

LCQ17: Irregularities concerning law firms

Following is a question by Dr Hon Chiang Lai-wan and a written reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (February 24):

Question:

Recently, the Law Society of Hong Kong (Law Society) intervened in the operation of a law firm (the firm) because the Law Society suspected after investigation that a former staff member of the firm had dishonestly misappropriated the money of the clients of the firm and was satisfied that the firm had committed serious breaches of the provisions of the Solicitors' Accounts Rules (Cap. 159F). The firm forthwith ceased practice, and all the money of the firm has been held by the Council of the Law Society (Council) on trust. It has been reported that as the firm was mainly engaged in business relating to the sale and purchase (S&P) of second-hand property units, quite a number of property buyers had deposited money, amounting to nearly \$130 million, under the client accounts of the firm. Some affected clients could not complete property transactions by the deadlines specified in the S&P agreements as they could not get back in time their money deposited with the firm, hence suffering huge losses. Similar incidents also occurred in 2016. In this connection, will the Government inform this Council:

(1) whether it will amend Cap. 159F to prevent the occurrence of the following situation: upon the intervention of the Law Society in the operation of a law firm which has breached regulations, the clients' money deposited in the client accounts of the law firm concerned has to be held by the Council on trust; if so, of the details; if not, the reasons for that;

(2) whether it will consider in future (i) requiring that the transaction money of both the buyer and the seller of a property shall no longer be handed to the law firms for depositing into the relevant client accounts, but instead be put in the custody of an independent third party, or (ii) establishing a compensation fund to compensate those clients of a law firm who have suffered losses caused by the winding up of the law firm or the Law Society's intervention in the firm's operation; if so, of the details; if not, the reasons for that;

(3) whether, in the event that a staff member of a law firm has committed criminal offences or negligence resulting in losses on the part of the firm's clients, the relevant solicitors or partners of the law firm concerned will be penalised under the current mechanism; if so, of the details; if not, the reasons for that; and

(4) of (i) the number of law firms whose operation was intervened by the Law Society, (ii) the number of affected clients and the amount of money

involved, and (iii) the respective longest, shortest and average time taken for returning the clients' money concerned, in each of the past five years, and set out the information by reason for the intervention?

Reply:

President,

As pointed out in my written response to a relevant question from the Legislative Council on January 20 this year, the implementation of a self-regulatory regime for Hong Kong's legal profession is to ensure the professionalism and independence of Hong Kong legal practitioners. The profession itself is also best placed to respond to the ever-changing landscape of international and local legal practices. This regime is crucial to upholding the rule of law and at the same time maintaining Hong Kong's position as an international legal hub for deal-making and the provision of legal and dispute resolution services.

The Legal Practitioners Ordinance (Cap. 159) (the Ordinance) and its subsidiary legislation provide that the Law Society of Hong Kong (the Law Society) is the only organisation authorised by law to regulate the professional branch of solicitors. The Law Society must, in compliance with the relevant laws, exercise its powers and discharge its duties independently in relation to the regulation of solicitors.

Amongst others, section 26A of the Ordinance specifies the circumstances under which the Council of the Law Society (the Council) may pass a resolution to exercise its statutory power to intervene into a law firm's practice (intervened firm), including where there is reason to suspect dishonesty on the part of a solicitor or an employee of a solicitor, and exercise the powers set out in Schedule 2 to the Ordinance, including those relating to the handling of money, documents and mail of the intervened firm and appointing an intervention agent to assist in the intervention, for the protection of the interests of the clients of that firm and the public.

In respect of the case mentioned in the question, the Law Society intervened into the practice of the relevant law firm on December 24, 2020. Since then, the Department of Justice (DoJ) has been in contact with the Law Society so as to be appraised of developments.

In relation to the questions raised by Dr Hon Chiang Lai-wan, the DoJ, having made enquires with the Law Society, replies as follows:

(1) Schedule 2 to the Ordinance provides the Council with various statutory powers, including the power to handle the money, documents and mail of the intervened firm, and to appoint an intervention agent to assist in the intervention, for the protection of the interests of the clients of the relevant firm and the public.

Amongst others, section 2 under Schedule 2 of the Ordinance provides that if the Council passes a resolution to the effect that all sums of money

of the intervened firm (including all sums of money deposited by clients of the intervened firm in any client accounts of that firm) shall vest in the Council, all such sums shall vest accordingly (whether they were received by the person holding them before or after the Council's resolution) and shall be held by the Council on trust for the persons beneficially entitled to them.

The purpose of exercising this power is to preserve the money of the intervened firm and to prevent the money concerned from being misappropriated, so as to protect the interests of the clients and the public. The Law Society indicates that generally, the major concerns of the Council in most intervention cases are the risk of further misappropriation of client funds, and the immediate need to take action to preserve the money that is under the control of the intervened firm. The power of intervention granted to the Law Society under the Ordinance, including the power to handle the money of the intervened firm, is designed to deal with such kind of urgent situation for the protection of the interests of the clients of the intervened firm as well as the public.

The mechanism which provides for the Law Society to intervene into the practice of a law firm, as stipulated under the Ordinance, is an important regulatory tool. The DoJ is willing to be in liaison with the industry and other stakeholders over the possibilities of enhancing the relevant regulations under the Ordinance on the basis that both the interests of the clients of the intervened firm and of the public are protected.

(2) We understand that the current payment method in property transactions are generally matters to be agreed between the vendors and purchasers.

In relation to views on further strengthening the protection of clients of solicitors' firms and the public interests, the DoJ is ready to communicate with the industry.

(3) The Solicitors Disciplinary Tribunal Panel (Panel) set up pursuant to section 9 of the Ordinance is responsible for inquiring or investigating into the conduct of a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer. The tribunal convenor of the Panel (Tribunal Convenor) and the members of the Panel are appointed by the Chief Justice of the Court of Final Appeal.

Pursuant to section 9A(1) of the Ordinance, where the Council considers that the conduct of a person who is, or was at the relevant time, a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer should be inquired into or investigated as a result of a complaint being made to it or otherwise, the Council shall submit the matter to the Tribunal Convenor.

Upon receipt of the matter submitted by the Council, the Tribunal Convenor shall, pursuant to section 9B(1) of the Ordinance, appoint from the Panel two solicitors and one lay person to constitute a Solicitors Disciplinary Tribunal (Tribunal) to inquire into and investigate the matter.

Section 10(2) of the Ordinance stipulates the sanctions that the Tribunal could impose, including striking off the roll of solicitors the name of a solicitor and suspending a solicitor from practice for a specified period, etc. Section 10(4) of the Ordinance provides that an order made under section 10(2) may also be made in respect of a person who was, at the relevant time, an employee of a solicitor or foreign lawyer.

In addition, according to the Practising Certificate (Special Conditions) Rules (Cap. 159Y) (the Rules), under specified circumstances, the Law Society is empowered to impose additional conditions on a practising certificate already issued to a solicitor. For example, section 7(2)(c) of the Rules provides that, where a solicitor has been charged with, or convicted of –

- (i) an offence involving dishonesty or deception; or
- (ii) an offence which in the opinion of the Council has compromised or impaired or is likely to compromise or impair the reputation of the profession,

the Law Society could impose one or more conditions specified in Schedule 1 to the Rules on that solicitor's practising certificate; for example, that solicitor may only practise under the supervision of a solicitor holding an unconditional practising certificate, or that solicitor may only practise in an employment that has been approved by the Council, or that solicitor shall not sign cheques on a client account, etc.

(4) The DoJ does not have the information requested in the question. On our enquiry, the Law Society agrees to disclose the following information.

From 2016 to 2020, there were 15 interventions. Among them,

- (i) two were due to the death or incapacity of the sole proprietor;
- (ii) three were due to suspected dishonesty of an employee or a partner (two of these cases also involved breaches of the Solicitors' Accounts Rules);
- (iii) nine were due to breaches of the Solicitors' Accounts Rules; and
- (iv) one was due to being in practice without a practising certificate.

In connection with the above interventions, the Law Society received a total of 941 claims (excluding claims that were subsequently withdrawn). The total amount of claims was about HK\$120 million. According to the statistics maintained by the Law Society, it would take an average of approximately one and a half years (counting from the date of the intervention) to have the fund released with the Court's approval.