

**For discussion on
20 July 2015**

**Legislative Council Panel on
Administration of Justice and Legal Services**

The administration of the Estate of the late Mrs Nina WANG

PURPOSE

This paper is to brief Members of the Panel on the administration of the Estate of the late Mrs Nina Wang (“the Estate”).

ROLE OF SECRETARY FOR JUSTICE (“SJ”)

2. SJ, in his capacity as protector of charities, may intervene in relevant legal proceedings for the purpose of protecting the interests of charity and may render assistance to the Court in the administration of charitable trusts. The role of SJ, which arises under common law, is recognized in the Trustee Ordinance (Cap. 29) and under Order 120 of the Rules of High Court (Cap. 4A).

3. As the protector of charities, SJ is necessarily a party to charity proceedings and represents the beneficial interest or objects of the charity. As there are charitable interests under the will made by the late Mrs Wang on 28 July 2002 (“2002 Will”), and given the exceptional size of the Estate, SJ has been a party to the probate, construction and administration proceedings, and has been keeping a close monitor of the case developments at all times.

BACKGROUND

Construction proceedings

4. Following the conclusion of the contentious probate proceedings in which the Court upheld the validity of the 2002 Will, SJ commenced proceedings in May 2012 in his capacity as the protector of charities to seek guidance from the Court on the proper construction of the 2002 Will

in order to determine the proper administration and eventual distribution of the Estate.

5. On 22 February 2013, the Court of First Instance (“CFI”) handed down a judgment holding that a charitable trust had been established under the 2002 Will (as contended by the SJ) such that the Chinachem Charitable Foundation Limited (“Foundation”) shall hold the residuary estate in trust to give effect to the directions in Clauses 2 and 3 of the 2002 Will and with a discretion to exercise the power under Clause 4. The Foundation’s appeal was dismissed by the Court of Appeal on 11 April 2014. The Foundation’s further appeal to the Court of Final Appeal (“CFA”) was dismissed on 18 May 2015. The text of the 2002 Will is set out at **Annex I**. A summary of the CFA judgment is at **Annex II**.

Administration of the Estate

6. Since 10 December 2007, the Estate has been under the interim administration of independent administrators who are professional accountants as appointed by the Court.

7. Following the conclusion of the probate proceedings in October 2011, the Court ordered on 26 March 2012 that the interim administration of the Estate shall continue until a full grant of letters of administration with the 2002 Will annexed is made by the Court or until any further order. Since around mid-2012, the Estate has been administered by 3 interim administrators, all being professional accountants.

8. Pursuant to the Court's order, the interim administrators are authorized to manage the properties and affairs of the Estate. Their principal responsibilities are to collect and preserve the properties of the Estate, including making enquiries as they deem reasonably necessary or taking out relevant legal proceedings, and requiring any person(s) having custody, control or management of properties of the Estate to deliver or transfer to the interim administrators such properties, so as to ensure that the Estate is properly preserved. Except with the prior consent of both SJ and the Foundation or the Court's consent, the interim administrators shall not distribute any part of the Estate, and no unauthorized person

shall use any property of the Estate.

9. The interim administrators, being “officers of the Court”, owe a duty to the Court on matters relating to the interim administration of the Estate and the Court may give directions to the interim administrators if and when necessary. In discharge of their duties, the interim administrators shall investigate and take follow-up actions against any irregularity known to them which may prejudice the proper preservation and management of the Estate. The interim administrators are also required to submit periodical reports to the Court, SJ and the Foundation on the conduct of the administration.

10. The Department of Justice (“DoJ”) has, at all times, worked closely with the interim administrators and provided assistance to the Court in the interim administration of the Estate as may be required. In addition, DoJ has entered a caveat against a grant of probate or letter of administration in respect of the Estate so as to ensure that SJ will be informed if any such application is made.

11. By its judgment dated 18 May 2015, the CFA held that the Foundation would hold Mrs Wang’s Estate as a trustee subject to the powers under clause 4 of the 2002 Will, rather than receiving it as an unconditional absolute gift. The judgment has clarified the proper interpretation of the 2002 Will (“the Will”) at law, and provided a legal basis and clear guidance for the future implementation of the Will through a scheme.

12. According to the CFA judgment, a scheme should be prepared and submitted to the High Court for approval after consultation between the Foundation’s Board of Governors and SJ as the guardian of the public interest. The scheme should, amongst others, set out the establishment of a supervisory “managing organization” and the detailed working-out of arrangements for the Chinese prize mentioned in the Will.

13. The CFI has original jurisdiction to impose (upon application or otherwise) a scheme of administration on a charitable trust and will exercise such jurisdiction whenever the Court is satisfied that the scheme will secure the better administration of the charitable trust. The DoJ will

continue to liaise with the Foundation and the interim administrators in taking follow-up actions having regard to the guidance given by the CFA on the various aspects, and will seek the Court's further directions when necessary.

14. The DoJ will also continue to closely monitor the interim administrators' work in managing and preserving the Estate and take such follow-up actions as may be appropriate with a view to protecting and safeguarding the interest of the charity.

Department of Justice
July 2015

Annex I

The text of the 2002 Will made by the late Mrs Nina WANG

“ I, Kung Yu Sum, solemnly make my will as follows:

1. ‘Chinachem Charitable Foundation Limited’ was set up by me and my husband, Wang Teh Huei, jointly. After I pass away, all of my properties shall be bequeathed to ‘Chinachem Charitable Foundation Limited’.
2. After I pass away, I wish to entrust ‘Chinachem Charitable Foundation Limited’ to the supervision of a managing organization jointly formed by the Secretary General of the United Nations; the Premier of the PRC Government as well as the Chief Executive of the Hong Kong Special Administrative Region. Under its supervision, not only must ‘Chinachem Charitable Foundation Limited’ continue all the projects which it has undertaken since its establishment to enable their developments continuously, but it must also continue to achieve the purpose of setting up a fund and a Chinese prize of worldwide significance similar to that of the Nobel Prize.
3. The Board of Directors of ‘Chinachem Charitable Foundation Limited’ shall practically manage the company’s businesses and capital under the supervision of the abovementioned supervising organization, to safeguard and expand the ‘Chinachem Group’ as well as all the business which we have set up, to ensure the continuous growth of the business empire of the ‘Chinachem Charitable Foundation Limited’ and with part of its profits, to continuously develop the charitable business till eternity.
4. ‘Chinachem Charitable Foundation Limited’ must continue to achieve:
 - (1) provide for the seniors of the Wang’s family, Mr Wang Din Shin and Madam Run Yuk Chun, which provision should be in accordance with their wishes and be satisfactory to them.
 - (2) support Wang Teh Hwa’s living and medical expenses, to look after her children as well as their needs of advanced studies. As regards the other siblings of my husband, Wang Teh Huei, if necessary, the company also has the obligation to look after them. If their children pursue university or advanced studies, the company should be responsible (for the costs).

- (3) 'Chinachem Charitable Foundation Limited' has the obligation to provide care and assistance to the staff of the 'Chinachem Group' and their children, to encourage them to continue studying and keep on enhancing their own value, to encourage them to work hard together towards achieving the goal of bringing benefit to mankind."

THE HONG KONG COURT OF FINAL APPEAL

*This Summary is prepared by the Court's Judicial Assistants
and is not part of the Judgment.*

The Judgment is available at:

<http://www.hkcfaf.hk/en/work/cases/index.html>

or at:

<http://legalref.judiciary.gov.hk/lrs/common/ju/judgment.jsp>

PRESS SUMMARY

The Secretary for Justice

and

*(1) Chan Wai Tong, Christopher,
Wong Tak Wai and Jong Yat Kit,
The Joint and Several Administrators of the
Estate of Kung, Nina (龔如心) also known as
Nina Kung and Nina TH Wang*

*(2) Chinachem Charitable Foundation Limited
華懋慈善基金有限公司*

(3) 施福英, The Natural Mother of the Deceased

FACV No.9 of 2014 on appeal from CACV No. 44 of 2013

APPELLANT: Chinachem Charitable Foundation Limited

1st RESPONDENT: Secretary for Justice

2nd RESPONDENT: The Joint Administrators of the Estate of Kung, Nina

3rd RESPONDENT: The Natural Mother of the Deceased

JUDGES: Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Fok PJ, Mr Justice Chan NPJ, Lord Walker of Gestingthorpe NPJ

COURTS BELOW: Court of First Instance: Poon J; Court of Appeal: Lam VP, Cheung and Kwan JJA

DECISION: Appeal unanimously dismissed

JUDGMENT: Lord Walker of Gestingthorpe NPJ

DATES OF HEARING: 21-23 April 2015

DATE OF JUDGMENT: 18 May 2015

REPRESENTATION:

Simon Taube, QC, Ambrose Ho, SC, and Michael Yin, instructed by Department of Justice, for the Plaintiff/1st Respondent

Brian Green, QC, Patrick Fung, SC and Jeremy Chan, instructed by Wilkinson & Grist, for the 2nd Defendant/Appellant

Ashley Burns, SC and Bonnie Cheng, instructed by Allen & Overy for the 1st Defendant/2nd Respondent

SUMMARY:

1. The testatrix, Nina Kung, passed away leaving a home-made Chinese will dated 28 July 2002 (the “Will”) that bequeathed all of her properties to the Appellant, a registered Hong Kong charitable company. After introductory words, the Will contained four clauses, which are summarised as follows:

- Clause 1 contained a gift of Nina’s property to the Foundation.
- Clause 2 contained provisions about the appointment of a managing organisation to supervise the Foundation, about the continuation of existing projects, and about the funding of “a Chinese prize of worldwide significance to that of the Nobel Prize”.
- Clause 3 related to the Foundation’s management of the Chinachem Group [for both business and charitable purposes].
- Clause 4 contained provisions about the Foundation providing support for members of the family of Nina’s late husband Teddy Wang (“Teddy”), and staff of the Chinachem Group and their children.

2. The principal issue that divided the Foundation and the Secretary for Justice in the proceedings was whether the Foundation should take the properties bequeathed to it (i) as a gift absolutely for the general charitable objects set out in its memorandum; or (ii) as a charitable trustee and be obliged to give effect to all or some of the directions in clauses 2, 3, and 4 of the Will.

3. The Court of First Instance and the Court of Appeal held that the language used in clauses 2, 3, and 4 of the Will was imperative in nature and sufficiently clear that the Foundation would hold the estate as a trustee and would be obliged to give effect to clauses, 2, 3, and 4 of the Will in so far as it would be possible.

4. The Court of Final Appeal held that the words of the home-made Will must be read and understood in their context, and that the Will must be read as a whole. The Court further held that a gift to a charitable company is a gift to the company unless it was sufficiently clear that the imposition of a trust was intended.

5. In the present case, the Court considered the effects of the imperative language and specific phrases used in the entire context of the home-made Will, and held it was sufficiently clear that clause 2(2) imposed a trust for charitable purposes. The alternative argument, that the clause 2(2) imposed a personal obligation on the Foundation, was held to be unworkable and unnatural.

6. The Court held that clause 3, which concerned the administration and management of the trust property rather than the application of its income for charitable purposes, must be taken to be aspirational or declaratory in nature. The Court held that the objects in clause 4 were discretionary, the powers of which the Foundation would have an obligation to consider exercising from time to time. In view of the foregoing findings, the Court concluded that the Foundation would hold the entire estate as a trustee and would not receive any part of the estate as an absolute gift.

7. Finally, the Court further held that the language of 2(1) was sufficiently clear to indicate that Nina wished to “entrust” the Foundation to the supervision of a managing organization outside the Foundation, and accordingly the Court would exercise its inherent jurisdiction to establish a scheme for the administration of the charitable trusts under the Will.

8. Accordingly, the appeal was unanimously dismissed.