

Inspector appointed by Financial Secretary under Section 841(2) of Companies Ordinance (Cap. 622) to investigate into affairs of Next Digital Limited

The Government announced today (July 28) that, pursuant to the power conferred on him by section 841(2) and (3) of the Companies Ordinance (Cap. 622) (the Ordinance), the Financial Secretary, Mr Paul Chan, has appointed Mr Clement Chan Kam-wing as the Inspector to investigate into the affairs of Next Digital Limited (Stock Exchange of Hong Kong Stock Code: 282) (NDL).

Under sections 841(2) and (3) of the Ordinance, the Financial Secretary may appoint a person to investigate a company's affairs, if it appears to him that there are circumstances suggesting the following and he is satisfied that it is in the public interest to appoint the Inspector:

(a) the company's affairs are being or have been conducted:

1. in a manner unfairly prejudicial to the interests of its members generally or of one or more members;
2. with intent to defraud its creditors or the creditors of any other person; or
3. for any other fraudulent or unlawful purpose; or

(b) the persons concerned with the formation of the company or the management of its affairs have, in relation to the formation or management, engaged in fraud, misfeasance or other misconduct towards it, its members or its creditors.

In invoking the statutory power to make the appointment, the Financial Secretary has reviewed the relevant facts and circumstances in relation to the affairs of NDL and all the available information. It appears to the Financial Secretary that there are circumstances suggesting the existence of a state of affairs referred to in section 841(2) of the Ordinance in relation to NDL, including, among others, that NDL has been run in a manner unfairly prejudicial to the interests of its shareholders and creditors; that the officers of NDL have used the listed company to conduct unlawful activities and have themselves been involved in various alleged fraud offences and misconduct closely associated with the affairs of NDL; that the senior officers of NDL have breached their fiduciary duties and failed to observe proper standards of care in the performance of their duties; and that the governance of the company had seriously fallen short of that expected of a listed company.

Circumstances that have particularly given rise to great concern

include, first, on May 26, 2021, NDL made a corporate announcement, effectively indicating that the company had a strong liquidity position that would provide it with sufficient working capital for continued operation for another 18 months from April 1, 2021. However, with only HK\$18 million in bank balances held by three of the company's subsidiaries being frozen by the Secretary for Security on June 17, 2021, NDL announced in less than a week on June 23, 2021 that it had to cease one of its major subsidiaries' publication businesses on the following day. Second, the Financial Secretary also noticed that NDL had failed to comply with the Listing Rules to publish its preliminary annual results in time, and it subsequently made an announcement on July 22, 2021, revealing for the first time that it had made an early loan repayment of \$150 million to its former chairman and major shareholder on April 1, 2021, substantially reducing its cash balance, when the previous financial reports of NDL suggested that there was still considerable time to go before the loan was due. This casts doubt as to whether such repayment was potentially intended to defraud the company's creditors. Third, the Financial Secretary noticed that the officers of NDL were charged in April 2021 for fraud in relation to the misuse of one of its subsidiaries' premises by the subsidiary. Fourth, in end-2020 and mid-2021, the senior officers of NDL and the three subsidiaries of NDL were charged for various serious criminal offences under the Hong Kong National Security Law, raising the question of whether the affairs of NDL had been conducted by its officers in pursuit of their personal interests to the detriment of the public shareholders.

All the circumstances give rise to grave concerns on whether there was serious mismanagement on the part of NDL, in particular the involvement of its senior officers in the alleged criminal offences and/or misconduct and the officers' failure in their duty to prevent this from happening, and whether the officers of NDL had taken reasonable and adequate steps to protect the interests of its shareholders and creditors.

In view of the above, the Financial Secretary considers it in the public interest to invoke the relevant statutory power to appoint an inspector to investigate into the affairs of NDL. As a leading financial and commercial centre, Hong Kong attaches paramount importance to upholding the integrity and reputation of its corporate sector and the corporate governance regime, which is the hard-earned result of the continuous efforts of the Government, regulators and the business community over the years. Compliance with a high standard of governance by companies, in particular listed companies, is vital to Hong Kong in maintaining the quality, fairness and effectiveness of its market. It is also necessary to ensure that the right of incorporation is not abused and that public confidence in how companies conduct their affairs is maintained. It is therefore important, and in line with international practice, that any suspected serious wrongdoings of a company, in particular a company that is publicly listed, should be investigated if the circumstances so warrant.

The Inspector appointed is requested to investigate into the affairs of NDL, draw his own conclusions and report on, among others: (i) whether the affairs of NDL are being or have been conducted in a manner unfairly prejudicial to the interests of its members, with intent to defraud any

creditors, or for any fraudulent or unlawful purpose; (ii) whether the affairs of NDL have been conducted in the personal interests of any of its senior officers to the detriment of its public shareholders; (iii) whether officers of NDL have engaged in fraud, misfeasance or other misconduct towards NDL, its members or its creditors; (iv) whether full, adequate and timely disclosures were made by NDL to its shareholders; (v) whether any officers of NDL have been in breach of any of their duties or negligent in performing their functions; (vi) whether transactions concerning NDL in relation to loan(s) provided by its former Chairman and/or the repayment(s) were made bona fide, at arm's length and in the normal course of business; (vii) whether NDL is generally in a healthy state of governance commensurate with that expected of a listed company; and (viii) whether it is expedient in the public interest for the Financial Secretary to consider making an application under section 879(6) of the Ordinance for a disqualification order against any person to be made under section 168J of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

The Inspector's powers in regard of the investigation are clearly set out in the Ordinance. For example, under section 846 of the Ordinance, the Inspector appointed may require the company, an officer or former officer of the company, an agent or former agent of the company and a person in possession of information relevant to the investigation, to produce within the specified time any record or document that may be relevant to the investigation, and attend before the Inspector, at the specified time and place, and answer any questions, whether on oath or otherwise, relating to any matter under investigation that the Inspector may raise. The Inspector would submit a Final Report to the Financial Secretary in six months.

Mr Clement Chan, the Inspector appointed, is a senior accountant and served as a president of the Hong Kong Institute of Certified Public Accountants (HKICPA). He was also a non-executive director of the Securities and Futures Commission. He has a wealth of experience in public service, being currently a non-executive director or member of several institutions, namely the Hong Kong Mortgage Corporation Limited, the Standing Committee on Company Law Reform, the Inspection Committee of the Financial Reporting Council, the HKICPA's Audit Committee and Regulatory Oversight Board, and the Independent Police Complaints Council.