

Press release

LCQ8: Investigations into the affairs of CITIC Pacific Limited

Wednesday, January 20, 2010

Following is a question by the Hon Wong Sing-chi and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (January 20):

Question:

The Government advised in its reply to a question raised by a Member of this Council on November 18 last year that the Securities and Futures Commission (SFC) had completed its investigation into the affairs of the CITIC Pacific Limited and had submitted the investigation report to the Department of Justice (DoJ) for consideration, while the Police's investigation was still underway. Moreover, when a claim for compensation from the immediate past chairman of the CITIC Pacific Limited was heard in the Small Claims Tribunal on January 5 this year, the adjudicator pointed out that the allegations made by the claimant were matters for the Market Misconduct Tribunal (MMT), and the claimant might make a civil claim after MMT had examined the case. In this connection, will the Government inform this Council:

- (a) whether it knows if SFC has submitted the aforesaid investigation report to the Secretary for Financial Services and the Treasury (SFST) as well as the Financial Secretary (FS) for consideration; if so, when such report was submitted to SFST and FS, as well as the results of their consideration; if not, the reasons for that;
- (b) whether the Police has completed its investigation into the aforesaid incident; if so, whether the investigation report has been submitted to DoJ for consideration;
- (c) whether the Secretary for Justice, SFST and FS will consider referring the aforesaid incident to MMT for instituting proceedings; and

(d) of the total number of cases MMT has dealt with since its establishment on April 1, 2003, and the market misconduct activities involved and, among such cases, the respective numbers of which were referred to FS by SFC and then to MMT for instituting proceedings, as well as those referred to MMT by the Insider Dealing Tribunal; of the number of cases in which the proceedings have been completed, the time required for completing the proceedings of each case and the results, as well as the number of cases still underway?

Reply:

President,

In response to Hon Wong Sing-chi's question, we have consulted the Securities and Futures Commission (SFC), the Department of Justice (DoJ) and the Hong Kong Police Force (HKPF) for comments and our reply is as follows:

(a) SFC is restrained under the Securities and Futures Ordinance (SFO) from disclosing details of individual cases. Under the SFO, there are dual routes to deal with market misconduct, i.e. under Part XIV thereof where SFC may report its investigation findings to DoJ to consider criminal prosecution; or under Part XIII where FS may institute proceedings before MMT whether or not following any report by SFC or any notification by DoJ. In general, SFC will examine all options and bring criminal prosecution as a matter of priority if there is sufficient evidence and where criminal prosecution is in the public interest. Since DoJ has been given the exclusive responsibility for the control of criminal prosecutions in Hong Kong under the Basic Law, SFC will refer cases of suspected market misconduct to DoJ for advice in the first instance. If DoJ rules out the case for criminal prosecution, SFC will consider other enforcement options, including referral to FS for consideration of instituting MMT proceedings. SFC would not consider a referral to FS before obtaining DoJ's advice due to the need to preserve primacy to criminal prosecution.

(b) As the investigation is still underway, HKPF will not comment further on the progress of the case at the moment.

(c) As described in (a), cases of potential market misconduct are usually investigated by SFC. Under Part XIII of the SFO, FS upon receipt of SFC's report will consider instituting proceedings before the MMT where it appears appropriate to him.

(d) MMT was established in April 2003 under the SFO to take over the role of the Insider Dealing Tribunal under the repealed Securities (Insider Dealing) Ordinance, and hears cases concerning insider dealing as well as five other types of market misconduct, including false trading, price rigging, stock market manipulation, disclosure of information about prohibited transactions and disclosure of false or misleading information inducing transactions in securities and futures contracts, which occur on or after April 1, 2003.

So far, MMT has heard four cases which were instituted by FS on reports made by SFC. MMT has concluded the fourth and last case in hand and issued a report in August 2009. There is at present no outstanding case. Details of the four cases are at Annex 1.

The longer processing time in two of the cases (QPL and COLI) was attributable to judicial reviews taken by the specified persons. The reviews had respectively taken eleven and six months to complete, hence leading to the staying and adjournment of the MMT proceedings.

Ends