

Transcript of remarks by FS at media session (with video)

Following is the transcript of remarks by the Financial Secretary, Mr Paul Chan, at a media session today (July 28) at Central Government Offices, Tamar:

Financial Secretary: Pursuant to the power conferred on me under sections 841(2) and (3) of the Companies Ordinance, I have appointed Mr Clement Chan (é™³éŒ|æ!®) as the Inspector to investigate into the affairs of Next Digital Limited (NDL).

Under section 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 that:

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

(i) in a manner unfairly prejudicial to the interests of members generally or of one or more members;

(ii) with intent to defraud its creditors or the creditors of any other persons; or

(iii) for any other fraudulent or unlawful purposes; or

(b) the person 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; and the Financial Secretary is satisfied that it is in the public interest to appoint the Inspector.

In invoking the statutory power to make this appointment, I have reviewed the relevant facts and circumstances in relation to the affairs of Next Digital Limited and all the available information. It appears to me that there are circumstances suggesting that 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 fall short of that expected of a listed company.

All the circumstances giving 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, I consider 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 international 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.

Mr Clement Chan, the Inspector appointed, is a senior accountant and served as a former president of the Hong Kong Institute of Certified Public Accountants. 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 member of a number of different boards and committees.

Thank you.

Reporter: A couple of questions in English. First, how much do you think the taxpayers will need to pay for this investigation? Will Mr Chan get any pay? Does he need to hire anybody? Does he need to quit his job as a boss of BDO to take up this job? Second question, does he have any power to call for witness or do any investigation? Because usually it is the Police or the SFC which has a power to do so. As an FS-appointed Inspector, to what extent he can check the document or ask men to co-operate with his investigation? Thirdly, it is the first time in 20 years for the government to appoint an Inspector. If you think that it is a usual tool, why didn't the Government do more investigation before and what will be the outcome if he found any malpractice? Will there be any prosecution or any fine for the company or anyone?

Financial Secretary: Well, the cost of this investigation is yet to be ascertained because we have just announced the appointment and agreed with the Inspector on the scope of his work. It will depend on the progress of the investigation work and the findings. So at the moment, it is unrealistic for me to give an indicative figure as to the costs. But we will exercise due care and diligence in vetting the bills to be submitted by the Inspector. We have agreed with the Inspector that before incurring substantial costs, they have to seek our advance agreement. As to the investigation by the Police, the Securities and Futures Commission and the Inspector, you are referring to the powers of different authorities. Under the Companies Ordinance, this particular Inspector has been given very wide-ranging powers with details set out in the Ordinance which I won't repeat here. And if people do not co-operate with the Inspector, there would be consequences like penalty and imprisonment. So this Inspector has been given very wide-ranging powers to inspect documents, to ask people to be interviewed, to ask the company and its associated companies and the other related parties to provide information and to attend interviews. One of the purposes of appointing the Inspector is to learn from the experience and to see whether there are specific recommendations for further enhancement of our corporate governance regime. Whether this particular power will be invoked more frequently, it is premature to tell. Let's focus our energy in doing this particular assignment first. Thank you very much indeed.

(Please also refer to the Chinese portion of the transcript.)