

LCQ16: Monitoring the administration of estates for charitable purposes

Following is a question by the Hon Paul Tse and a written reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (May 29):

Question:

The estate of the late Mrs Nina Wang comprises the Chinachem Group with a net asset value of as high as HK\$137 billion as at August last year. The Court of Final Appeal handed down a judgment in 2015, which held that the Chinachem Charitable Foundation (the Foundation) was to hold the estate as a trustee rather than as a beneficiary which had received it as an unconditional absolute gift, and requested the Department of Justice to establish a supervisory managing organisation to ensure that the Foundation would operate in accordance with the testamentary intention of Mrs Wang and use the estate for charitable purposes. So far, the incumbent Secretary for Justice (SJ) and her predecessors have not submitted to the court any plan for establishing the supervisory managing organisation. Furthermore, recently, the SJ has been alleged to have failed to fulfil her duty as the protector of charities for having mishandled the over HK\$10 billion estate for charitable purposes of the late "tycoon of hourly-rated hotels", and a lawsuit has been filed against the SJ in a bid to holding her accountable. On the other hand, it has been reported that the Executive Committee of the Chinachem Group (ECCG), which is under the direction of the interim administrator (the administrator) of the estate of Mrs Wang, recently relieved the duties of one of the members of the trustee on grounds that the person in question was allegedly involved in false investment projects on the Mainland and had allegedly divulged papers on the ECCG making "abnormal termination payment" to the former chief executive officer of the Group. In this connection, will the Government inform this Council:

(1) whether it has inquired into the various acts, in which the trustee and the administrator were alleged to have been involved, of improper use of the assets of the Foundation; if so, of the outcome, if not, the reasons for that;

(2) whether, in view of the concerns of the media and the community regarding whether the estate of Mrs Wang has been misappropriated, it will make public the expenditures of the Foundation; if it will not, of any credible means in place to convince members of the public that the Government can effectively monitor the operation of the Foundation;

(3) of the reasons why the incumbent SJ and her predecessors have so far not formulated any plan for establishing a supervisory managing organisation for the Foundation; when the aforesaid estate can formally be used for charitable purposes;

(4) as it has been reported that an estate management fee of as high as HK\$60 million per annum is being charged by the administrator, and that over HK\$200 million have been charged since 2015, whether the Government has assessed the aggregated amount of management fees to be charged by the administrator before the estate can formally be used for charitable purposes;

(5) as it has been reported that the SJ is considering a request of the Foundation for replacing the administrator, of the outcome of the SJ's consideration;

(6) given that the SJ has been criticised for the repeated delays and impropriety in handling sizeable estates for charitable purposes and thus causing unduly long delays in putting the relevant assets to charitable uses, whether the Government has assessed if such incidents will affect public confidence in the SJ assuming the role as the protector of charities;

(7) as it is estimated that the sizeable estates to be used for charitable purposes in just the aforesaid two cases amount to HK\$150 billion, whether the Government has assessed the negative impact on social welfare as a whole brought about by the unduly long delays in putting the relevant assets to charitable uses; and

(8) of the difficulties of and constraints on the SJ's handling of her work as the protector of charities; the strategies in place to prevent problems such as mishandling of sizeable estates and unduly long delays in putting sizeable estates to charitable uses?

Reply:

President,

As the protector of charity, the Secretary for Justice (SJ) has the role of safeguarding charitable interests. Under this principle, the SJ can participate in the relevant legal proceedings, and assist the Court in the administration of charitable trusts. If there is sufficient information or evidence showing that a charitable organisation may have breached the charitable trust, or there is maladministration prejudicing the beneficial interest of the charitable organisation, the Department of Justice (DoJ) will pay close attention to the administration and operation of the said charitable organisation, and take such follow-up actions as may be appropriate, including seeking directions or appropriate relief from the Court.

Regarding the Hon Paul Tse's question in relation to the estate of the late Mrs Nina Wang and the estate of the late Mr Yu Pang-lin, The DoJ's consolidated reply is as follows:

(I) The estate of the late Mrs. Nina Wang (NW Estate)

Mrs Nina Wang passed away in April 2007 leaving a home-made Chinese will

dated July 28, 2002 (the Will). In May 2012, SJ, as the protector of charity, commenced proceedings in the Court of First Instance of the High Court seeking the Court's adjudication on the proper construction of the Will, in order to ensure proper management and ultimate distribution of the NW Estate.

The Court of Final Appeal handed down its judgment on May 18, 2015 and unanimously held 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 (CFA Judgment).

(1) Latest developments regarding the scheme of administration (Scheme)

The DoJ has been actively following up on the Scheme in light of the blueprint laid down in the CFA Judgment on May 18, 2015, and has provided its proposed scheme. The DoJ has been in contact with the Foundation's responsible persons to discuss the detailed arrangements of the Scheme, with a view to completing the relevant tasks as soon as possible. Nevertheless, parties are unable to reach consensus on some fundamental issues. Accordingly, the DoJ had made an application to the Court on March 29, 2019 in respect of the relevant matters, to seek the Court's determination or directions, such that the DoJ may continue to complete the remaining tasks. The relevant matters concern the propriety of the Scheme proposed by the DoJ and details thereof, including the setting up of a supervisory managing organisation to monitor the Foundation as trustee. The Court has fixed a directions hearing on June 13, 2019. Given that legal proceedings have already been commenced, it would not be appropriate for us to publicly discuss any further details. The DoJ will continue to closely follow up in order to ensure the early preparation and implementation of the Scheme, in order to handle the NW Estate in accordance with the wishes of the late Mrs Nina Wang.

Currently, the administration of the NW 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 and sanctioned by the Court.

(2) The work of the interim administrators

The current interim administrators are professional accountants appointed by the Court. Their principal responsibilities are to get in and preserve the properties of the NW Estate, including making enquiries as they deem reasonably necessary or taking out legal proceedings to ensure that the NW 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 making 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

NW Estate. The interim administrators are also required to submit periodical reports to the Court, the DoJ and the Foundation to account for the administration of the NW Estate.

As "officer of the Court", the interim administrators owe a duty to the Court on matters relating to the interim administration of the NW Estate. The Court may also give directions to the interim administrators if and when necessary. The work of the interim administrators has all along been 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 NW 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 relevant matters, 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 as may be required in the course of interim administration of such estate.

The DoJ has noted that certain governors of the Foundation have been suspended from their duties in the Chinachem Group's Executive Committee; the termination payment made by the Chinachem Group to its former Chief Executive Officer; the requests for the change of the interim administrators, etc. The DoJ will consider these matters thoroughly. It is not appropriate to make any comment at this stage. Generally speaking, if any misappropriation of the charitable assets by the administrator or trustee is found, the DoJ being the protector of the charity can apply to the Court for the appropriate relief (including the change of the relevant personnel if necessary). The DoJ will continue to closely monitor the interim administrators' work in managing and preserving the NW Estate, and take such follow-up actions as may be appropriate.

Regarding the fees of the interim administrators, they have been prescribed by the Court in the appointment order and are subject to the Court's scrutiny. Without the Court's order for disclosure, we are not in a position to disclose such information. 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 excessive or unreasonable, an application may be made to the Court for taxation of the fees, in order to ensure that the interim administrators' fees are maintained at a reasonable level.

As the protector of charity, the SJ will actively follow up on the detailed arrangements for the implementation of the Will in the light of the blueprint laid down in the CFA Judgment, including handling the court proceedings already commenced and closely monitoring the management and preservation of the NW Estate with a view to protecting and safeguarding the charitable interest.

(II) The estate of the late Mr Yu Pang-lin (YP Estate)

Regarding the estate of the "Clocktel Tycoon" (i.e. Mr Yu Pang-lin), the Court of First Instance of the High Court, with the assistance of the SJ as the protector of charity, handed down a judgment on March 8, 2018 after trial holding that the will of the late Mr Yu was valid and confirmed the trustee of the YP Estate. As the YP Estate involves charitable interests, the SJ has been paying attention to the management of the estate and will approach the trustee in order to further understand the administration of the charitable trust as appropriate.

Regarding the lawsuit filed against the SJ as referred to in the question, the plaintiff alleges that the SJ has failed to perform her duties as the protector of charity. Since there are ongoing legal proceedings, it is not appropriate for the DoJ to make any further comments.