

Press release

LCQ10: Investigations into the affairs of CITIC Pacific Limited

Wednesday, June 23, 2010

Following is a question by the Hon Albert Ho and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (June 23):

Question:

Regarding the investigations conducted respectively by the Securities and Futures Commission (SFC) and the Police into the leveraged foreign exchange transactions of CITIC Pacific Limited (CITIC) and related affairs, as well as an earlier press report that the Department of Justice (DoJ) has instructed the Police to look into the matters relating to CITIC's bidding for the Shenzhou Peninsula development project in Hainan Province on the Mainland, will the Government inform this Council:

(a) given that SFC had submitted the aforesaid investigation report to DoJ for consideration more than six months ago, of the progress concerned;

(b) whether the Police's investigation has been completed; if not, whether the authorities will consider freezing part of the assets of CITIC and the director(s) concerned, so as to ensure that minority shareholders may recover their losses in the future;

(c) given that the aforesaid investigation has been in progress for more than 20 months and the authorities still have not instituted any criminal prosecution, and that it has been learnt that the Police's investigation still remains at the stage of determining which of the seized documents are related to the case, whether the authorities have assessed if it is appropriate at present to refer the case to the Market Misconduct Tribunal for instituting proceedings, so as to try the case expeditiously; if an assessment has been made, of the results and the factors considered by the authorities;

(d) given that it has been reported that three minority shareholders have applied to claim compensation from the past chairman of CITIC through the Small Claims Tribunal but their cases were not taken on and had to be referred to the High Court for proceedings, yet due to the huge litigation costs and their ineligibility for legal aid, these minority shareholders were forced to give up their claims, what expeditious and cost-effective measures the authorities have at present to assist minority shareholders, who have suffered losses of about several tens of thousand dollars as a result of wrong investment decisions made under the influence of false or misleading communications or market misconduct of listed companies, in claiming compensation from the listed companies concerned or the person(s)-in-charge of the companies, so as to safeguard the rights and interests of minority shareholders;

(e) whether it has ascertained how, in other mature international financial markets (e.g. the United Kingdom and the United States, etc.), losses in the amount of several tens of thousand dollars are recovered for minority shareholders in circumstances similar to the aforesaid situation; if so, of the details;

(f) given that CITIC has made a responsibility statement in its circular issued on September 16, 2008, stating that "[t]his Circular includes particulars given in compliance with the Listing Rules [t]he Directors collectively and individually accept full responsibility for the accuracy of the information contained in this Circular and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief, there are no other facts not contained in this Circular, the omission of which would make any statement herein misleading", whether the contents of the responsibility statement are in compliance with the requirements of the rules and guidelines on listing matters; if so, of the purpose of such requirements; whether it has assessed if the requirements can protect minority shareholders when listed companies' circulars contain inaccurate information, so that they can claim losses from the listed companies concerned or the person(s)-in-charge of the companies, or rather protect listed companies; and

(g) focusing on the investigation into the matters relating to CITIC's bidding for the Shenzhou Peninsula development project in Hainan Province on the Mainland, whether the Police will investigate if the case involves any connected transactions, damages to the benefits of minority shareholders, failure to disclose the relevant information in a timely and detailed manner, and conduct in breach of the Listing Rules in Hong Kong and the Securities and Futures Ordinance (Cap. 571)?

Reply:

President,

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

(a) According to the DoJ, the SFC has submitted a request for legal advice following the completion of its investigation. The Police is also investigating the same conduct but its investigation is not yet concluded. The investigation by the Police involves a large volume of documents and computer evidence. CITIC Pacific Limited and the directors claimed legal professional privilege in respect of the documents seized and the claim is currently being litigated in the High Court. Since the investigation by both the SFC and the Police concern the same set of facts, it is appropriate for the DoJ to finalise its advice to the SFC and the Police after it has had an opportunity to consider the results of the Police investigation.

(b) Since its investigation is ongoing, the Police would not comment further on the case.

(c) In general, criminal prosecution will be instituted if there is sufficient evidence and where criminal prosecution is in the public interest. If the DoJ advises against criminal prosecution, the SFC will consider other enforcement options, including referral to the Financial Secretary for consideration of instituting proceedings in the Market Misconduct Tribunal (MMT). As investigation by the Police is still in progress, the DoJ will finalise its advice to the SFC and the Police after it has had an opportunity to consider the results of the Police investigation. It is therefore inappropriate to comment on the way forward at this stage.

(d) & (e) Sections 281 and 305 of the Securities and Futures Ordinance (SFO) respectively provide that a person, who has engaged in market misconduct, or committed offences relating to dealings in securities and futures contracts, etc. under Part XIV Division 2 to 4 of the SFO, is liable to pay compensation to any other person for any pecuniary loss as a result of his conduct. Eligible persons could lodge claims accordingly, and the determination made by the MMT is admissible in evidence.

Under the structure of Hong Kong courts, the Small Claims Tribunal hears civil claims within its jurisdiction of up to \$50,000, with no legal representation allowed. To ensure that any person who has reasonable grounds for taking or defending a legal action is not prevented from doing so by lack of means, the Administration also provides a means-tested legal aid scheme.

(f) It is a requirement of the Listing Rules (e.g. Rules 14.66(2), 14.68(1), 14.69(1)(a) and 14A.59(3)) to include a directors' responsibility statement in the circulars issued by the relevant listed companies. The purpose is to ensure that the listed companies comply with the general disclosure principles of the Listing Rules, in particular Rule 2.13 which requires the information disclosed to be accurate and complete in all material respects and not misleading or deceptive. The Stock Exchange of Hong Kong Limited (SEHK) administers the Listing Rules. In general, where SEHK is aware of facts and circumstances which suggest that the Listing Rules have not been complied with, it would conduct appropriate enquiries and investigation with the companies and/or directors involved. SEHK indicated that it would not comment on individual cases.

(g) We would not comment on individual cases.

Ends