

LCQ1: Charitable foundations and charities

Following is a question by the Hon Abraham Shek and a written reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (February 24):

Question:

The Court of Final Appeal handed down a judgment on May 18, 2015, which held that the Chinachem Charitable Foundation (the Foundation) was to hold the estate of the late Mrs Nina Wang (the estate) as a trustee; moreover, the Secretary for Justice and the Foundation's Board of Governors were required to formulate an administration scheme for the estate, including the establishment of a supervisory managing organisation, to ensure that the estate would be used for charitable purposes in accordance with the testamentary intention of Mrs Wang. Nevertheless, the judgment has not yet been fully implemented since it was handed down over five years ago. On the other hand, "charity" or "charitable purpose" are not defined in the existing legislation, nor is there dedicated legislation which governs charities and their use of donations. In this connection, will the Government inform this Council:

(1) whether it will, in the light of the current serious unemployment situation in Hong Kong, recommend that the Foundation's Board of Governors set up an unemployment assistance scheme to provide assistance to members of the public who have been affected by the epidemic; if so, of the details; if not, the reasons for that;

(2) whether it will consider enacting dedicated legislation for the Foundation with a view to monitoring and regulating its operation more effectively; if so, of the details; if not, the reasons for that; and

(3) given that there are currently about 9 200 charities in Hong Kong, and tax-exempt donations amounted to as high as \$12.7 billion in 2019, whether the Government will enact dedicated legislation so as to regulate charities more comprehensively and effectively; if so, of the details; if not, the reasons for that?

Reply:

President,

In relation to the estate of the late Mrs Nina Wang (Estate), I provided a detailed oral response at the Legislative Council (LegCo) on December 16, 2020 about the latest developments regarding the scheme of administration (Scheme) and the work of the interim administrators.

The Secretary for Justice (SJ), as the protector of charities, is necessarily a party to charity proceedings and represents the beneficial interest or objects of the charity. The Department of Justice (DoJ) has been actively following up the blueprint of the Scheme as laid down in the judgment of the Court of Final Appeal dated May 18, 2015 (CFA Judgment). Yet it must be emphasised that the relevant legal proceedings could be taken forward in a reasonable time only with the co-operation of all parties, but not just SJ as necessarily a party to charity proceedings, and their active follow-up with the Court's directions and orders.

Except otherwise prescribed by law or order by the Court, charities operate autonomously under their own governing articles and in accordance with their own rules or regulations, and decide the manner in which the public is to be informed about the relevant matters. The role of SJ is to protect charitable interests but SJ does not participate in a charity's decision and arrangement to make donations to others for charitable purposes, and has no power to direct any charity to make donations.

In relation to the Hon Abraham Shek's questions, I now reply as follows:

(1) As aforementioned, even when the Court has approved the Scheme and appointed members to the supervising managing organisation, SJ has no power to direct the Chinachem Charitable Foundation Limited (Foundation) or the Chinachem Group to make donations for charitable purposes, including providing unemployment assistance to members of the public who have been affected by the epidemic.

(2) The DoJ has been actively following up the blueprint of the Scheme as laid down in the CFA Judgment. An application was made to the Court on March 29, 2019 in respect of the propriety of the Scheme proposed by the DoJ and details thereof, in order to seek the Court's determination or directions for the DoJ to proceed to complete the remaining tasks. The Scheme has already provided a monitoring mechanism for the Foundation, which includes the setting up of a supervisory managing organisation to monitor the Foundation as trustee. As such, there is no need to enact separately a dedicated ordinance to monitor the operation of the Foundation.

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 of the Estate pending a scheme to be set up and sanctioned by the Court. The DoJ will continue to actively pursue the relevant legal proceedings in relation to the Scheme to ensure the early preparation and implementation of the Scheme, and to handle the Estate in accordance with the wishes of the late Mrs Nina Wang. The DoJ will also continue to actively follow up the detailed arrangements for the implementation of the will, including handling the court proceedings already commenced, and closely monitoring the management and preservation of the Estate with a view to protecting and safeguarding the relevant charitable interest.

The Court has fixed a directions hearing on May 26, 2021. Given that the

relevant legal proceedings have already commenced, it is inappropriate for us to publicly discuss any further details.

(3) The Law Reform Commission (LRC), chaired by SJ, published its Report on Charities (the LRC Report) in December 2013, which made a number of recommendations for reform to the Government for more comprehensive and effective regulations of charitable organisations, including: (i) there should be a clear statutory definition of charitable purposes; (ii) all charitable organisations which (1) solicit from the public for the donation of cash or its equivalent; and/or (2) have sought tax exemption should be subject to the requirement of registration; (iii) a set of specifically formulated financial reporting standard should be adopted for charities in Hong Kong, and the Government should work with the professional accounting body/bodies to formulate this standard; (iv) the Government should ensure that tax-exempt charities make information about their operations available to the public by publishing certain documents, such as their financial statements and activities' reports, on their websites; (v) applicants for different types of charitable fundraising licences or permits should be required to disclose the charity's background and activities, the objective of the charitable fundraising, the use of the funds collected, and the charity's accounts for the most recent accounting year.

The publication of the LRC Report marks the completion of the LRC's study of the relevant subject. The LRC Report was then be passed to the Government for the relevant policy bureau to consider whether and how to implement the recommendations. In fact, the LRC Report has already been included as an outstanding item for discussion of the LegCo Panel on Welfare Services. Members who are concerned with the implementation progress of a specific LRC report may request the relevant Panel to follow up with the responsible bureau.

We have consulted the Home Affairs Bureau (HAB) regarding the implementation progress of the LRC Report. The HAB indicates that the recommendations in the LRC Report are relevant to the purviews of various Government bureaux and departments. Since many recommendations in the LRC Report carry significant implications on charities in Hong Kong in terms of their definition and operation, the Government needs to consider the recommendations thoroughly and carefully. The HAB points out that it has been assigned to co-ordinate inputs from relevant bureaux and departments in formulating a response to the LRC's recommendations for the Government's overall consideration. According to the HAB, it has been actively following up the co-ordination with a view to formulating a response for the Government's consideration as soon as possible. In the process of co-ordinating inputs from relevant bureaux and departments, the HAB will make reference to the improvement measures recommended in the Director of Audit's Report No. 68 (Audit Report) as well as in the Public Accounts Committee Reports No. 68 and 68A (PAC Reports).

With reference to the recommendations in the LRC Report, the Audit Report as well as the PAC Reports, the Government introduced by phases since August 1, 2018 and April 1, 2019 and put in place a series of administrative

measures relating to charitable fundraising activities.