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DEATH AND THE CENTRAL PROVIDENT FUND REVISITED

Chai Choon Yong v. Central Provident Fund Board

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I. INTRODUCTION

The Central Provident Fund ('CPF') plays such an important part in the lives of Singaporeans that it comes as something of a surprise to discover that quite basic legal questions relating to it remain unresolved. Two such questions were discussed by the courts in the recent case of *Chai Choon Yong v. Central Provident Fund Board*.[1] The most important question was what should be done with CPF moneys on the death of a member who did not make a valid nomination. The second question was the effect of minor irregularities in the nomination form. Although the discussion of the Court of Appeal of both issues is strictly speaking *obiter*, the case undoubtedly provides valuable guidance in the interpretation of the *Central Provident Fund Act*.[2]

Ms Wang Lee Jun was an unmarried woman, who appointed Mr Lai Weng Kwong, with whom she had lived for many years before her death, as executor of her will and sole beneficiary of her estate. She also nominated Mr Lai to receive all the moneys in her CPF account. After her death, Ms Wang's mother filed an originating summons to challenge the validity of the nomination under the *CPF Act* on the grounds that the nomination was null and void because Ms Wang's signature had not been properly witnessed. The plaintiff argued that since the nomination was invalid, the money should be paid to the Public Trustee for disposal in accordance with the *Intestate Succession Act*,[3] under which she would be entitled to a share of the money. Mr Lai sought to uphold the validity of the nomination, but argued further that even if the nomination were invalid, the money was payable to him pursuant to Ms Wang's will. The argument was that if a CPF member died without making a nomination, the money standing to the credit of his account should be paid to the Public Trustee for disposal in accordance with the member's will and not the *Intestate Succession Act*.

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[1] [2005] 2 S.L.R. 594 [*Chai Choon Yong*], affirming the judgment of the High Court reported at [2004] 2 S.L.R. 416.

[2] Cap. 36, 2001 Rev. Ed. Sing. [*CPF Act*].

[3] Cap. 146, 1985 Rev. Ed. Sing.

The Court of Appeal held that the nomination made by Ms Wang was valid on the facts. In the circumstances its discussion of what should be done with CPF moneys when the member had not made a valid nomination was *obiter*.

II. Nature of Nomination

The *CPF Act* provides that a member may determine what should happen with the moneys standing to his credit in his CPF account by the simple procedure of executing a nomination form. Section 25 provides as follows:

Moneys payable on death of member

(1) Any member of the Fund may by a memorandum executed in the prescribed manner nominate a person or persons to receive in his or their own right such portions of the amount payable on his death out of the Fund under section 20 (1) or of any shares designated under section 26 (1) as the memorandum shall indicate.

(2) If, at the time of the death of a member of the Fund, there is no person nominated under subsection (1), the total amount payable out of the Fund shall be paid to the Public Trustee for disposal in accordance with any written law for the time being in force.

(3) If any person nominated (other than a widow) is below the age of 18 years at the time of payment of the amount payable out of the Fund, his portion of the amount payable shall similarly be paid to the Public Trustee for the benefit of the nominated person.

(4) The receipt of a person or persons nominated under subsection (1) or of the Public Trustee shall be a discharge to the Board for such portions of the moneys payable out of the Fund on the death of a member as are payable to the person or persons or the Public Trustee under subsection (2) or (3).

(5) Any nomination made by a member of the Fund under subsection (1) shall be revoked by his marriage, whether the marriage was contracted before or after 15th May 1980.

The important point to note about this nomination scheme is that it is essentially a form of will. *Jarman on Wills*,[4] in a definition which has been quoted with approval by the Privy Council,[5] states that "[a] will is an instrument by which a person makes a disposition of his property to take effect after his decease, and which is in its own nature ambulatory and revocable during his life." The *CPF Act* provides for automatic revocation of the nomination on marriage,[6] which points to the ambulatory nature of the document. Other forms of revocation are not expressly provided for in the Act, but the *Central Provident Fund (Nominations) Rules*[7] provide for revocation by written notice of revocation[8] or by subsequent nomination.[9]

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[4] Thomas Jarman, *A Treatise on Wills*, 8th ed. (London: Sweet & Maxwell, 1986) at 26.

[5] In *Baird v. Baird* [1990] 2 A.C. 548 at 556.

[6] *Supra* note 1, s. 25(5).

[7] 1998 Rev. Ed. Sing.

[8] *Ibid.* rule 7(c).

[9] *Ibid.* rule 7(d).

The nomination only takes effect on the death of the member. Section 24(3A) of the *CPF Act* states that moneys paid out of the Fund on the death of a member are impressed with a trust in favour of the nominee. A document will only be of a testamentary nature if it disposes of property belonging to the deceased. If the property did not belong to the deceased, then the document may well amount only to the exercise of a power of appointment.[10] Section 6(2) of the *CPF Act* states that the CPF Board is the trustee of the Fund and section 12(2) states that the Board shall cause to be credited to each member of the Fund the amount of every contribution paid to the Fund for him together with interest on the amount standing to his credit in the Fund. A member can withdraw the money standing to his credit in the Fund in accordance with the provisions of Part II of the Act. The inescapable conclusion is that the member is a beneficiary of and thus has a property interest in the amount standing to his credit in the Fund subject to the terms of the Act.[11]

The nomination form is therefore a testamentary document, and it may be seen as a type of "poor man's will" designed to enable a member to dispose of his property effectively on death without the need to consult a solicitor and to incur the legal expense of drawing up a formal will. This point is perhaps an obvious one, but it is worth noting because it seems to have been lost sight of in some of the literature on the CPF. It is nevertheless worthy of note that the formalities for making a nomination under the *Central Provident Fund (Nominations) Rules*[12] are strikingly similar to those for making a will under the *Wills Act*.[13]

There is nothing unusual about the procedure outlined in section 25(1) of the *CPF Act*. It mirrors arrangements contained in several English statutes.[14] These nomination provisions were originally designed to give to the poorer members of society the power to make provision for the disposal of small sums at their death without the expense of making a will or taking out a grant of representation.[15]

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[10] It was this fact that led the Privy Council in *Baird v. Baird*, *supra* note 5 , to conclude that the nomination by a member of a pension scheme of a "death-in-employment" benefit did not need to be executed as a will.

[11] The restrictions on withdrawal laid down by Part III limit the property rights of the CPF member, but this does not affect the conclusion that the nomination form is a testamentary document. The point is discussed in more detail in Barry Crown, "Death and the Central Provident Fund" [1991] 1 M.L.J. cxiv, at n 11.

[12] See in particular rules 4 and 6.

[13] Cap. 352, 1996 Rev. Ed. Sing. Non-statutory rights of nomination may also exist under certain forms of express trust, *e.g.*, pension schemes. In such cases, where the nomination is a testamentary document, it will need to comply with the formalities of the *Wills Act*. No such need arises, of course, where the form of nomination is prescribed by statute.

[14] See *e.g.*, the schemes set up under the following U.K. Acts of Parliament: *Post Office Savings Bank Act 1954* (U.K.), 1954, c. 62, s. 7; *Trustee Savings Bank Act 1954* (U.K.), 1954, c. 63, s. 21(3); *Industrial and Provident Societies Act 1965* (U.K.), 1965, c. 12, ss. 23, 24; *Friendly Societies Act 1992* (U.K.), 1992, c. 40, Sch. 9; *Trade Union and Labour Relations (Consolidation) Act 1992*, (U.K.), 1992, c. 52, s. 17.

[15] Sir Henry Studdy Theobald, *Theobald on Wills*, 16th ed. by John G. Ross Martyn, Stuart Bridge and Mika Oldham, secs. 13–16, (London: Sweet & Maxwell, 2001). See *Eccles Provident Industrial Co-operative Society Ltd. v. Griffiths* [1912] A.C. 483 at 490.

It is accepted in England that the nomination form is a testamentary document. In the words of Farwell J. in *Re Barnes*[16] the nomination form is:

> "[I]n its nature testamentary" because it has all the characteristics of a testamentary document, that is to say, it is a nomination which has no effect at all until the death of the nominator who is left completely free during his lifetime to deal with his share irrespective of it. The nominee would have no right to complain of, nor could he take any steps to prevent, the nominator dealing with his interest during his lifetime. The nomination has no operation and is not intended to have any operation until the death of the nominator. Whether or not it then operates depends upon whether or not the nominator has during his lifetime either revoked it or used the money which he purported to nominate for his own purposes, by withdrawing it from the society or in some other way. The result, as I said, is that the nature of the nomination in a case of this sort is clearly testamentary.

III. *Saniah bte Ali v. Abdullah bin Ali*[17]

Difficulties have been caused by the language used in section 24(3A) of the *CPF Act*, which states that:

> (3A) All moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of—
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> (a) the person or persons nominated under section 25(1) by the deceased member, if any; or
> (b) the person or persons determined by the Public Trustee in accordance with section 25(2) to be entitled thereto,
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> but shall, without prejudice to the operation of the Estate Duty Act (Cap. 96), be deemed not to form part of the deceased member's estate or to be subject to his debts.

The notion that CPF moneys should not form part of the estate of the deceased member may perhaps be derived from the English law on statutory nominations. In *Bennett v. Slater*[18] it was held that a valid statutory nomination could not be revoked by a subsequent will. In the words of Rigby L.J.:

> [I]f the nominator had revoked the nomination in the manner prescribed by the Act, the money would have formed part of his estate; but he did not do so, and therefore, in my opinion, it was no part of his estate.[19]

Section 24(3A) seems, however, to go further than English law in providing that CPF moneys should not form part of the estate of the deceased member whether or

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[16] [1940] Ch. 267 at 273.
[17] [1990] 3 M.L.J. 135 [*Saniah bte Ali*], discussed in detail in Crown, *supra* note 11. It is submitted with respect that the case was incorrectly decided for the reasons given in the article.
[18] [1899] 1 Q.B. 45.
[19] *Ibid.* at 51.

not he made a valid nomination. The marginal note to section 24 reads "Protection of benefits".[20] This intention is illustrated quite clearly by subsections (4) and (5) of section 24, which read as follows:

> (4) No contribution to the Fund or interest thereon shall be subject to the debts of the member of the Fund, nor shall the contribution or interest pass to the Official Assignee on the bankruptcy of the member.
>
> (5) If the member is adjudicated a bankrupt or is declared insolvent by judgment of the court, the contribution and interest shall be deemed not to form part of the property of the member.

Undoubtedly the intention of section 24(3A) was to ensure that CPF moneys should not be used to pay the deceased member's debts, as indeed is expressly stated in the legislation. The words "be deemed not to form part of the deceased member's estate or to be subject to his debts" are probably an example of the "belt and braces" style of drafting. It is submitted that the subsection should be read as if the words "for the purpose of protection of the moneys from creditors" were inserted immediately after the word "estate".

The Singapore courts have, however, sought to give a literal interpretation to the phrase "be deemed not to form part of the deceased member's estate" and this has given rise to difficulties. In *Saniah bte Ali*,[21] Saleh bin Ali died intestate as a result of a road traffic accident. He had nominated one of his stepsisters, Saniah bte Ali, as the sole nominee in relation to his CPF account and accordingly the CPF Board paid her in full the amount in the deceased's account not long after his death. Some time later the deceased's brother, Abdullah bin Ali, obtained from the Syariah Court an inheritance certificate declaring that he was entitled to the entire estate of the deceased. The deceased had $60,607.71 in his CPF account at the time of his death, but the total value of his estate, excluding the CPF moneys, came to only $8,038.76.

Thean J. held that the moneys payable out of the Fund on the death of a member are specifically excluded by the *CPF Act* from the estate of the deceased and therefore are not subject to the *Administration of Muslim Law Act*.[22] The result of the case was that the bulk of the property of the deceased was not distributed in accordance with Muslim law. This is in spite of the fact that the *Administration of Muslim Law Act* requires that the estates of Muslims domiciled in Singapore dying intestate should be distributed in accordance with Muslim law[23] and that no Muslim domiciled in Singapore can dispose of more than one third of his property by will.[24]

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[20] There is authority for the view that in Singapore, unlike the position in England, marginal notes may be used as an aid to interpretation of the statute: see *Cashin v. Murray* (1888) 4 Ky. 435 and *Re Tan Keng Tin* [1932] M.L.J. 134.

[21] *Supra* note 17.

[22] Cap. 3, 1999 Rev. Ed. Sing.

[23] *Ibid.*, s. 112(1).

[24] *Ibid.*, s. 111(1).

IV. Distribution of CPF Moneys in the Absence of Nomination

Difficulties have also been caused by the language used in section 25(2) of the *CPF Act*, which states that,

> If, at the time of the death of a member of the Fund, there is no person nominated under subsection (1), the total amount payable out of the Fund shall be paid to the Public Trustee for disposal in accordance with any written law for the time being in force.

The section is probably derived ultimately from provisions such as section 68(1) of U.K. *Friendly Societies Act 1974*,[25] which provides that:

> If any member of a registered society … dies without having made any nomination thereof then subsisting, the society … may, without letters of administration or probate of any will … distribute the sum among such persons as appear to the committee, upon such evidence as they may deem satisfactory, to be entitled by law to receive that sum.

The practice in the UK is therefore to follow the general principles of succession law in determining the devolution of sums due where there is no nomination.[26]

Returning to section 25(2) of the *CPF Act*, there is no written law which provides specifically what should be done with CPF moneys on the death of the member when there is no nomination in force. There are, of course, written laws such as the *Wills Act*, the *Probate and Administration Act*[27] and the *Intestate Succession Act*, which provide what should be done with the estates of deceased persons in Singapore. However, if one follows the decision in *Saniah bte Ali*, none of these laws applies, as the moneys payable out of the Fund on the death of a member are specifically excluded by the *CPF Act* from the estate of the deceased. If the moneys do not form part of the estate of the deceased and if there is no law which says to whom they do belong, one is left with the logical, if uncomfortable, conclusion that the moneys are ownerless and therefore pass to the state as *bona vacantia*. It is not an attractive conclusion, and it is to the credit of the state bodies which were parties to the proceedings in *Chai Choon Yong* that none of them even raised this possibility.

It appears that some time after *Saniah bte Ali* and as a response to this case, the Public Trustee adopted the practice of distributing CPF moneys in accordance with the *Intestate Succession Act*, even where the deceased had left a will.[28] The practice is a strange one, as it means ignoring the express wishes of the deceased in favour of the list of beneficiaries contained in the *Intestate Succession Act*. The facts of *Chai Choon Yong* illustrate this very clearly. The deceased wanted her partner to be the sole beneficiary of her estate, including her CPF moneys. She executed a will and a nomination form to secure this goal, but had her nomination been held invalid for

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[25] 1974, c. 46. This section is derived from the *Friendly Societies Act, 1896* (U.K.), 59 & 60 Vict., c. 25, s. 58.

[26] See *Nelson v. Royal London Friendly Society* (1896) Diprose & Gammon 544. Unfortunately, the original report is not available in Singapore, but the case is noted in *Halsbury's Laws of England*, 4th ed. (London: Butterworths, 1995) vol. 19(1), para. 266.

[27] Cap. 251, 2000 Rev. Ed. Sing.

[28] It appears that previously the practice of the Public Trustee was to pay CPF moneys in such a case to the executor. See Crown, *supra* note 11 at cxix.

some technicality, her CPF funds would instead have gone to relatives she wanted to exclude from benefiting on her death and not in accordance with her wishes as manifested in her will.

Writing to *The Straits Times* in 2000, Lee Cheow Han, the Assistant Public Trustee, explained:

> On [the member's] death, CPF moneys do not form part of his estate and are therefore not subject to any attachment or payment of any of his debts. In 1990, the High Court ruled that for these reasons, CPF savings could only be disposed of by a specific nomination, as provided by the Act, and not by will or any other instrument. The CPF Act also provides that if there has been no nomination by the member, his CPF monies shall be paid to the Public Trustee for distribution in accordance with the law, which must mean the Intestate Succession Act which governs the distribution of property not subject to a will.[29]

This practice was approved by the Court of Appeal in *obiter dicta* in *Chai Choon Yong*.

It is difficult, however, to understand the legal basis for the practice adopted by the Public Trustee. If one takes literally the words of section 24(3A) that CPF moneys are "deemed not to form part of the deceased member's estate", then there is no basis for distributing them in accordance with the *Intestate Succession Act*. After all, as the long title to the *Intestate Succession Act* states expressly, it is an "Act to make provision for the distribution of intestate *estates*". The rules for distribution are set out in section 7 of the *Intestate Succession Act*. Every single one of these rules refers expressly to the division of the *estate* of the deceased. It is totally inconsistent to say on the one hand that CPF moneys do not form part of the estate of the deceased, but on the other hand that the *Intestate Succession Act* applies to the distribution of such moneys. Assuming one rejects the notion that the moneys are *bona vacantia,* the only solution is to accept that the phrase "deemed not to form part of the deceased member's estate" cannot be interpreted literally. It was clearly inserted to protect CPF moneys from creditors and should therefore be read as if the words "for the purpose of protection of the moneys from creditors" were inserted immediately after the word "estate". If this interpretation were adopted, the written law referred to in section 25(2) would be understood as the *Probate and Administration Act*. The Public Trustee would therefore pay the moneys to the executor, who would distribute them in accordance with the will and would not use them to pay the deceased's debts.

Delivering the judgment of the court in *Chai Choon Yong*, Lai Siu Chiu J. referred to the

> very crucial characteristic of the CPF statutory regime which is conspicuously lacking in the UK's statutory nomination schemes, *viz,* the overriding concern in the *CPF Act* that CPF moneys should be protected from a member's creditor. As such, there has to be a clear demarcation between CPF moneys and the member's estate .... If the Public Trustee was to use the will as a basis to distribute the CPF moneys, it would be an indirect enforcement of the deceased's will. Such a result would undoubtedly dilute the declaration in s 24(3A) that CPF moneys

[29] Letter to the Editor, *The Straits Times* (6 May 2000).

are not part of a member's estate; a neat separation between CPF moneys and the estate would no longer be possible.[30]

With respect, it is difficult to see how the desire to maintain a clear demarcation between CPF moneys and the member's estate leads to the conclusion that CPF moneys should be distributed in accordance with the *Intestate Succession Act*, which simply provides a form of statutory will for the distribution of the estates of persons who die intestate.

Lai Siu Chiu J. also saw practical difficulties if CPF moneys were to be distributed otherwise than in accordance with the *Intestate Succession Act* where no nomination had been made. This led to the need for a purposive interpretation of the *CPF Act* according to which the *Wills Act* could not apply to the *CFP Act*:

> [I]f the Public Trustee considered CPF moneys to be part of a member's estate, he would have to consider other laws besides the Wills Act. For instance, the Inheritance (Family Provision) Act (Cap 138, 1985 Rev Ed) may well apply if the testator has not made reasonable provision for his dependants, and this would inevitably have an impact on the distribution of CPF moneys. Similarly, in the event that a CPF member is a Muslim, the rule in Muslim law that the testator may not dispose by will more than one-third of his property has to be considered …[31]

It would undoubtedly be inappropriate for the Public Trustee to have to deal with such matters, but it is submitted with respect that the difficulty comes from assuming that if the Public Trustee does not distribute the moneys in accordance with the *Intestate Succession Act*, then he must do so himself in accordance with the will. Once it is recognised, however, that the "written law" is the *Probate and Administration Act*, it becomes apparent that all the Public Trustee has to do is to pay the CPF moneys to the personal representative of the deceased. It will be for the personal representative to consider such matters as the possibility of claims under the *Inheritance (Family Provision) Act*[32] or the impact of Muslim law, just as he always has to do as part of the normal administration of the estate. The only difference is that the executor cannot use CPF moneys to pay creditors.

V. AMENDMENT OF THE *CPF ACT*

Lai Siu Chiu J. added that "[p]erhaps it is timely for Parliament to consider amending the section, by adding the words 'governing intestacy' after the phrase 'any written law for the time being in force' in s 25(2)."[33] It is indeed timely to amend section 25(2) and also section 24(3A), both of which are poorly drafted, as has long been known in the legal community.[34] However, the proposed amendment would merely legitimate the Public Trustee's present practice. It is submitted that it would be better to follow the practice of the U.K. statutory nomination schemes and allow CPF

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[30] *Supra* note 1 at para. 25.
[31] *Ibid.* at para. 27.
[32] Cap. 138, 1985 Rev. Ed. Sing.
[33] *Supra* note 1 at para. 30.
[34] Indeed the present writer called for amendment of the *CPF Act* to deal with the problems discussed here some 14 years ago. See Crown, *supra* note 11 at cxx.

members to have full freedom of testamentary disposition. Any amendment should provide expressly that where there is no nomination, the CPF Board should pay moneys standing to the credit of the deceased's member's account to that member's personal representative, who should not, however, use them for payment of the member's debts.

It is sometimes assumed that the difficulties discussed here can be avoided by the simple expedient of encouraging CPF members to make nominations. Indeed, Lai Siu Chiu J. stated that it would be inappropriate to distribute CPF moneys in accordance with the member's will as that would "create a disincentive to making a nomination" and that "[t]he intention that CPF moneys should be disposed of via nomination would not be achieved."[35] With respect, there is nothing in the *CPF Act* which says that CPF moneys should be disposed of via nomination. It is simply an option given to CPF members for their convenience, designed originally—as the English models show—to save members the trouble and expense of making a will.

Even if a member has made a nomination, difficulties can still occur. A CPF nomination is a very simple form of will designed to be used by members without legal advice. It does not therefore allow for the sophisticated devices that are possible in wills made under the *Wills Act*. Sometimes, however, such sophistications are necessary. For example, H intends to marry W, who is several years his junior. W's parents are opposed to the union and refuse to attend the wedding. Prior to the wedding, H makes a will leaving his entire estate to W should she survive him by thirty days. If she does not so survive him, H's estate is to go to his sister as his parents are deceased. The will is expressed to be made in contemplation of his marriage to W. H also makes a CPF nomination in favour of his sister. W has not made a will. H and W get married and drive directly from the wedding reception to Changi Airport for their honeymoon. Unfortunately, they are both killed in a plane crash.

If it is not possible to discover who died first, it has to be assumed under section 30 of the *Civil Law Act*[36] that H predeceased W, as she is the younger. H's estate will pass to his sister, as W did not survive him by the requisite period of thirty days. However, H's CPF nomination has been revoked by his marriage. Since W is deemed to survive H, under *Chai Choon Yong* the CPF moneys would pass to her under the *Intestate Succession Act* and on her death would form part of her estate. The result is that W's parents, who opposed the marriage and refused to attend the wedding, would get H's CPF moneys to the exclusion of his own sister.[37] In contrast to the position under the *Wills Act*[38] it is not possible to avoid automatic revocation by making a CPF nomination in contemplation of marriage. It would appear, therefore, that the only way to avoid this result would be for H to make a new CPF nomination immediately after his wedding and to post it to the CPF Board before boarding the plane at Changi!

This example also suggests a related problem. What happens where the nominee predeceases the CPF member? If the member does not manage to execute a new

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[35] *Supra* note 1 at para. 26.

[36] Cap. 43, 1999 Rev. Ed. Sing.

[37] Since W died intestate, her estate is distributed in accordance with r. 5 of s. 7 of *the Intestate Succession Act*.

[38] *Supra* note 13, s. 13(2).

nomination before his own death, the result will be that his CPF funds will be distributed in accordance with the *Intestate Succession Act*. It is common practice in wills to avoid this problem by providing for substitutional gifts, as was indeed done in the example above where H provided that his estate should go to his sister if his wife did not survive him by thirty days. Although there is nothing in the *CPF Act* to expressly prohibit nominations like this, the design of the nomination form made under the *Central Provident Fund (Nomination) Rules*[39] clearly does not contemplate such an arrangement. The aim of the nomination scheme is simplicity, and it would not therefore appear possible to make substitutional nominations. It would not even be desirable, as it would complicate the task of the CPF Board in distributing funds to nominees on the death of members.

It is questionable also to what extent it is possible to make a nomination on trust. The nomination form would not appear to contemplate trust arrangements, but presumably one could name T as a nominee and declare the trust in a separate document. A difficulty, however, is that a trust is a private document and might not necessarily come to light on the death of the CPF member, if T sought to keep the moneys for himself. This is not a problem where the trust is declared in a will, which becomes a public document on the grant of probate. Another problem would be where T predeceased the CPF member. The nomination would fail and under *Chai Choon Yong* the moneys would be distributed in accordance with the *Intestate Succession Act*. Perhaps the solution is to name a trust company as the nominee.

There is nothing in the *CPF Act* to say that only an individual can be a nominee, although that is clearly the only possibility contemplated by the nomination form. It is not clear how the CPF Board would react to the receipt of such a nomination. There is nothing in the Act which would appear to give the Board any discretion in the matter, but in practice, as shown by the facts of *Chai Choon Yong*, the Board has adopted a proactive—some might say paternalistic—role in relation to nominations. It will be recalled that Ms Wang Lee Jun was a single woman who made a nomination in favour of her partner, Mr Lai Weng Kwong. The nomination form contains a column "Relationship to member" in which Wang described Lai as a "friend". Upon receiving the nomination form, the CPF Board sent Wang a letter asking if she would like to include her next-of-kin as nominees. Wang replied to confirm that Lai was her choice of nominee. It seems the Board was still not satisfied because the officer handling the file then contacted Wang to explain to her the implications of her nomination. The officer subsequently noted that he had the impression that Wang understood the effect of her decision.

A final difficulty with the present system is that it can lead to unnecessary costs. The Public Trustee has to find out who are the beneficiaries entitled under the *Intestate Succession Act*. The Public Trustee charges a fee for this service, as costs may well be incurred in finding the beneficiaries and working out their entitlements. Where a personal representative has been appointed, these expenses could be avoided, if the CPF moneys were paid directly to him.[40] A similar difficulty occurs where a

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[39] *Supra* note 7.

[40] See M. Jayakumar, "Make CPF nomination or be poorer for it", Letter to the Editor, *The Straits Times* (22 April 2000), and the reply by Lee Cheow Han, the Assistant Public Trustee, "CPF monies: Fees help defray costs", *The Straits Times* (6 May 2000).

nomination is made in favour of a person under the age of 18.[41] The Public Trustee will administer the funds until the beneficiary reaches this age. The fees charged by the Public Trustee in this case could be avoided if the CPF moneys could be disposed of by will in favour of a private trustee for the minor. Indeed, if there is a will which creates a trust in favour of the minor together with a CPF nomination in favour of the same minor, that will give rise to two trusts for the same person—one administered by the private trustee and the other by the Public Trustee—a most unfortunate duplication, which simply gives rise to unnecessary costs.

All the above problems could be avoided by allowing CPF members full freedom of testamentary disposition. It is proposed that the Act should be amended to require the CPF Board to pay CPF moneys to the personal representative of the deceased where there is no valid nomination, and that the personal representative should be expressly barred from using the moneys to pay the debts of the deceased. Where there is no nomination and no grant of representation has been taken out, the moneys should be passed to the Public Trustee, who should be granted a broad power to distribute the moneys similar to that available under section 68(1) of the *U.K. Friendly Societies Act 1974*.[42]

VI. Non-compliance with Formalities

As mentioned above, in *Chai Choon Yong*, the mother of the deceased challenged the validity of the nomination. There was a finding of fact at first instance that the nomination form had been validly executed, which was affirmed on appeal. Nevertheless, Lai Siu Chiu J. suggested that a lack of compliance with formalities should not be fatal to the validity of a nomination, so long as there was substantial compliance and no evidence of fraud. In this case, the CPF Board had contacted the member after receiving the nomination and confirmed that it did indeed represent her wishes, which removed any fear of fraud.[43]

This idea of "substantial compliance" is derived from proposals which have been made in a number of jurisdictions for reform of the law of wills and which have been adopted in Queensland, where section 9 of the *Succession Act 1981*[44] states that "the court may admit to probate a testamentary instrument executed in substantial compliance with the formalities prescribed by this section if the court is satisfied that the instrument expresses the testamentary intention of the testator." It is not possible to engage here in a full discussion of the concept of "substantial compliance", but a few words about substantial compliance and CPF nomination forms would not be out of place.

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[41] See *CPF Act*, *supra* note 2, s. 25(3).

[42] Where the estate is a small one, it may be administered by the Public Trustee himself (where its gross capital value is less than $5,000) under s. 6 of the *Public Trustee Act* (Cap. 260, 1985 Rev. Ed. Sing.) or (where it does not exceed $50,000 in value without deduction for debts) under s. 62 of the *Probate and Administration Act*. The money held in the deceased's CPF account may well exceed these amounts, but since it cannot be used for the payment of debts, the family of the deceased would be put to needless expense if they had to apply for a grant of representation simply to obtain the CPF moneys. It is therefore appropriate to allow the Public Trustee, if he thinks fit, to distribute the moneys in the absence of a valid nomination whenever a grant of representation has not been taken out.

[43] *Supra* note 1 at paras. 49 and 50.

[44] (Qld.), Act No. 69 of 1981.

Formalities are necessary as a means of preventing fraud. Indeed, the formalities currently found in the *Wills Act* were first introduced by the *Statute of Frauds 1677*. The person who is best able to testify as to the circumstances in which a will was made is the testator himself, and he will inevitably be dead when the issue comes to court. It is all too easy for others to fabricate evidence in these circumstances, so one needs to be very careful before one is prepared to overlook what might appear to be minor irregularities in the execution of a will. The difficulty, however, is that common law systems typically do not allow for any form of assurance that a will is valid before the death of the deceased. A will is a private document until it is admitted to probate, at which point its validity is determined. It is, of course, too late by that time to correct any formal errors, which is why the proposal has been made that substantial compliance should suffice.

The situation is different in the case of CPF nominations. In practice, the nomination form is sent to the CPF Board by the member. The Board acknowledges receipt and notes the details of the nomination in its records. If there were something irregular on the face of the nomination, the Board would undoubtedly ask the member to execute a new form. Indeed the facts of *Chai Choon Yong* itself illustrate the proactive role taken by the Board in vetting nominations. A doctrine of substantial compliance runs the risk of facilitating fraud, and in the special circumstances of the CPF, it appears to be unnecessary.