore, at this stage the Estate has not been vested on the Foundation. DoJ will continue to pay close attention to the financial condition of the Foundation.

Since the handing down of the judgment of the Court of Final Appeal on May 18, 2015 (CFA Judgment), DoJ and the Foundation have had meetings and have been in communications on the contents of the proposed Scheme. In order to facilitate constructive and frank discussions, the parties have agreed that the details of such communications should be kept in confidence in the meantime. Meetings have been held to discuss specific areas of the proposed Scheme, including the establishment of the "supervisory" managing organisation, and that a draft Scheme has been prepared taking into account the clauses of the 2002 Will and the relevant guidance contained in the CFA Judgment.

DoJ and the Foundation are actively discussing the content of the draft Scheme with a view to reaching consensus as soon as practicable. We anticipate that DoJ may make an application to the Court for directions concerning the Scheme by the first quarter of 2019, if necessary.

In addition, DoJ will continue to liaise with the interim administrators and request relevant information when appropriate on the detailed arrangements for the implementation of the Will.

Ends/Wednesday, December 12, 2018