

LCQ3: Self-regulation of the legal profession

Following is a question by the Hon Cheung Kwok-kwan and a written reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (April 21):

Question:

At the end of last year, the Council of the Law Society of Hong Kong (Law Society) intervened in the operation of a law firm (the firm) pursuant to the relevant legislation. The firm's practice forthwith ceased, and all the money of the firm has been held by the Law Society on trust. Given that the firm, prior to its cessation of practice, was one of the major law firms in Hong Kong engaging in cases of sale and purchase of second-hand property units, more than 150 clients of the firm were affected by the incident (affected clients), and at least \$375 million of clients' money was frozen. Some affected clients have pointed out that they have suffered huge losses as the money they deposited in the firm has been frozen, and that the incident has also illustrated that the self-regulatory regime of the legal profession cannot adequately protect the interests of clients of law firms. In this connection, will the Government inform this Council:

- (1) whether it knows the number of law firms the operation of which was intervened by the Law Society in the past 10 years, and set out in a table for each case (i) the date of intervention, (ii) the name of the law firm, (iii) the number of clients affected, (iv) the total amount of clients' money frozen, and (v) the duration of the intervention;
- (2) of the number of enquiries or requests for assistance, received by the Department of Justice (DoJ) in the past 10 years, from the clients of the law firms which had been intervened, and the follow-up actions taken by DoJ;
- (3) whether DoJ regularly reviewed in the past 10 years if the legislation relating to the self-regulation of the legal profession could dovetail with the current situation, thereby being able to effectively protect the interests of members of the public and clients of law firms; if DoJ did, of the dates and outcome of such reviews; if not, the reasons for that, and whether DoJ will conduct a review immediately; and
- (4) given that in a judgment handed down on February 19 this year on an application for leave to apply for judicial review in relation to the aforesaid incident, the Court of First Instance of the High Court pointed out that the parties concerned could consider and implement tailor-made, perhaps innovative, solutions seeking to alleviate the harshness of the impact felt by clients of the firm (such as making an early and significant interim payout), and that the Court would remain ready to provide such assistance and directions as might be sought, whether DoJ will follow up on this advice, and discuss with the Law Society solutions for helping the large number of

affected clients; if so, of the details; if not, the reasons for that?

Reply:

President,

The Legal Practitioners Ordinance (Cap. 159) (the Ordinance) and its subsidiary legislation provide for the powers and functions of the Law Society of Hong Kong (the Law Society) as the regulatory body for solicitors in Hong Kong. Under the self-regulatory regime for Hong Kong's legal profession, the Law Society must, in compliance with the relevant laws, exercise its powers and perform its functions independently.

The mechanism which provides for the Law Society to intervene into the practice of a law firm is an important regulatory tool under the legislative scheme of the Ordinance. Part IIA of the Ordinance confers the relevant powers on the Law Society with due regard to protection of clients and the public interests. The circumstances under which the Council of the Law Society (the Council) may intervene into a law firm's practice include cases of suspected dishonesty (Note 1), bankruptcy (Note 2), or breaches of other rules made under the Ordinance (Note 3). The progress of an intervention would depend on a number of factors, including the number of clients of the intervened firm, the amount of records of the intervened firm, and whether the files and accounting records are complete.

In the course of intervention, the Council shall, as required by the law, hold all sums of money of an intervened firm on trust for the persons beneficially entitled to them. This is to avoid any misappropriation of such funds in order to protect the interests of the clients and the public. As the trustee of the funds, the Council may apply to the court for directions or determination of any question arising in the execution of a trust (Note 4). The intervention agent, appointed by the Council to assist the intervention, would first verify any claims for return of money paid to an intervened firm and the manner of release of such client money will be subject to authorisation by a court order obtained upon the Council's application to the court.

With regard to various parts of the question, having made enquiries with the Law Society, the Department of Justice (DoJ) replies as follows:

(1) DoJ does not have the information requested in the question. The Law Society, on our enquiries, agreed to disclose the following information.

Between 2011 and 2020, there are in total 23 interventions by the Law Society. The names of such intervened firms and the respective dates of intervention are listed in Annex.

In respect of the 21 interventions from 2011 to 2019, the Law Society received a total of 979 claims (excluding subsequently withdrawn applications). Regarding the two interventions in 2020 which are still in receipt of claims, the Law Society is unable to provide the respective number of claims at this stage.

In relation to the total amount of frozen client funds, the total relevant amount in respect of the interventions over the past 10 years is approximately HK\$538 million.

The Law Society indicated that according to its record, with regard to the interventions in the past 10 years, it took on average 2 years and 7 months from the date of the intervention to the grant of court orders in relation to disposal and distribution of the relevant funds.

(2) DoJ does not maintain statistics on public enquiries and requests for assistance to DoJ on interventions. Whenever on receipt of enquiries about and comments on the intervention of law firms, DoJ would follow up as appropriate. If necessary, DoJ, having acquired the consent of the relevant persons, would refer the relevant enquiries or comments to the Law Society for follow-up as appropriate.

(3) & (4) In relation to the intervention since December 24, 2020 undertaken by the Law Society mentioned in the question, the Law Society indicated that in deciding whether to exercise its statutory power to intervene into the practice of that intervened firm, the Council had already taken into account all relevant circumstances and the risks to clients' money being misappropriated, and accordingly decided to exercise its statutory power to so intervene.

DoJ understands the impact of such intervention on the clients of the intervened firm, and has since then been in touch with the Law Society. Further, DoJ understands that the Hong Kong Monetary Authority (HKMA) has, since it became aware of the incident, also been closely monitoring the impact of the incident on bank customers and has requested banks to proactively approach affected customers and provide appropriate assistance in a reasonable and accommodating manner. The HKMA is currently studying with the banking industry an alternative payment arrangement for property transactions and the related operational flows and details. The arrangement aims at enabling settlement of the payments of the property mortgage loan proceeds (and other sizable funds) in property transactions without involving funds going through law firms, while preserving the primary roles and legal responsibilities of the various parties in a property transaction (including the buyer, the seller, their respective lawyers, and their respective mortgage banks (if applicable)). This would help minimise any impact on banks and customers in case the operation of a law firm is materially at issue, as well as enhance protection to the parties concerned. The HKMA and the banking industry are actively discussing and following up with the relevant stakeholders (including the Law Society) on the alternative payment arrangement proposal. DoJ is willing to assist when needed.

Besides, in a set of litigation in relation to the aforementioned intervened firm, the court indicated that it would be ready to provide such assistance and directions as may be sought (Note 5).

As the regulatory body of solicitors in Hong Kong, the Law Society has already set up a working group to review the intervention process, and also indicated that it would keep their operation under constant review and is

always open to suggestions with a view to improving it. DoJ will continue to maintain communication with the legal industry and other stakeholders in this regard.

Note 1: Section 26A(1)(a) of the Ordinance.

Note 2: Section 26A(1)(d) of the Ordinance.

Note 3: Section 26A(1)(c) of the Ordinance.

Note 4: Order 85, Rule 2(2)(a) of the Rules of the High Court (Cap. 4A).

Note 5: Ng Wing Hung v The Council of the Law Society of Hong Kong (HCAL 70/2021) [2021] HKCFI 379.