

LCQ7: Property conveyancing procedures and related irregularities

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 (January 20):

Question:

The Law Society of Hong Kong (Law Society) has recently uncovered after an investigation that a former clerk (commonly known as legal executive) of a law firm (firm) dishonestly misappropriated the money of the firm's clients, and the firm allegedly breached the provisions of the Solicitors' Accounts Rules (Cap. 159F), including overdrawing on clients' accounts and allowing unqualified persons to be signatories of clients' accounts. The Law Society has appointed another law firm as the Intervention Agent (Agent) to handle the follow-up work. It has been reported that as the firm was mainly engaged in the business of sale and purchase (S&P) as well as mortgages of second-hand property units, quite a number of property buyers deposited money with the firm. As it takes time for the Agent to handle the follow-up work, such buyers may not be able to engage in time alternative solicitors to take over matters related to their S&P transactions, and get back the transaction money deposited with the firm, resulting in their failure to complete property transactions by the deadlines specified in the S&P agreements, and hence their suffering of huge losses. Besides, as the case may involve criminal offences committed by the partners of the firm, those clients who have suffered losses may not be able to receive compensation through the Solicitors' Professional Indemnity Fund. In this connection, will the Government inform this Council:

- (1) whether it knows the respective numbers of property buyers and sellers affected by the aforesaid case, and the total amount of money involved in the property transactions concerned;
- (2) of the measures in place to help expedite the work of the Agent, so that the affected clients may get back the transaction money deposited with the firm as early as possible so that they may complete the transactions in time and avoid huge losses;
- (3) whether it has studied the causes of the case, and if there are inadequacies in the relevant regulatory regime and execution work;
- (4) of the measures in place to assist those victims who have been unable to complete property transactions due to the aforesaid case in recovering their monetary losses expeditiously; and
- (5) as some members of the public have pointed out that the transaction of a second-hand property currently involves the procedures of checking all

previous deeds of the property by the solicitors of the buyer and seller to verify the title (and also the preparation of a certified copy of the assignment in case the assignment has been lost), and such procedures are time-consuming and cumbersome, incurring additional transaction costs and indirectly creating opportunities for unscrupulous personnel of law firms to commit offences for gains, whether the Government will expedite the review of such procedures, and implement as soon as possible the Land Titles Ordinance (Cap. 585) which was enacted as early as in 2004, so as to streamline the property conveyancing procedures, and reduce the solicitors' fees payable and the risks to be borne by members of the public in buying and selling properties?

Reply:

President,

The main purpose of implementing 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 Law Society of Hong Kong (Law Society) is the regulatory body of solicitors in Hong Kong and its power and functions are laid down in the Legal Practitioners Ordinance (Cap. 159) and its subsidiary legislation. Amongst others, section 26A of Cap. 159 specifies the circumstances under which the Council of the Law Society (Council) may pass a resolution to exercise its statutory power to intervene into a law firm's practice, including where there is reason to suspect dishonesty on the part of a solicitor or an employee of a solicitor. Upon intervention, the Council may exercise the powers set out in Schedule 2 to Cap. 159, including those relating to the handling of money, documents and mail of that law firm and appointing an intervention agent (IA) to assist in the intervention, for the protection of the interests of the clients of that firm and the public.

With respect to the case mentioned in the question, the Law Society intervened into the practice of the relevant law firm (Intervened Firm) on December 24, 2020. Since then, the Department of Justice (DoJ) has been in contact with the Law Society so as to be apprised of the developments. The Council considered that it had reason to suspect that a former clerk of the Intervened Firm had dishonestly misappropriated clients' money of the Intervened Firm, and was satisfied that there were serious breaches of the regulations of the Solicitors' Accounts Rules (Cap. 159F) by the Intervened Firm, including overdrawing on client accounts and allowing unqualified persons to be authorised signatories of client accounts. Taking into account the seriousness of the findings of the investigation against the Intervened Firm, the Council considered that it had no alternative but to exercise the statutory power pursuant to sections 26A(1)(a)(ii) and 26A(1)(c) of Cap. 159 to intervene into the practice of the Intervened Firm to protect the

interests of its clients and the public.

With regard to the question raised by the Hon Paul Tse, the DoJ, having made enquiries with the Law Society and consulted the Development Bureau (DEVB) and the Financial Services and the Treasury Bureau, replies as follows:

(1) The DoJ does not have any of the information requested in the question. The Law Society, having been enquired by us, agreed to disclose the following information.

The Law Society indicated that since the Intervened Firm does not have a proper filing system and the physical files located at its head office are very disorganised, it takes time for the IA to acquire a full picture. The exact number of property buyers and sellers affected in the case, as well as the amount of clients' money being involved could only be ascertained after all the information has been obtained, collated and verified.

According to the information gathered by the Law Society as at January 15, 2021, it is estimated that there are around 935 conveyancing matters with imminent deadlines for the period between December 24, 2020 and January 31, 2021.

(2) Section 2 of Schedule 2 to Cap. 159 provides that upon intervention, all sums of money of the Intervened Firm (including all sums of money deposited into the Intervened Firm's client account by its clients) shall vest in the Council and shall be held by the Council on trust for the persons beneficially entitled to them.

We understand that the Council has already appointed five other law firms to assist the IA in order to handle the work related to the intervention as quickly as possible.

According to the Law Society, the urgent tasks for the IA and the assisting law firms at the moment are to locate the files and title deeds from a large number of files, return the files with urgent deadlines to relevant clients, and index the files. As at January 15, 2021, the Intervened Firm's three branch offices in Prince Edward, Tsuen Wan and Yuen Long have already been vacated. The IA is currently processing the remaining files and affairs of the Intervened Firm's head office at Central.

Upon completion of the urgent tasks, the IA plans to launch the claim procedure in February 2021. The IA would need to check the supporting documents with care to verify the claims.

In circumstances where dishonesty is involved or where records of the intervened law firm are incomplete, the release of clients' money has to be subject to authorisation by a court order.

The IA and all the assisting firms are doing their best to handle the process efficiently. The Law Society is also doing what it can within its

capacity to provide the necessary manpower support to the IA to facilitate its work. However, given the volume of files and that the records are disorganised, the process would take some time.

(3) The DoJ notes that the Law Society has already explained publicly about the said incident and its statutory powers in the exercise of its regulatory function. As the intervention of the Intervened Firm is still ongoing and involves uncompleted or possible civil or criminal proceedings, it is not appropriate for the DoJ to comment at this stage.

As aforementioned, Hong Kong's legal profession implements a self-regulatory regime to ensure the professionalism and independence of Hong Kong legal practitioners. Cap. 159 and its subsidiary legislation stipulate that the Law Society is the only institution in Hong Kong authorised by law to regulate the professional branch of solicitors. The Law Society must independently exercise its powers and discharge their functions and duties to regulate solicitors in accordance with the relevant enactment.

Where the Council considers that a solicitor or foreign lawyer may be unfit to practise, the Council may, if it considers it necessary for the purpose of investigating the matter, require the solicitor, the foreign lawyer or his/her firm to produce or deliver relevant documents to the Council. The Council may also appoint an inspector under section 8AA(1)(a) of Cap. 159 to conduct an inspection of a law firm on its relevant files, documents and accounting records for the purpose of verifying the firm's compliance with Cap. 159, its subsidiary legislation and other relevant professional conduct rules.

In relation to the power of intervention, according to section 26A(1)(a) of Cap. 159, the Council, before intervening into the practice of a law firm, must consider that the exercise of such statutory power is in the interests of the public or the clients of that firm. The Law Society indicated that, in deciding whether to exercise its statutory power to intervene into the practice of the Intervened Firm, the Council has already taken into account all relevant circumstances and the risks to clients' money being misappropriated. It exercised its statutory power to intervene in order to preserve the clients' money and to protect clients' interests.

The Law Society indicated that it would keep their operation under constant review and is always open to suggestion with a view to improving it.

(4) As pointed out in its press release of January 12, 2021, the Law Society indicated that since the intervention, it has been working closely with different stakeholders to minimise its impact, including:

(a) calling for law firms to assist clients of the Intervened Firm and conducting a briefing session for them on how they could assist;

(b) informing different government bureaux/departments and the Judiciary Administration of the intervention;

(c) updating the Hong Kong Monetary Authority (HKMA) on the intervention and written to the Hong Kong Association of Banks (HKAB) to urge banks to consider support measures for clients of the Intervened Firm;

(d) alerting the Consumer Council and the Estate Agents Authority of the intervention and urging licensed estate agents who have acted for the clients of the Intervened Firm to consider assistance for them; and

(e) co-ordinating a list of mediators to provide mediation services to parties affected by the intervention and talking to a number of mediation service platforms to seek their assistance.

The HKMA has been closely monitoring the impact on bank customers since it became aware of the incident, and has requested banks to proactively approach affected customers and provide appropriate assistance in a reasonable and accommodating manner. It is understood that banks concerned have already contacted customers who are imminently affected due to the freeze of their mortgage loans and offered assistance as appropriate including financial arrangements. Such include the granting of a mortgage loan of equivalent amount to customers whose mortgage loans have already been disbursed by the bank and yet now frozen, or the provision of an additional bridging loan to customers whose property purchase deposits have been frozen such that the property transactions in question can be completed. Besides, there are also cases involving mortgage refinancing where the new mortgage bank has granted payment holiday for affected customers such that they have time to make arrangements for the original mortgage loans. As cases differ in their circumstances, banks will examine each and every case in order to provide appropriate assistance. The HKMA will continue to communicate with the HKAB and the Law Society with a view to facilitating the offer of suitable protection and assistance to affected bank customers.

Besides, the Stamp Office of the Inland Revenue Department (IRD) has announced the following arrangements to assist the affected duty payers:

(a) if a duty payer concerned is unable to arrange stamping of a property transaction instrument before the time limit, the Stamp Office will consider remission of penalty for late stamping. The duty payer can make an application to the Stamp Office for remission of penalty directly or through the newly engaged solicitor;

(b) if the duty payer is unable to raise funds to settle the stamp duty payable within a short period of time due to the freezing of relevant bank accounts of the law firm, an application can be made to the Stamp Office for payment by instalment; and

(c) if a property transaction cannot be completed otherwise than by reason of re-sale or disposal of the property by the purchaser, the relevant agreement for sale is not chargeable with stamp duty. The duty payer can apply for refund of the stamp duty paid in respect of the relevant agreement within two years after the agreed date of completion of the transaction.

The IRD issued a press release on the above arrangement on January 12, 2021, and the Stamp Office has also informed the Law Society and is proactively reaching out to its appointed IA and the affected duty payers to assist them in handling the relevant stamp duty matters.

(5) According to the DEVB, the Land Titles Ordinance (Cap. 585) (LTO) aims to establish a new system under which the Title Register will be conclusive evidence as to the title of the property, to replace the present deeds registration system that gives no guarantee to title, with a view to providing greater assurance and certainty to property titles as well as simplifying the procedures of title checking in conveyancing. The Legislative Council (LegCo), when passing the LTO in July 2004, requested the Government to conduct a comprehensive review on a number of outstanding issues and consider making further amendments to the LTO in consultation with the stakeholders before its implementation.

The land title registration system is inherently complicated. It involves complex legal issues and carries significant implications. Since the enactment of the LTO, the Government has carried out a comprehensive review of the LTO in full consultation with the major stakeholders, and put forth various proposals to address stakeholders' divergent views over the main issues, including the mechanism for bringing existing land and properties under the new system (i.e. conversion mechanism) and the rectification and indemnity arrangements. The Government has been making continuous efforts in engaging the major stakeholders, bridging their different expectations and addressing their concerns on implementing the title registration system.

In order to achieve early implementation of the title registration system, the Government is actively pursuing the proposal of implementing title registration on newly granted land first (i.e. land granted by the Government after the commencement of the LTO) ("new land first" proposal) and has secured support in principle for the proposal from the major stakeholders. The Government will continue engaging the major stakeholders and strive to reach a consensus on the major issues including indemnity arrangements, verification of applications for registration and caution mechanism. Thereafter, the Government will prepare as soon as possible a more concrete timetable for the preparation of the Land Titles (Amendment) Bill and introduction of such amendment bill to the LegCo for scrutiny.