# Kuek Siang Wei and another *v* Kuek Siew Chew
# [2015] SGCA 39

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| **Case Number** | : Civil Appeal No 167 of 2014 |
| **Decision Date** | : 13 August 2015 |
| **Tribunal/Court** | : Court of Appeal |
| **Coram** | : Sundaresh Menon CJ; Andrew Phang Boon Leong JA; Steven Chong J |
| **Counsel Name(s)** | : Dr G Raman (Khattarwong LLP) for the appellants; Tng Kim Choon and Henry G S Lim (KC Tng Law Practice) for the respondent. |
| **Parties** | : Kuek Siang Wei and another — Kuek Siew Chew |

*Deeds and Other Instruments – Deeds*

*Legal Profession – Conflict of interest*

*Probate and Administration – Distribution of Assets*

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2015] 1 SLR 396.]

13 August 2015

**Sundaresh Menon CJ (delivering the grounds of decision of the court):**

**Introduction**

1 This appeal arose from Suit No 966 of 2012, an action commenced by the respondent, Kuek Siew Chew ("the Respondent"), against the first appellant, Kuek Siang Wei ("the First Appellant"), and the second appellant, Kuek Tsing Hsia ("the Second Appellant"), to set aside three instruments – a letter of consent, a deed of consent and a deed of family arrangement – which were purportedly executed to give effect to the wishes of a deceased person, Mr Kuek Ser Beng ("Mr Kuek"), as to how his assets were to be distributed among the surviving members of his family. The subject of the appeal mainly concerned the decision of the judicial commissioner ("the Judge") to set aside the second of the three instruments, *ie*, the deed of consent (see *Kuek Siew Chew v Kuek Siang Wei and another* [2014] SGHC 237 ("the GD")). The Judge considered that deed to be a family arrangement and analysed its validity on that footing. He set it aside on the ground that the Respondent had not been informed about the full value of Mr Kuek's estate before she signed that deed. The First Appellant and the Second Appellant (collectively, "the Appellants") appealed against the Judge's decision. We agreed with the Judge that the deed of consent was a family arrangement, and that it should be set aside because material facts had not been disclosed to the Respondent prior to its execution. Hence, we dismissed the appeal. We now set out the detailed grounds for our decision.

**Background facts**

***The demise of Mr Kuek and the discovery of his handwritten note***

2 Mr Kuek passed away on 30 January 2007 without leaving a will. He was married to Mdm Lim Swee ("Mdm Lim") and they had three children together, namely, a son (Kuek Hock Eng ("Hock Eng")) and two daughters (the Respondent and Kuek Siew Eng ("Siew Eng")). He also had a second family

with Mdm Goh Ah Pi ("Mdm Goh"), with whom he had five children (four daughters and a son). For ease of reference, we refer to Mdm Lim and her children as "the first family", and Mdm Goh and her children as "the second family". In addition, we include within our definition of "the first family" the following persons: (a) Hock Eng's wife, Mdm Ho Per Jong ("Mdm Ho"); (b) Hock Eng's five children (three daughters and two sons); (c) Mr Kuek's brother, Mr Kerk Hup Hin ("Hup Hin"); and (d) Hup Hin's wife, Mdm Yak Hong Eng ("Mdm Yak"). Although this point was disputed at the trial below, it bears mentioning that there is some evidence that the members of the first family did not know about the existence of the second family prior to Mr Kuek's demise.

3 Approximately two months after Mr Kuek's death, the members of the first family found in Mr Kuek's safe a note dated 23 May 2002 written by him ("the Note"). By that time, Hock Eng, Mdm Ho and their children had already moved into Mr Kuek's matrimonial home at Toh Tuck Road ("the Toh Tuck Road Property"). The Note set out Mr Kuek's wishes as to how his assets were to be distributed among the surviving members of the first and second families. At [12] of the GD, the Judge found that the evidence as a whole supported the conclusion that the Note was genuine. This finding was not contested on appeal. The Note was not a valid testamentary instrument because Mr Kuek did not sign it; nor was it attested to by any witnesses. It therefore did not meet the requirements set out in s 6 of the Wills Act (Cap 352, 1996 Rev Ed) for a valid will. Hence, Mr Kuek's estate stood to be distributed in accordance with the regime set out in the Intestate Succession Act (Cap 146, 1985 Rev Ed) ("the ISA"). However, it was open to the beneficiaries of Mr Kuek's estate under the ISA, all of whom were also among the beneficiaries named in the Note, to agree to compromise their respective entitlements under the intestacy regime and to accept, instead, a different basis of dividing the assets in the estate.

***The distribution envisaged in the Note***

4 Under the Note, Hock Eng and his family stood to receive the bulk of Mr Kuek's estate. Specifically, Hock Eng was to receive $400,000 and two properties in Johor Bahru, Malaysia ("the Malaysian Properties"). His wife, Mdm Ho, was to receive $200,000. His three daughters (the Second Appellant, Kuek Tsing Qi ("Tsing Qi") and Kuek Tsing Xiu ("Tsing Xiu")) each stood to receive $100,000. The Toh Tuck Road Property and the residuary estate – *ie*, the balance of the assets (primarily cash and shares) which were not particularised in the Note – were to be given to Hock Eng's two sons (the First Appellant and Kuek Yong Wei ("Yong Wei")). The Toh Tuck Road Property was valued at $3.3m as at 30 January 2007 in the declaration of estate duty which the Appellants made to the Commissioner of Estate Duties on 31 October 2011 in their capacity as the administrators of Mr Kuek's estate. In that same declaration, the residuary estate was valued at approximately $8.3m. The residuary estate was the largest part of Mr Kuek's estate, forming about 60% of the whole estate. In total, excluding the value of the Malaysian Properties, Hock Eng's family stood to receive cash and assets valued at about $12.5m under the division envisaged in the Note.

5 Mdm Lim and her two daughters (namely, the Respondent and Siew Eng) stood to receive $200,000 each under the Note.

6 As for the members of the second family, they were to receive a shophouse at Jurong Kechil ("the Jurong Kechil Shophouse"). This was valued at $800,000 as at 30 January 2007 in the aforementioned estate duty declaration.

7 The Note also dealt with a total sum of $1.65m that Mr Kuek wished to be distributed among the members of the first family, including his brother, Hup Hin, and the latter's wife, Mdm Yak. The specific distribution of this sum as envisaged in the Note was as follows:

(a) Mdm Lim (Mr Kuek's wife): $200,000;

(b) Hock Eng (Mr Kuek's son with Mdm Lim): $400,000;

(c) Mdm Ho (Hock Eng's wife): $200,000;

(d) the Respondent (Mr Kuek's daughter with Mdm Lim): $200,000;

(e) Siew Eng (Mr Kuek's daughter with Mdm Lim): $200,000;

(f) the Second Appellant (Hock Eng's daughter): $100,000;

(g) Tsing Qi (Hock Eng's daughter): $100,000;

(h) Tsing Xiu (Hock Eng's daughter): $100,000;

(i) Hup Hin (Mr Kuek's brother): $100,000; and

(j) Mdm Yak (Hup Hin's wife): $50,000.

***The distribution under the intestacy regime***

8 The distribution envisaged in the Note was drastically different from that which would obtain if the assets in Mr Kuek's estate were distributed in accordance with the intestacy regime set out in the ISA. Under s 7 of the ISA, Mdm Lim would receive a half-share of the estate, and her three children (*ie*, the Respondent, Siew Eng and Hock Eng) would each receive a one-sixth share of the estate. Mdm Ho, Hup Hin, Mdm Yak and Mr Kuek's grandchildren, including the Appellants, would not receive any share in the estate.

9 The question of whether the members of the second family would receive any share in Mr Kuek's estate under the intestacy regime set out in the ISA would depend entirely on the strength of their case that they had a right to participate in the distribution of the estate under that regime on the basis that Mdm Goh was Mr Kuek's common law wife. The question of whether Mdm Goh was Mr Kuek's common law wife was not the subject of the suit below. The distribution set out in the preceding paragraph would be significantly different if Mdm Goh was recognised as a spouse entitled to participate in the distribution of the estate under the intestacy regime. On that basis, Mdm Lim and Mdm Goh each would receive a one-quarter share, and the eight children would each receive a one-sixteenth share. It should be noted that in disposing of the suit, the Judge ordered the Appellants to take all necessary steps to ascertain the status of the second family under the ISA.

10 It would be evident that the Respondent, Mdm Lim and Siew Eng stood to lose the most if Mr Kuek's estate was distributed according to the Note instead of according to the intestacy regime set out in the ISA. If Mdm Goh was not recognised as a lawful spouse entitled to participate in the distribution of the estate under the intestacy regime, the Respondent and Siew Eng would each stand to lose about $2.1m and Mdm Lim, about $6.7m, by agreeing to abide by the Note instead of proceeding in accordance with the ISA; whereas if Mdm Goh was recognised as a lawful spouse entitled to participate in the distribution of the estate under the intestacy regime, the Respondent and Siew Eng would each stand to lose about $662,500 and Mdm Lim, about $3.25m. These figures are based on the estimated value of Mr Kuek's total estate as stated in a letter dated 23 June 2010 ("the 23 June 2010 Letter") that Mr Chia Soo Michael ("Mr Chia"), the solicitor who represented the first family at the material time, sent Mr Dennis Singham ("Mr Singham"), the solicitor who represented

the second family.

11 On the other hand, Hock Eng and his family stood to gain the most if the Note was adhered to. They stood to receive about 90% of Mr Kuek's estate if it was distributed in accordance with the Note. In contrast, under the intestacy regime, only Hock Eng would have inherited anything, and he would have received only either a one-sixth or a one-sixteenth share of the estate, depending on whether the members of the second family were entitled to participate in the distribution of the estate under that regime. It should also be noted that Hock Eng was in severe financial difficulty in 2007, having been adjudged bankrupt on 5 November 2004. This meant that any inheritance which he received under the intestacy regime would end up with his creditors; whereas under the arrangement envisaged in the Note, although Hock Eng's own share of the estate would likewise be subject to his creditors' rights, his wife and his children would receive a substantial share of the estate free of the creditors' interests.

***The signing of the letter of consent and the events occurring thereafter***

12 On or around 19 March 2007, almost two months after Mr Kuek's death, all the parties named in the Note, including the members of the second family, signed a letter of consent ("the Letter of Consent") indicating their agreement to abide by Mr Kuek's wishes as set out in the Note. At that point, it appears that the members of the first family were predominantly concerned as to whether there would be enough liquid assets in the estate to give those members of the family who were beneficiaries of the $1.65m cash gift the respective sums which Mr Kuek indicated, in the Note, he wanted them to receive. This is evident from the fact that there were only two clauses in the Letter of Consent. The first related to the agreement of all the parties named in the Note (including the members of the second family) to abide by the wishes of Mr Kuek; and the second related to the agreement of those members of the first family who were beneficiaries of the $1.65m cash gift to bear any shortfall in that amount proportionately. There was no attempt in the Letter of Consent to particularise the assets in Mr Kuek's estate. The full terms of the Letter of Consent are as follows:

> Each of the individuals named hereunder consents to the wishes and intention of KUEK SER BENG, deceased by signing as provided.
>
> In particular it is agreed that insofar as the gift of $1,650,000.00 cash is concerned, should the amount available be less than $1,650,000.00 (Singapore Dollars One Million Six Hundred and Fifty Thousand), each beneficiary's entitlement shall be pro-rated based on the respective percentages.

13 Mdm Ho contended that all the parties agreed that Hock Eng should act as the administrator of the estate since he was Mr Kuek's eldest and only male child with his lawful wife, Mdm Lim. However, this was contested by the Respondent. She claimed that Hock Eng told Mdm Lim to sign the renunciation of her right of administration in his favour so as to enable him to apply for the grant of letters of administration without explaining what that entailed. It is not necessary for us to establish which account is true. What matters is that Mdm Lim did sign the requisite renunciation. Hock Eng applied for the grant of letters of administration in respect of Mr Kuek's estate in September 2007, even though he was an undischarged bankrupt at that point. The documents required for Hock Eng's application were prepared by Mr Goh Peck San ("Mr Goh") of M/s P S Goh and Co, the firm of solicitors appointed to handle the matter. Hock Eng's supporting affidavit for the application contained a statement setting out the amount of cash which Mr Kuek had in his bank accounts as well as statements setting out the stocks which Mr Kuek held. Hock Eng was duly appointed as the administrator of the estate, notwithstanding his status as an undischarged bankrupt. However, the letters of administration were never extracted and nothing was done to effect the distribution of

Mr Kuek's estate.

14 In April 2010, the second family reneged on the Letter of Consent. Mdm Goh indicated that she and her family did not wish to be bound by the Note. She claimed, instead, that they were entitled to half of Mr Kuek's estate under the intestacy regime set out in the ISA and lodged a caveat against the estate in the Subordinate Courts (now known as the State Courts). She also filed an application for one of her daughters, Kuek Geok Hua ("Geok Hua"), and herself to be added as co-administrators of the estate. As a result, the court process relating to the administration of the estate came to a complete standstill.

15 Hock Eng and his wife, Mdm Ho, then sought the assistance of a new firm of solicitors, M/s Sankar Ow & Partners LLP, on 10 May 2010 to resist Mdm Goh's application and negotiate a settlement with the second family. Mr Chia, a solicitor at that firm, was in charge of the matter. Although Mr Chia stated in his affidavit of evidence-in-chief ("AEIC") that he "agreed [to] act for Hock Eng", in the course of cross-examination, he accepted that he had been engaged to act for the first family as a whole. However, as will become evident in the course of these grounds, Mr Chia had a woeful understanding of his duty to the other members of the first family aside from Hock Eng's family, and he was oblivious to the possibility of a conflict of interest between Hock Eng's family on the one hand, and the Respondent, Siew Eng and Mdm Lim on the other.

16 At their meeting with Mr Chia on 10 May 2010, Hock Eng and Mdm Ho showed Mr Chia the Note and the Letter of Consent, among other documents. Mr Chia stated in his AEIC that he told Hock Eng and Mdm Ho that the Note was not a valid will, but that the court would uphold the Letter of Consent as a valid family arrangement. Thereafter, Mr Chia met Hock Eng, Mdm Ho, Siew Eng and the Respondent at his office on 13 May 2010. At that meeting ("the 13 May 2010 meeting"), Mr Chia repeated his opinion concerning the Note and the Letter of Consent. In the course of cross-examination, counsel for the Respondent, Mr Tng Kim Choon ("Mr Tng"), went to great lengths to elicit from Mr Chia confirmation that at that meeting, he had told the Respondent (as well as Siew Eng) that the Letter of Consent would likely be upheld by the court:

> Q: All right, Mr Chia, did any of them, particularly the plaintiff [*ie*, the Respondent], ask you what was your opinion on the first consent [*ie*, the Letter of Consent] on 13th May when they met you?
>
> A: I basically repeated what I told Kuek Hock Eng and his wife on the 10th –
>
> …
>
> Q: … You were also asked your opinion on the first consent by specifically the plaintiff and her sister [*ie*, Siew Eng]. And you repeated, you say, your views on the first consent that it is – could be treated as an agreement to a family arrangement –
>
> A: That's right.
>
> Q: – since everybody signed –
>
> A: Yes, that's right.
>
> Q: – and the Court would accept as [an] agreement for a family arrangement, right?
>
> A: Yes.

…

Q: … And you have heard that I have been asking you –

A: Mm.

Q: – more than once, whether, in your opinion, the first consent was a valid document.

A: In my opinion, it is.

Q: Yes. And I repeat whether – this question whether the plaintiff and her sister understood your opinion, insofar as the first consent was concerned?

A: Well, I see no reason that they don't understand it, because it was communicated to them in a language they understood.

Q: All right.

17 It bears emphasis at this point that Mr Chia's view as to the likelihood of the Letter of Consent being upheld by the court was expressed in the context of the second family's reneging on its earlier agreement to be bound by the Note. Hence, the real point that was being made by Mr Chia at the 13 May 2010 meeting was that in his view, the second family's attempt to set aside the Letter of Consent and migrate to the intestacy regime under the ISA was not likely to be successful. Mr Chia was saying, in effect, that the court would likely accept the Letter of Consent as valid and, as a result, bind the parties to the distribution reflected in the Note. However, contrary to this and unknown to the Respondent, Mr Chia subsequently sent a letter to Hock Eng alone on 18 May 2010 ("the 18 May 2010 Letter"), in which he expressed a markedly different view concerning the Letter of Consent. There, he stated:

> Although M/s P S Goh & Co. had arranged for all the beneficiaries referred to in [the Note] to sign a "Letter of Consent" to agree to the purported wishes of your late father contained in the document, *there is* ***some doubt as to whether a Court would accept that the "Letter of Consent" would be considered a valid deed of family arrangement that could override the default position provided by the law of intestacy*** *. In the circumstances, if the application by M/s Singham is fought head on, there is* ***real risk that the application may be granted order in terms*** … [emphasis added in italics and bold italics]

18 The reference to "the application by M/s Singham" was a reference to the application filed on behalf of Mdm Goh for herself and her daughter, Geok Hua, to be added as co-administrators of the estate on the basis of Mdm Goh's status as Mr Kuek's common law wife. That application had been made with a view to realising the second family's rights under the ISA instead of proceeding on the basis of the Note. In the 18 May 2010 Letter, Mr Chia also stated that there might be "an issue of the appropriateness of [Hock Eng] continuing to act as Administrator" given his status as an undischarged bankrupt. It was not disputed that this letter was not extended to the Respondent, Siew Eng or Mdm Lim.

19 When the difference in the advice which he had given concerning the validity of the Letter of Consent was pointed out to Mr Chia in cross-examination, he said that he did not consider his advice in the 18 May 2010 Letter to be different from that which he had expressed earlier at the 13 May 2010 meeting. He said that all he was seeking to do in the 18 May 2010 Letter was to "set out … the risk of litigation". The relevant excerpt from the cross-examination goes thus:

Q: … [Y]ou were expressing another opinion to [K]uek Hock Eng on the 18th of May 2010, that the Court might not accept [the Letter of Consent] as a valid document if you tried to argue that it is a deed of family arrangement. Do you agree?

A: I disagree.

Q: You disagree. Yes, what were you saying, then?

A: What I was trying to set out is the risk of litigation. The whole point there is that if it goes into a court, you can never be sure. And there are a lot of live issues, for example, whether [Mdm Goh] is married, whether, er, what they are saying in their affidavit in – in challenging the [N]ote, whether those things that they say are true, et cetra, et cetra. So, all this, there – there is a question, serious question, if we were to fight [Mdm Goh] head on, whether the court's going to find that they are right, or find that my opinion is right. So there are risks involved. … So, all these, er, honestly, after having only met the parties on two occasions, I can't say with certainty that if we go into litigation over these issues, the first family will prevail. I mean, I've – I've got to put some caveats.

20 Mr Chia was also asked during cross-examination why he did not send the 18 May 2010 Letter to the Respondent, Siew Eng and Mdm Lim. He replied that he did not think there was a need to do so because he had scheduled a meeting with the members of the first and second families as well as the solicitor representing the second family, Mr Singham, at his office on 18 May 2010 ("the 18 May 2010 meeting"), and he intended, on that occasion, to read the letter to the members of the first family prior to the arrival of the other parties. Mr Chia had called the 18 May 2010 meeting in an attempt to amicably resolve the dispute between the two families. Mr Chia testified clearly that at that meeting, he informed the members of the first family that they had to select someone to replace Hock Eng as the administrator of Mr Kuek's estate. This was one of the matters which he had touched on in the 18 May 2010 Letter. However, he did not state in his evidence whether he also told *all* the members of the first family on 18 May 2010 that: (a) the Letter of Consent might not be upheld by the court; (b) the second family's application for Mdm Goh and Geok Hua to be added as co-administrators of Mr Kuek's estate might be allowed by the court; and (c) the second family might be allowed to participate in the distribution of the estate under the intestacy regime and hence obtain a larger share of the estate than the share allotted to it under the Note. We return to this issue later.

21 The 18 May 2010 meeting did not result in an immediate settlement. Mr Chia testified that he told Mr Singham to advise his clients not to renege on the Letter of Consent and to honour Mr Kuek's wishes instead. Mr Singham wrote to Mr Chia on 26 May 2010 asking for a list of all the assets in Mr Kuek's estate. Mr Chia had a meeting with Hock Eng and Mdm Ho on 18 June 2010 ("the 18 June 2010 meeting"), where he drew up the said list based on documents that Mr Goh, the solicitor from M/s P S Goh and Co who had previously handled the matter, had handed him. Mr Chia accepted that he did not inform the Respondent, Siew Eng or Mdm Lim about the 18 June 2010 meeting. When he was asked, in the course of cross-examination, to explain why he did not do so, he said:

Okay, let me explain. Because what Dennis Singham was asking for were things that [were] with regards to the application for letters of administration. So the logical person to speak to is the administrator then on record. If I were to ask your client or anyone else in the [N]ote, none of them would be privy to that information. …

…

Whatever happened up till this stage was reported to them at the next meeting. And whatever

was done up till this stage was not out of sync with what we discussed the last time we met. … [I]f something crucial develops, as you could see from the course of the events, anything that affected the understanding that was reached at the meeting of the 13th [of May 2010], I always call a meeting.

22 By way of the 23 June 2010 Letter (see [10] above), Mr Chia provided Mr Singham with the information which he had requested and also asked Mr Singham to respond with the second family's proposal on how Mr Kuek's estate should be divided. Mr Singham responded on 29 June 2010 by way of a letter ("the 29 June 2010 Letter") conveying the second family's proposal that the estate be divided on an equal basis between the first and second families in exchange for the second family's withdrawal of its caveat against the estate and its application for Mdm Goh and Geok Hua to be added as co-administrators.

***The execution of the deed of consent and the deed of family arrangement***

23 Mr Chia called a meeting on 8 July 2010 ("the 8 July 2010 meeting") with all the members of the first family to discuss the second family's proposal contained in the 29 June 2010 Letter, and also to ascertain whether they had settled on who would replace Hock Eng as the administrator of Mr Kuek's estate. Mr Chia gave evidence that he informed the Respondent, Siew Eng and Mdm Lim about the full extent of Mr Kuek's estate at this meeting, but this was hotly contested at the trial by the Respondent and Siew Eng, who gave evidence for the Respondent. We will address this issue later.

24 A number of matters transpired at the 8 July 2010 meeting. First, the Appellants were chosen to take over as the administrators of Mr Kuek's estate. Second, those gathered decided to reject the second family's proposal contained in the 29 June 2010 Letter. According to Mr Chia, the proposal was rejected because the members of the first family wanted to make sure that there would be enough money in the estate to honour the wishes of Mr Kuek as regards the sum of $1.65m which he wanted to be distributed to the persons named in the Note. Mr Chia claimed that this was why, in the counterproposal which he conveyed to Mr Singham on 21 July 2010, he stated that the first family was agreeable to a 50:50 division provided that the two Singapore properties (*ie*, the Toh Tuck Road Property and the Jurong Kechil Shophouse) and a sum of $1.65m were kept "out of the equation". Third, all the members of the first family executed a deed of consent ("the Deed of Consent") at the 8 July 2010 meeting. Mr Joseph Hoo ("Mr Hoo"), a solicitor from M/s Tan Kim Seng & Partners, was present at the meeting to witness the execution of the Deed of Consent.

25 It appears that the Deed of Consent was entered into primarily to authorise the Appellants to apply to be appointed as the administrators of Mr Kuek's estate and to negotiate with the second family with a view to amicably resolving the dispute between the two families. It was not disputed that Mr Chia dealt exclusively with Hock Eng's family after the Deed of Consent was executed. He contended that he had been instructed that Mdm Ho would and did keep the Respondent, Siew Eng and Mdm Lim informed of the details of the negotiations with the second family.

26 Negotiations then took place between the two families from July to November 2010. In this regard, Mr Chia ostensibly represented all the members of the first family, but in fact, it will become apparent that he was primarily concerned with Hock Eng's family. The second family was represented by Mr Singham in the negotiations. The Respondent, Siew Eng and Mdm Lim were not informed of the details of the negotiations. The negotiations eventually culminated in the execution of a deed of family arrangement dated 11 November 2010 ("the Deed of Family Arrangement"). The Appellants purported to execute the Deed of Family Arrangement on behalf of all the members of the first family by relying on the authority conferred upon them by the Deed of Consent. A list of the known assets in Mr Kuek's estate was set out in the Deed of Family Arrangement (cl 7). The Appellants agreed to

disclose to Mdm Goh and Geok Hua any other assets belonging to Mr Kuek's estate which they might discover in the course of winding up the estate (cl 8). On their part, Mdm Goh and Geok Hua agreed to withdraw their application to be added as co-administrators of Mr Kuek's estate and also to withdraw the caveat which they had lodged (cl 5). It was further agreed that Mr Kuek's estate would be distributed in the following manner (cl 10):

(a) The Toh Tuck Road Property was to be transferred to the First Appellant and Yong Wei or their nominee(s).

(b) The Jurong Kechil Shophouse was to be transferred to Mdm Goh or her nominee(s).

(c) A sum of $1.65m was to be set aside to be distributed in accordance with Mr Kuek's wishes as set out in the Note.

(d) The Malaysian Properties and the residuary estate (as defined at [4] above) were to be equally divided between the first and second families. The Deed of Family Arrangement did not set out how these assets were to be divided among the individual members of each family, but it appears that the Appellants proceeded on the basis that Hock Eng's family would receive the entirety of the first family's share of these assets.

27 Mr Chia then applied to the court for the Appellants to be appointed as joint administrators of Mr Kuek's estate in place of Hock Eng. The Appellants were so appointed by the Subordinate Courts on 12 April 2011, and were granted letters of administration a year later on 12 April 2012. Following this, Mr Chia called a meeting at his office on 7 May 2012 ("the 7 May 2012 meeting") with the members of the first family in order to give those members of the family who were entitled to a share of the sum of $1.65m their respective cash entitlements pursuant to the arrangements reflected in the Deed of Family Arrangement. Mdm Lim was not present at that meeting because she had been taken ill and had been hospitalised. The Respondent maintained that she was not aware of the Deed of Family Arrangement until that meeting. The Respondent used her mobile phone to record what was said at the meeting without the knowledge of the others present because she felt that Mr Chia had not adequately safeguarded her interests or those of Siew Eng and Mdm Lim. She produced a transcript of what transpired at the meeting ("the transcript of the 7 May 2012 meeting") in her AEIC dated 26 April 2013. At the end of the meeting, the Respondent and Siew Eng refused to accept the two cheques for $200,000 each that had been prepared in their favour and left Mr Chia's office.

28 The Respondent then sought the advice of Mr Tng of M/s KC Tng Law Practice. According to her, she only found out about the full extent of Mr Kuek's estate in 2012 after she engaged Mr Tng to represent her. Eventually, she commenced the suit below to have the Letter of Consent, the Deed of Consent and the Deed of Family Arrangement set aside.

29 Mdm Lim and Hock Eng both passed away before the matter went to trial.

**The decision below**

30 The Judge dealt with the following issues in the GD:

(a) Did the Letter of Consent constitute a valid compromise of the respective entitlements of those parties who were beneficiaries under the ISA?

(b) Should the Deed of Consent be set aside based on one or more of the following grounds which the Respondent raised:

(i) *non est factum*;

(ii) lack of independent legal advice;

(iii) undue influence; and

(iv) material non-disclosure?

(c) Did either the Deed of Consent or the doctrine of relation back, which deems an administrator to have authority, as from the date of the deceased's death, to deal with the assets in the deceased's estate even though letters of administration have yet to be extracted, confer authority on the Appellants to execute the Deed of Family Arrangement on behalf of the first family?

(d) Should the court exercise its discretion to authorise and uphold the Deed of Family Arrangement pursuant to s 56(1) of the Trustees Act (Cap 337, 2005 Rev Ed)?

***The validity of the Letter of Consent***

31 The Judge was of the view that a valid compromise of the respective entitlements of those parties who were beneficiaries under the intestacy regime set out in the ISA could be achieved by way of either a deed or a contract. Therefore, he considered whether the Letter of Consent could be regarded as either a valid deed or a valid contract. He held (at [32] of the GD) that it was not a valid deed because "there was no attestation or any indication of a seal which would have given rise to a valid deed". It was also not a valid and binding contract due to the lack of consideration moving from those parties who, if not for the Letter of Consent and the Note, would not have had any share in Mr Kuek's estate as they did not fall within the group of potential beneficiaries identified under the intestacy regime. As alluded to at [8] above, these persons included the Appellants, who, as the grandchildren of Mr Kuek, were excluded from the intestacy regime.

32 The Judge then considered the validity of the Letter of Consent on the assumption (but without making a finding) that it constituted a family arrangement. Even on that footing, he found that the Letter of Consent could be set aside on two distinct grounds. The first was the "gross inadequacy of consideration" to compensate the Respondent, Siew Eng and Mdm Lim for the amounts which they stood to lose if Mr Kuek's assets were distributed in accordance with the Note as opposed to under the intestacy regime (see the GD at [47]–[48]). The Judge held that this gross inadequacy of consideration was evidence from which the court could infer (together with all the other facts of the case taken as a whole) the existence of a vitiating factor such as *non est factum*, misrepresentation or non-disclosure of material facts. Alternatively, the consideration was so inadequate that it was invalid consideration. On either basis, the Letter of Consent would not be a valid family arrangement.

33 Second, the Judge held that the Letter of Consent could not be regarded as a valid family arrangement because Hock Eng and Mdm Ho had not disclosed material facts which were within their knowledge to the Respondent, Siew Eng and Mdm Lim prior to the execution of that document. Specifically, the Judge found that the latter group had not been apprised of, among other things, the value of Mr Kuek's Singapore bank accounts and the physical state of the Malaysian Properties. For these reasons, the Judge held that the Letter of Consent did not have any binding legal effect as a family arrangement.

***The validity of the Deed of Consent***

34 With regard to the validity of the Deed of Consent, the Judge rejected the Respondent's plea of *non est factum*. He held that the Deed of Consent "was not fundamentally different from what [the Respondent] and [Siew Eng] had believed it to be" (see the GD at [58]). They both understood the two main purposes underlying the Deed of Consent, which the Judge framed in a slightly different manner from us (see [25] above), namely: "to confirm that the distribution would be in accordance [with] the [Note] as per the [Letter of Consent] and to appoint the [Appellants] as administrators in place of [Hock Eng]" (see the GD at [60]).

35 The Judge also rejected the Respondent's argument that the Deed of Consent should be set aside because she had not been given an opportunity to seek independent legal advice before she signed it. He considered that the lack of independent legal advice was not, in and of itself, an independent ground to invalidate the Deed of Consent. In any event, he thought that the Respondent had ample opportunity to seek independent legal advice before signing the Deed of Consent.

36 The Judge was of the view that the Deed of Consent did amount to a family arrangement as it was intended to resolve a pre-existing family dispute. He proceeded to consider whether the Respondent had been unduly influenced into signing the Deed of Consent and whether there had been "honest disclosure of material facts" prior to the execution of that deed (see the GD at [70]).

37 The Judge rejected the Respondent's argument that she had been labouring under Hock Eng's undue influence when she signed the Deed of Consent. He noted that the Respondent's argument rested solely on her allegation that Hock Eng had scolded her and forced her to sign the Deed of Consent at the 8 July 2010 meeting. He thought that Mr Chia would have intervened if the dispute between the Respondent and Hock Eng had gotten out of hand. He also noted that the Respondent had ample opportunity to raise any allegations of undue influence to either Mr Chia or Mr Hoo, who was present to witness the execution of the Deed of Consent. In those circumstances, he found that Hock Eng had not made any promises or threats, whether express or otherwise, to pressurise the Respondent into signing the Deed of Consent.

38 However, the Judge agreed with the Respondent that there had been non-disclosure of material facts which was sufficient to justify setting aside the Deed of Consent. He found that in all likelihood, Hock Eng and Mdm Ho knew about the full extent of Mr Kuek's estate. However, they kept the Respondent (as well as Mdm Lim and Siew Eng) in the dark about this. The Judge accepted that the Respondent only found out about the full extent of Mr Kuek's estate in 2012 after she engaged Mr Tng to represent her following the 7 May 2012 meeting. Therefore, the Judge held that the Deed of Consent was not a valid family arrangement.

***The validity of the Deed of Family Arrangement***

39 In respect of the Deed of Family Arrangement, the Judge was of the view that its validity depended on whether the Appellants had the requisite authority to execute that deed on behalf of all the members of the first family. Given his decision to set aside the Deed of Consent, he held that the Appellants could not rely upon that document for the authority which they needed to act on behalf of the first family. He did observe, however, that *if* the Deed of Consent was valid, then cl 2 of that deed would have given the Appellants authority to not only negotiate, but also enter into a binding settlement with the second family on behalf of the first family (see the GD at [108]).

40 The Judge rejected the Appellants' argument that the doctrine of relation back should be applied to validate the Deed of Family Arrangement. He considered that doctrine to be inapplicable to the present case because although that doctrine deemed an administrator to have authority, as from the date of the deceased's death, to deal with the assets in the deceased's estate before the letters

of administration were extracted, it would not enable the administrator to vary the beneficiaries' entitlements under the intestacy regime, which was what the Deed of Family Arrangement purported to do. In the circumstances, the Judge held, Mr Kuek's estate had to be distributed in accordance with the intestacy regime set out in the ISA since the Letter of Consent and the Deed of Consent were invalid.

41 Similarly, the Judge also rejected the Appellants' argument that the court should exercise its discretion to validate the Deed of Family Arrangement pursuant to s 56(1) of the Trustees Act. In his view, that provision did not permit the court to empower a trustee to vary the proportion of the estate which each beneficiary was entitled to receive.

***The Judge's orders***

42 Having made the above findings, the Judge made the following orders (see the GD at [120]):

> (a) the [L]etter of [C]onsent, the [D]eed of [C]onsent and the [D]eed of [F]amily [A]rrangement are set aside;
>
> (b) the [Appellants], who remain as administrators of [Mr Kuek's] estate pursuant to the court order dated 12 April 2011 granted by the Subordinate Courts, are to undertake all necessary steps (including, but not limited to, the recovery of any assets which have already been distributed, [and] the ascertainment of the status of the second family under the ISA) to distribute [Mr Kuek's] assets in accordance with the ISA; and
>
> (c) the above two orders shall be without prejudice to any party applying for the removal and/or replacement of the [Appellants] as administrators of [Mr Kuek's] estate.

**The issues on appeal**

43 Having considered the parties' submissions on appeal, we considered that the two key issues below arose for our consideration:

> (a) whether we should affirm the Judge's holding that the Deed of Consent was not a valid family arrangement because there had been non-disclosure of material facts prior to the execution of the deed; and
>
> (b) whether there were any legal impediments to the Appellants continuing as the administrators of Mr Kuek's estate if the Deed of Consent were set aside.

We will elaborate on the parties' submissions as and where appropriate in the course of our discussion below.

**Our decision**

***Overview***

44 Like the Judge, we are satisfied that the Deed of Consent should be regarded as a family arrangement. One important consequence which flows from this is that the validity of the Deed of Consent rests upon there having been full and frank disclosure of all material facts at the time it was entered into. Mr Chia's assessment of the strength of the second family's claim for a share of Mr Kuek's estate under the intestacy regime set out in the ISA and the total value of Mr Kuek's estate were material facts, but they were withheld from the Respondent (as well as from Mdm Lim

and Siew Eng). In our view, the non-disclosure of these facts justified the setting aside of the Deed of Consent.

***The principles governing family arrangements***

*Examples of types of family arrangements*

45 We begin our analysis by first outlining what constitutes a "family arrangement". There does not appear to be a precise definition of this term; but in our judgment, stated broadly, it refers to an agreement between members of the same family which is intended to be generally and reasonably for the *benefit of the family* (see *Pek Nam Kee and another v Peh Lam Kong and another* [1994] 2 SLR(R) 750 ("*Pek Nam Kee*") at [107], as well as *Halsbury's Laws of England* vol 91 (Butterworths, 5th Ed, 2012) ("*Halsbury's Laws of England* vol 91") at para 903). The parties to a family arrangement act not just out of self-interest, but also in furtherance of the interest of the family unit to which they belong. Often, this means that one or more of them might sacrifice their own interests for what they perceive to be the greater good of the family.

46 In the Canadian case of *Grenon v Grenon Estate* [1980] BCJ No 42, it was held that for an agreement to be treated as a family arrangement, a key requirement was the presence of some form of benefit to the family. There, an agreement was reached between a widower ("Grenon") and one of his sons ("Olson"), pursuant to which Grenon agreed, in exchange for C$10,000, to renounce his interest in his deceased wife's estate in favour of Olson. The agreement had been entered into prior to the deceased wife's will being declared invalid by reason of non-compliance with certain statutory requirements. Although it is not entirely clear from the judgment, it appears that Grenon would not have received anything under the invalid will (see [13]). The British Columbia Supreme Court rejected the submission that the agreement was a family arrangement. It said (at [18]):

> … [T]o classify [the agreement] as a "family arrangement" and have it stand on that ground is … not supported. *It did not benefit the family, the benefit was solely to Olson.* He was a trustee for the estate yet he proceeded in advancing his personal position as exhibit 6 states. Grenon transferred his interest to Olson "for his own use absolutely". This certainly would not indicate any benefit for the family. In addition there is no evidence before this court that the brother Alvin was informed of what was transpiring either. [emphasis added]

47 The requirement that there be some form of benefit to the family can be met in a number of ways. For example, members of the same family may enter into agreements to compromise doubtful or disputed rights so as to preserve the peace and harmony of the family, which would be disrupted if the disputing members of the family were to litigate their disputes in court. Such agreements have been regarded as family arrangements, as can be seen from the Privy Council's decision in *Cashin v Cashin* [1938] 1 All ER 536 ("*Cashin*").

48 In *Cashin*, the father ("Sir Michael") passed away in 1926, and was survived by his wife ("Lady Cashin") and his four adult children (three sons and a daughter). In his will, he bequeathed $40,000 to each of his three sons and left the residue of his estate to Lady Cashin. It turned out that Sir Michael's estate was insufficient to pay the legacies in full. Two years prior to his death, Sir Michael had made, or at least, had attempted to make, some large gifts to Lady Cashin. In particular, he had transferred some bearer bonds to her. Six months after Sir Michael's passing, the Ministry of Finance attempted to obtain payment of death duties on those bonds. The Ministry contended that the bonds formed part of Sir Michael's estate because the gift of the bonds was imperfect and therefore void. One of the executors of Sir Michael's estate, Lawrence Cashin, who was also one of Sir Michael's sons (the other executor was Lady Cashin), and his brother, Peter Cashin,

sought legal advice on the course that should be pursued by the estate. The advice was "not encouraging". Ultimately, it was decided that payment of the additional death duties should be made. Thereafter, a deed was entered into between Lady Cashin and her three sons. The deed stated that Lady Cashin was to provide a sum sufficient to pay the additional death duties and all the pecuniary legacies in full, and, on their part, her three sons were to give up any claim against her in relation to the aforesaid bonds. In 1930, Peter Cashin commenced an action to have the deed set aside on the basis, among other things, that the executors had failed to disclose that the bonds had not been the subject of a completed gift by Sir Michael to Lady Cashin, and therefore formed part of his estate at his death.

49 The Privy Council said that the question of whether the deed should be set aside was to be approached in the following manner (at 543):

> The proper course is, first, to consider the true nature of the transaction embodied in the deed, and, secondly, to ascertain what facts as to the alleged gift were then known to the parties, including the executors, and what representations, if any, were made to, or what facts were withheld from, the respondent.

This passage is instructive because it sets out – correctly, in our judgment – the two-stage inquiry which applies when considering whether an agreement that is alleged to be a family arrangement should be set aside on the basis of, specifically, non-disclosure of material facts. In such situations, it is necessary, first, to ascertain whether the agreement in question should be interpreted and treated as a family arrangement. Second, if the agreement is indeed regarded as a family arrangement, the court must then consider whether there were any material facts which were withheld from one or more of the parties to the agreement prior to its execution.

50 On the facts of *Cashin*, as to the first of these two questions, the Privy Council said (at 543):

> On the first point, it seems clear to their Lordships that the deed is framed, and takes effect, as a family arrangement. It does not in any true sense purport to be a sale. It is a release by the three sons of a doubtful claim against their mother.

This is a clear illustration that an agreement between members of the same family that seeks to compromise doubtful or disputed rights among them may be interpreted as a family arrangement.

51 Agreements between members of the same family to preserve family property may also fall under the rubric of family arrangements. *Pek Nam Kee* is an example of this. We set out the facts of that case in some detail as we will return to it later. Mr Pek Boon Bok ("Mr Pek") died intestate in 1973, leaving his estate to be divided between his second wife ("Mdm Ow") and his 13 children, seven of whom were from his marriage with his first wife (who predeceased him) and six of whom were the progeny of his second marriage. Mr Pek's fourth son from his first marriage ("Lam Kong") and Mdm Ow were the administrators of the estate. The major asset in the estate was a piece of commercial property. In 1988, a contract was entered into to sell that property. Discussions took place between the members of the family as to how the proceeds of sale were to be dealt with. Lam Kong came up with a proposal, but Mdm Ow passed away before a deed could be executed to give effect to that proposal. Mdm Ow left a will bequeathing her property to her six children in equal shares. This had the effect of increasing the share of Mr Pek's estate that Mdm Ow's six children would be entitled to. After Mdm Ow's demise, Lam Kong pressed on with his proposal, but in a modified form. In gist, he suggested that Mdm Ow's share be fixed at $510,000, and that the balance be divided equally between all 13 siblings. The 13 siblings would then inject their respective one-thirteenth shares of the balance of Mr Pek's estate (*ie*, what remained of Mr Pek's estate after Mdm Ow's estate had been

given the $510,000 apportioned to her) into a company called "PBB". In addition, Mdm Ow's six children would inject their respective shares of the $510,000 which they stood to receive as beneficiaries of Mdm Ow's estate into another company called "SPL", and PBB would match their investment by injecting a further sum of $510,000 into SPL.

52 A deed was drafted by a firm of solicitors on Lam Kong's instructions to give effect to the aforesaid proposal. When the accounts of Mr Pek's estate were drawn up, Lam Kong was careful to ensure that the expenses which he had incurred as one of the administrators of the estate were included, but he left out the expenses incurred by Mdm Ow. Prior to the signing of the deed, two of Mdm Ow's children sought independent legal advice. They were advised not to sign the deed. Their solicitors wrote to Lam Kong's solicitors asking various questions about the accounts of the estate. They were told that their clients could inspect the accounts at Lam Kong's office. That, however, was never done. Subsequently, the two children who had sought independent legal advice agreed to sign the deed, against the advice of their solicitors. Eventually, the deed was signed by all the siblings. Lam Kong became the chairman of the board of directors of both PBB and SPL; he was also the managing director of SPL. SPL had two other directors, one of whom was Mdm Ow's fourth son ("Nam Kee"). After some time, the relationship between Nam Kee and Lam Kong became strained. Nam Kee was one of the plaintiffs who commenced proceedings to have the deed set aside on the ground, among other things, of non-disclosure of material facts. Judith Prakash J concluded that the agreement had been entered into to ensure that family property remained in the family. She said (at [107]):

> … [W]hen dealing with an agreement between members of a family which is intended to be generally and reasonably for the benefit of the family, the court has to consider what, in the broadest view of the matter, is most in the interest of the family. In doing so, it has regard to considerations such as whether the arrangement has the result of avoiding disputes in the family, or preserves the family's honour, or *allows family property to continue in the family. In this instance the last consideration is clearly apt since it is clear that one of [Lam Kong's] intentions when he proposed and pushed through the arrangement was to ensure that the siblings' inheritance from their father was not divided up and, perhaps, dissipated, but continued to work for all of them though in a different form.* [emphasis added]

53 Such agreements to preserve family property can benefit the family, for example, by creating a situation where the returns on the property are not compromised as a result of the property being broken up into smaller parts, and may properly be regarded as family arrangements.

54 A third category of agreements which will likely be regarded as family arrangements are those which are entered into to safeguard the honour of the family. *Stapilton v Stapilton and others* [1558–1774] All ER Rep 352 ("*Stapilton*") has been interpreted as standing for this proposition (see *Stockley v Stockley* (1812) 35 ER 9 at 12; see also *Halsbury's Laws of England* vol 91 at para 903). In *Stapilton*, an agreement was entered into between a father ("Stapilton") and his two sons ("Henry" and "Philip") to deal with the question of how his property was to be shared among his sons after his passing. Ostensibly, the agreement was entered into for the purpose of "preventing disputes and controversies that might possibly arise between the two sons" (at 352). Following the demise of both Stapilton and Henry, Henry's son and heir commenced an action against Philip for, among other things, an account of rents received by Philip from Stapilton's property. Philip contended that contrary to the agreement which had earlier been entered into, he was entitled to the whole of Stapilton's estate as Henry was an illegitimate child. Henry was indeed found to be illegitimate. However, Henry's son and heir contended that the agreement should nonetheless be upheld. The court agreed, saying (at 353–354):

It would be very hard for the defendant [*ie*, Philip] on his side to endeavour to set aside this agreement and the effect of this deed. Consider the state and situation of the family at the time of making the agreement. [Stapilton] had those children grown up, he had a very considerable real estate, both his sons were then owned as legitimate, their father and mother had lived together as husband and wife for many years, and at the time of this agreement were so, *there was a foresight in the father and mother that a dispute between their two sons might hereafter arise, to their dishonour and likewise that of the family.* The foundation of this agreement, the illegitimacy of the eldest son, Henry, has now been determined by trial. It is found that Henry was a bastard, yet both the sons are of the same blood of the father equally, though not so in the notion of the law. If the elder son should be found illegitimate (as he now is) the father knew he would be left without any provision if no agreement was made, and, on the other hand, if his legitimacy should be established, then Philip the younger son would have nothing. To prevent disputes and ill consequences the father brings both his sons into an agreement to make a division of his real estate.

…

… I am of opinion that the plaintiff is entitled to have an execution of the agreement as a good and binding agreement in this court. …

[emphasis added]

55 Yet another category of agreements which are generally treated as family arrangements are those entered into between the surviving descendants of a deceased person to give effect to testamentary wishes which the deceased expressed before his death in a manner that is not and cannot take effect as a will. *Williams v Willliams* (1866) LR 2 Ch App 294 ("*Williams*") provides an illustration of this. There, the father ("Williams") died and was survived by his two sons ("John" and "Samuel") and his widow. A testamentary document was found, but it was not a valid devise of Williams' estate because it had not been witnessed by anyone. That document purported to give the whole estate, subject to certain provisions for the widow during her lifetime, to the two sons equally. The estate comprised real property of different tenures as well as personal property. Under the then prevailing intestacy regime, the two sons were each entitled to different parts of the real property in the estate based on the type of tenure that Williams had over the property. The widow also had certain rights to the assets in the estate. There was a finding of fact that John (the elder son), who was entitled to a larger share of the estate, had declared that the invalidity of the testamentary document left behind by Williams should make no difference between himself and his brother, and that the property should be "not mine or thine, but ours" (at 296).

56 For a period of time following Williams' demise, the two brothers continued to treat the real and personal property of the estate as common property. The widow also did not assert her legal rights to the assets in the estate. After a time, John asserted his legal rights in Williams' estate. The suit which he instituted never came on for hearing. Samuel's executors and devisees in trust then commenced a suit in order to determine the rights of the two brothers in the properties comprised in the estate. It was strongly argued on behalf of John that there had been no family arrangement between the parties (see 304). The court rejected this argument and held that a valid family arrangement had been made between them, and that they should be equally entitled to the properties in the estate. The following excerpt from Lord Chelmsford LC's judgment suggests that an agreement entered into to give effect to a deceased person's testamentary wishes can be regarded as a family arrangement, provided it was supported by some consideration, even if the consideration is "trifling" (at 300):

So far as the motives which led [John] to admit his brother to an equal share of their father's

property are concerned, this case differs from those cases of family arrangement which have formerly been the subject of decision. *There was here no doubtful right to be compromised, no dispute between the brothers which was to be set at rest, no honour of the family involved; [John] was merely prompted by respect for his father's intentions and by his affection for his brother, both most excellent and praiseworthy motives, but scarcely sufficient to constitute such a consideration as would convert an act of kindness into a binding engagement. If, therefore, there had been no consideration for [John's] promise to share the freehold property with his brother, I should have been disposed to hold that he could not be bound by it.* But it appears to me that there is quite sufficient consideration to prevent its being a mere voluntary agreement, and that the Court will not be disposed to scan with much nicety the amount of the consideration. The borough English property, which belonged to Samuel, was of some, though of trifling value, and was brought by him into the common stock; and in a case of this kind some consideration may perhaps be found in the fact of Samuel leaving his share of the stock in trade in the business and continuing to carry it on instead of breaking up the concern. … [T]here can be no doubt that the widow was a party to the whole arrangement, and the consideration moving from her must be taken into account. … [emphasis added]

57 It is not hard to see why the courts will strain to see that such agreements should be regarded as family arrangements. They satisfy the requirement that there should be some form of benefit to the family. In such a case, the benefit is not of a pecuniary nature, but simply the satisfaction that the members of the family derive from seeing the testamentary wishes of the deceased fulfilled.

58 As we said at the beginning of this discussion, a family arrangement is an agreement between members of the same family which is intended to confer some benefit upon the family. Often, such agreements involve one or more of the parties to the agreement putting the greater interest of the family before their own so as to confer some benefit upon the family. The various types of agreements which we have referred to above are meant to illustrate general categories of agreements that will commonly be treated as family arrangements, and are not meant to be exhaustive.

*Effect of treating a particular agreement as a family arrangement*

59 We turn to consider some of the legal consequences of holding that a particular agreement is a family arrangement. At the outset, it should be noted that there are strong public policy considerations in favour of encouraging family arrangements as they go towards preserving peace, harmony and unity in families. One effect which flows from this is that an agreement which is found to be a family agreement, assuming it is reduced into writing, will not be interpreted with an excessive degree of formalism. Rather, the court will apply the rules of construction to ascertain the parties' intentions and, so far as possible, endeavour to give effect to them (see *Sheares Betty Hang Kiu v Chow Kwok Chi and others* [2006] 2 SLR(R) 285 at [17]). Prakash J also made the following pertinent observation in *Pek Nam Kee* at [107], which we referred to earlier (at [52] above):

> … [W]hen dealing with an agreement between members of a family which is intended to be generally and reasonably for the benefit of the family, *the court has to consider what, in the broadest view of the matter, is most in the interest of the family.* … [emphasis added]

60 However, as is evident from the excerpt which we quoted from *Williams* at [56] above, such a policy does not supersede the need for valid consideration. Although the court will not scrutinise the pecuniary worth of the consideration too closely, the court can set aside an agreement which purports to be a family arrangement if the inadequacy of the consideration is so gross as to lead the court to conclude that a party was unduly influenced into entering into the agreement; or entered into the agreement believing it to be something radically or fundamentally different from what it

turned out to be, *ie*, the inadequacy of the consideration is so gross that the court can infer the vitiating factor of *non est factum* (see *Pek Nam Kee* at [108], and *Halsbury's Laws of England* vol 91 at para 914).

61 As long as the agreement was fairly and freely entered into without any concealment or unfair pressure, and provided there is no question of a plea of *non est factum* being successfully taken, the court will uphold the agreement even though the parties may have misunderstood the true state of their legal rights prior to entering into the agreement. Lord Eldon LC put it in the following manner in *Gordon v Gordon* (1821) 36 ER 910 ("*Gordon*") at 917:

> Where family agreements have been fairly entered into, without concealment or imposition on either side, with no suppression of what is true, or suggestion of what is false, then, although the parties may have greatly misunderstood their situation, and mistaken their rights, a court of equity will not disturb the quiet, which is the consequence of that agreement; but when the transaction has been unfair, and founded upon falsehood and misrepresentation, a court of equity would have very great difficulty in permitting such a contract to bind the parties.

62 In essence, it may be said that the most important effect which flows from holding that an agreement is a family arrangement is that the agreement will generally be upheld provided it has been entered into fairly, "without concealment or imposition on either side, with no suppression of what is true, or suggestion of what is false" (*per* Lord Eldon in *Gordon* at 917). But, the corollary to this is that the agreement *will* be set aside if any party to it had *intentionally* suppressed facts that might have been material or suggested matters that were false before the agreement was entered into so as to influence another party's decision on whether or not to adopt the family arrangement in question. Even if the non-disclosure in question is not dishonest, so long as material facts have been withheld from one or more of the parties before the execution of a family arrangement, the agreement *may* be set aside (see further [64]–[65] below). Material facts in this context refer to such facts as may reasonably affect the parties' determination of whether they will enter into the agreement in question (see *Greenwood v Greenwood* (1863) 46 ER 285 ("*Greenwood*") at 290).

63 Both the tendency to uphold family arrangements if they have been entered into fairly, as well as the readiness to invalidate them in the stated circumstances stem from the fact that family arrangements are agreements between members of the same family, and very often, the parties do not deal with each other on a commercial basis or at arm's length. As Prakash J stated in *Pek Nam Kee*, such arrangements are often "founded on sentiment rather than commerce" (at [108]). The parties to a family arrangement may repose a certain degree of trust in the counterparties to the agreement. Additionally, since family arrangements are ostensibly for the greater good of the family, the parties may be more willing not to insist on their strict legal rights so that the family benefits as a whole. Given these circumstances, there is a duty on all the parties to a family arrangement to make full disclosure, before the arrangement is entered into, of all material facts known to them so that no party's ignorance of the true state of affairs is taken advantage of.

64 As mentioned earlier at [62] above, where a party's non-disclosure of material facts is deliberate and calculated to influence another party's decision as to whether or not to adopt the family arrangement in question, the arrangement will be set aside. In *Pek Nam Kee*, Prakash J said as follows in explaining her reasons for setting aside the deed which constituted the family arrangement in that case:

> 112 … [N]ot only did [Lam Kong] present accounts which left out expenses paid by Mdm Ow (an omission that is all the more glaring because of the care he took to itemise and recover the expenses he himself had incurred for the estate), but he went further to emphasise to all parties

the amount which Mdm Ow had supposedly taken for her own benefit from the date of her husband's death.

…

1 1 4 *It appears to me from the above that not only did Lam Kong fail to disclose the true state of the accounts to Mdm Ow's children but that* ***this non-disclosure was fully intentional*** *.* At all times he was aware of the importance of the accounts and he lost no opportunity to have his siblings acknowledge that they had examined and accepted such accounts. He also lost no opportunity to reinforce the impression which the siblings had that Mdm Ow had used the money she collected from the estate for her own benefit. *He did this despite knowing full well that she had made substantial payments on the estate's behalf from the time of the deceased's death …* ***Lam Kong must have been aware that if the true position had been disclosed to Mdm Ow's children, he would have faced a lot more opposition to his proposal that they accept $510,000 as her share.*** Further, even if the plaintiffs had taken the opportunity to examine the accounts of the estate which Lam Kong had purported to extend to them, they would not have been able to ascertain the true state of affairs.

115 … I am satisfied that, on the basis of non-disclosure alone, the deed should be set aside as the plaintiffs did not have the information which they needed to come to a considered decision on the agreement.

[emphasis added in italics and bold italics]

65 As we also noted at [62] above, there does not need to be a finding that the non-disclosure in question was dishonest before a family arrangement can be set aside. Rather, a family arrangement is liable to be set aside if one party to the arrangement has material information in his possession which, even without any dishonest intention, he happens not to communicate to the others before the arrangement is entered into. In such circumstances, an argument that the aggrieved party could have found out about the true state of affairs by making inquiries will not assist the party that seeks to have the arrangement upheld. This can be seen from *Greenwood*, which involved two agreements entered into between siblings following the death of two of their brothers who carried on business in New Zealand together with a third brother, the defendant ("George"). Under the first agreement, the surviving siblings agreed to share the deceased brothers' estates equally. Under the second agreement, the surviving siblings agreed to sell their respective shares of the deceased brothers' estates to George for £500. The deceased brothers had substantial assets in New Zealand. It was alleged that George, by virtue of having been in correspondence with one of the deceased brothers who was his business partner, knew about this and had withheld this information from the other surviving siblings prior to their entering into the agreements. The court refused to uphold the two agreements. Turner LJ said (at 290):

… [I]n order to support a transaction, not otherwise valid, upon the footing of [a] family arrangement, the parties must be upon an equal footing, and there must be a full and fair communication of all the circumstances affecting the question which forms the subject of the arrangement, and *I think that in this case the parties were not upon an equal footing, and that*, ***whether purposely or not*** *, there was not in fact a full and fair communication of all the circumstances which were material to be communicated*. It may be said perhaps that it was competent to the other parties to have asked for the particulars which were not communicated, and that they did not do so; but certainly *I am not disposed to hold that an arrangement not otherwise valid can be supported by this Court as a family arrangement, upon the ground that inquiry might have been made and was not made*. This Court does not, according to my view of

the law, deal with cases of family arrangement upon any such footing. *It expects and requires, as I think, in such cases a full and complete disclosure of all material circumstances within the knowledge of any of the parties*, ***whether inquiry be or be not made*** *as to such circumstances.* It expects and requires in such cases the most perfect *bonâ* [*sic*] *fides*, and it is not, in my opinion, consistent with *bonâ fides* that partial and imperfect statements should be made on the one side, the party making them taking the chance whether full and perfect explanation will be required on the other side. Upon this ground alone, therefore, I think that the agreement and purchase in question cannot be maintained … [emphasis added in italics and bold italics]

*Summary of the relevant principles*

66 The principles that we have set out above can be summarised as follows:

(a) A family arrangement is an agreement between members of the same family which is intended to confer some benefit upon the family. Often, such agreements involve one or more of the parties to the agreement putting the greater interest of the family before their own so as to confer some benefit upon the family.

(b) The following is a non-exhaustive list of general categories of agreements that will commonly be treated as family arrangements because they confer some form of benefit on the family:

(i) agreements between members of the same family, pursuant to which one or more of them agrees to compromise doubtful or disputed rights so as to preserve peace and harmony within the family, which would be disrupted if the disputing members of the family were instead to litigate their disputes in court;

(ii) agreements between members of the same family to preserve family property – such agreements can benefit the family, for example, by creating a situation where the returns on the property are not compromised as a result of the property being broken up into smaller parts;

(iii) agreements which are entered into to safeguard the honour of the family; and

(iv) agreements entered into between the surviving descendants of a deceased person to give effect to testamentary wishes which the deceased expressed before his death in a manner that is not and cannot take effect as a will – in such a case, the benefit that is conferred on the family is not of a pecuniary nature, but simply the satisfaction that the members of the family derive from seeing what they believe to be the testamentary wishes of the deceased fulfilled.

(c) The following is a list of some of the legal consequences that flow from holding that a particular agreement is a family arrangement:

(i) The agreement, assuming it is reduced into writing, will not be interpreted with an excessive degree of formalism. Rather, the court will apply the rules of construction to ascertain the parties' intentions and, so far as possible, endeavour to give effect to them.

(ii) The agreement must be supported by valid consideration. Although the court will not scrutinise the pecuniary worth of the consideration too closely, the court can set aside a

family arrangement if the inadequacy of the consideration is so gross as to lead the court to conclude that a party to the agreement was unduly influenced into entering into the agreement, or entered into the agreement believing it to be something radically or fundamentally different from what it turned out to be (*ie*, the inadequacy of the consideration is so gross that the court can infer the vitiating factor of *non est factum*).

(iii) As long as the agreement was fairly and freely entered into without any concealment or unfair pressure, and provided there is no question of a plea of *non est factum* being successfully taken, the court will uphold the agreement even though the parties may have misunderstood the true state of their legal rights prior to entering into the agreement.

(iv) The agreement will generally be upheld as long as it has been entered into fairly. But, the corollary to this is that the agreement will be set aside if it is found that any party to it had either intentionally suppressed facts that might have been material or suggested matters that were false before the agreement was entered into so as to influence another party's decision on whether or not to adopt the family arrangement in question.

(v) There is no need for a finding that any non-disclosure of material facts that may have transpired was dishonest before a family arrangement may be set aside. A family arrangement is liable to be set aside if one party to the arrangement has in his possession material information which, even without any dishonest intention, he happens not to communicate to the others before the arrangement is entered into.

67 In the light of the applicable principles, we turn to consider how these apply to the facts in the present case.

***Whether the Deed of Consent should be treated as a family arrangement***

68 As we have already said (see [44] above), we were satisfied that the Deed of Consent should be treated as a family arrangement. It may be categorised as a family arrangement under the last of the categories we have mentioned above at [55]–[57]. Although there was a lack of consideration moving from those members of the first family who were not beneficiaries under the intestacy regime set out in the ISA (such as the Appellants), there was, on the other hand, no dispute that the agreement was effected by way of a deed. Aside from this, the agreement also falls into the first of the aforementioned categories of agreements which have traditionally been regarded as family arrangements. At the time the Deed of Consent was signed, there were disputes between the members of the first and second families, and the deed was intended (among other things) to authorise the Appellants to negotiate, on behalf of the first family, an amicable settlement with the second family.

69 The circumstances that existed prior to the execution of the Deed of Consent are material. As mentioned earlier, in April 2010, Mdm Goh indicated that she and her family did not wish to be bound by the Note. She claimed that they were entitled, instead, to half of Mr Kuek's estate under the intestacy regime set out in the ISA. On 26 April 2010, Mdm Goh and Geok Hua applied to be added as co-administrators of Mr Kuek's estate. This was followed soon after by the lodging of a caveat against Mr Kuek's estate on 30 April 2010. As a result, the court process relating to the administration of the estate was brought to a standstill. Given those circumstances, there were disputes between the members of the first and second families over at least two issues, namely: (a) whether Mdm Goh was a lawful spouse entitled to participate in the distribution of Mr Kuek's estate under the intestacy regime; and (b) whether the Letter of Consent was valid and binding. Mr Chia advised Hock Eng,

Mdm Ho, Siew Eng and the Respondent on these issues at the 13 May 2010 meeting.

70 The first family wanted to avoid protracted litigation with the second family over these issues. The Deed of Consent was thus executed in order to authorise the Appellants to negotiate, on behalf of the first family, with the second family with a view to amicably resolving the disputes between the two families. As the Judge noted, the Deed of Consent conferred broad authority upon the Appellants to enter into a binding settlement with the second family on behalf of the first family. In agreeing to the Deed of Consent, the various parties seemingly intended to give up their strict legal rights under the intestacy regime and agreed instead to abide by whatever settlement the Appellants might reach with the second family. Therefore, we were satisfied that the Deed of Consent should be treated as a family arrangement.

***Non-disclosure of material facts in relation to the execution of the Deed of Consent***

71 We turn now to our reasons for setting aside the Deed of Consent for non-disclosure of material facts. In our judgment, two facts were withheld from the Respondent (as well as from Mdm Lim and Siew Eng) prior to the execution of the Deed of Consent, namely:

(a) the strength of the second family's claim for a share of Mr Kuek's estate under the intestacy regime set out in the ISA; and

(b) the size of Mr Kuek's estate, in particular, the residuary estate.

We considered both of these facts material to the Respondent's decision to agree to the Deed of Consent. We analyse each non-disclosure in turn.

*Strength of the second family's claim for a share of Mr Kuek's estate*

72 In our judgment, contrary to the evidence which he gave, Mr Chia in fact thought there was a good chance that the Letter of Consent would not be upheld by the court, and that the members of the second family would be entitled to share in Mr Kuek's estate under the intestacy regime set out in the ISA. However, he did not convey this to the Respondent, Mdm Lim and Siew Eng. We do not accept Mr Chia's contention that he was always of the view that the Letter of Consent would be upheld, and that he was merely setting out the "risk of litigation" in the 18 May 2010 Letter, which was sent only to Hock Eng, but not to the Respondent, Siew Eng or Mdm Lim (see [18] above). We reject Mr Chia's evidence for two reasons. First, it does not reflect what the 18 May 2010 Letter says. On its terms, the 18 May 2010 Letter suggests that there was a "real risk" that Mdm Goh's application for herself and Geok Hua to be appointed as co-administrators of Mr Kuek's estate might succeed, and that there was "some doubt" as to whether the Letter of Consent could "override the default position provided by the law of intestacy". Second, we note that after the Deed of Consent was entered into, Mr Chia effectively advised and represented Hock Eng's family in the negotiations with the second family, and these culminated in the Deed of Family Arrangement, under which the second family was to receive a half-share of the residuary estate as well as a half-share of the Malaysian Properties (see [26(d)] above). This leads to the inescapable inference that Hock Eng's family had been led to believe that the second family's claim for a share of Mr Kuek's estate under the intestacy regime set out in the ISA was a strong one. The agreement to set aside the sum of $1.65m to be distributed in accordance with Mr Kuek's wishes as set out in the Note was the only amendment that was eventually made to the second family's initial proposal that the estate be divided equally between the two families (see [22] above). In our judgment, this is wholly consistent with Mr Chia having formed the view that the second family's claim had a high likelihood of success. This was not communicated to the Respondent (nor to Mdm Lim and Siew Eng) prior to the execution of the Deed

of Consent.

73 In our judgment, the high likelihood of the second family's claim succeeding was a material fact. To understand why this is so, it is important to appreciate the Respondent's motivation for agreeing to the Letter of Consent and the Deed of Consent. The Respondent had an interest in seeing Mr Kuek's wishes upheld. In our view, this is the only motivation that explains why she was prepared to give up her entitlement under the intestacy regime in exchange for the small fraction of that entitlement reflected in the sum of $200,000 allotted to her under the Note. Both the Letter of Consent and the Deed of Consent make express reference to the parties' desire to honour Mr Kuek's wishes and intentions. The Respondent did not know the full extent of Mr Kuek's estate, in particular, the residuary estate, when the Letter of Consent and the Deed of Consent were executed (see [87]–[88] below). However, she was aware that he had two properties in Singapore (*ie*, the Toh Tuck Road Property and the Jurong Kechil Shophouse) and two other properties in Malaysia (*ie*, the Malaysian Properties). She was entitled to either a one-sixth share or a one-sixteenth share of the estate comprising (among other assets) those properties, depending on whether or not the second family was entitled to share in the distribution of the estate under the intestacy regime; she also had a contingent interest in Mdm Lim's share of the estate. The only conceivable reason for her willingness to give up her legal rights in the estate under the intestacy regime would have been the desire to see Mr Kuek's wishes honoured in their entirety or very nearly so. This is borne out by her evidence under cross-examination, which reflects the fact that her desire all along was to see all the family members adhere to Mr Kuek's wishes as set out in the Note:

> Q: Did you agree to the distribution of your father's estate according to the [N]ote which I have just shown you?
>
> A: At that time, everyone agree and I also agreed. But now, not all agreed so I disagreed.
>
> …
>
> Q: Let me put this directly to you and bluntly, Mdm Kuek. You talk about [their] not following the instructions in the [N]ote. Are you prepared to follow the instructions in the [N]ote on the distribution of your father's estate?
>
> A: They didn't accept so I do – I also disagree
>
> Q: Today, are you prepared to stand by your father's instructions in the [N]ote – leave out whether they agree or not, you know – on your part?
>
> A: No, I disagree.
>
> Q: So you're not prepared to honour your father's word, in short?
>
> A: I am not the only one [to] disagree on the distribution. Since others – they disagreed, I also disagreed.
>
> …
>
> Q: What – Madam, what I'm doing is putting to you what my [clients'] case is. I'm putting it to you … all along, you knew how the estate was to be distributed as evidenced in the two deeds and the [D]eed of [F]amily [A]rrangement.

A: Initially all agreed.

Q: Yes.

A: And subsequently, when the other party [*ie*, the second family] say that we [*ie*, the first family] will be given the house [*ie*, the Toh Tuck Road Property] and they wanted to take the shophouse [*ie*, the Jurong Kechil Shophouse] and they wanted 50% of the cash and shares –

Q: All right.

A: – there and then I asked [Mr Chia].

Q: All right.

A: [Mr Chia] asked us to settle among ourselves. He did not take care of us.

74 It does not appear that Mr Chia appreciated the Respondent's desire to see Mr Kuek's testamentary wishes honoured. He laboured throughout under the misconception that her only interest in the matter was to receive the $200,000 that Mr Kuek had bequeathed to her under the Note, and that Hock Eng and his family were free to negotiate whatever settlement they wanted with the second family so long as the sum of $1.65m which Mr Kuek wanted to be distributed to various named persons was not affected. This emerges from Mr Chia's admission under cross-examination that he did not think it was necessary to keep the Respondent, Siew Eng and Mdm Lim informed of the "minute" details of the negotiations between the two families that culminated in the execution of the Deed of Family Arrangement as long as their respective shares under the Note remained unaffected. We set out the relevant parts of his evidence below:

Q: … Do you agree that the [Respondent] and her sister, [Siew Eng], were both asking about, first of all, details of how much, first of all, the second family will be getting out of the whole estate? In other words, what specific details of the value of the estate, do you agree?

A: Yes, they were, yes.

Q: That is – I put it to you, that is because [the Respondent] was not informed by you –

A: Well –

Q: – when the settlement was reached.

A: *Well, to be blunt, actually, there was already an agreement of how the negotiation and the settlement [were] to proceed.* ***Under the [N]ote, [the Respondent] was entitled to $200,000*** …, ***and that was all she was entitled to, under the [N]ote.*** ... Whilst the intended administrators will assume the role of Kuek Hock Eng for the negotiations, *whatever they do, whatever settlement they reach, they can just not touch that $1.65 million that is set aside for this list of beneficiaries in the [N]ote.* So the whole exercise was to tell them, "Look, someone else is throwing in a spanner? Can you all confirm you are not going to throw a spanner?" They confirm they're not going to throw a spanner. We said, "Look, thank you for honouring the [N]ote. On our part, what we'll do is we'll make sure that whatever we do, we will not touch your 1.65 million – your share of the 1.65 million." So, that is the very basic premise before we moved on to anything else. ***So, actually, what [Mdm Goh's] side of the family get[s], to be blunt, is really none of their business, unless it's going to***

***encroach into the 1.65 million*** ; which was the very reason why when Dennis Singham's letter of the 29th of June 2010 came and, er, they basically wanted a global half-half. We said, "Cannot". So, in the subsequent negotiations, if you go through the correspondence, what we strove to do was that this 1.65 million has to be set aside first before we can talk about anything else …

…

A: ***So, this 1.65 [million] was set apart for these people ... and we held that sacrosanct. There was no need to talk to the rest of the people about how ... the amounts of monies [were] split specifically ... because it didn't touch their 1.65 [million].*** … And when [the Respondent] asked me for details, of course I'm happy to give them the details but, of course, just like when you ask me chapter and verse of legislation, I can't off-hand tell you that that's correct or wrong, I have to go back and go through the files. So, I gave them rough estimates when they asked me about it. Whether they knew or not, because I didn't tell them, actually, that's – that's – that's quite immaterial to me, because we've not touched their 1.65 million.

[emphasis added in italics and bold italics]

75 In our judgment, this passage throws into sharp relief the conflict of interest that Mr Chia was faced with:

(a) The members of the second family wished to depart from the Note. In fact, their proposal had been for Mr Kuek's estate to be split equally between the two families, but this had been rejected by the first family (see [22]–[24] above).

(b) In rejecting the second family's proposal, the first family must have taken into account the advice conveyed by Mr Chia at the 13 May 2010 meeting that he expected the Letter of Consent would likely be upheld by the court (see [16] above).

(c) Mr Chia was ostensibly representing the whole of the first family. Within this client group was one faction consisting of Mdm Lim, the Respondent and Siew Eng, who stood to lose a great deal by standing by the Note, and another faction consisting of Hock Eng and his family, who stood to gain a great deal by this.

(d) The only conceivable motivation for Mdm Lim, the Respondent and Siew Eng to go through with abiding by the Note, at considerable cost to themselves, was to honour Mr Kuek's wishes.

(e) But, such a motivation would make no sense in isolation. There would be no satisfaction in having Mr Kuek's wishes honoured by one small suffering group on its own, but by no one else in the first and second families.

(f) In particular, it was known at that time that the second family wanted half of the estate, contrary to Mr Kuek's wishes, and this demand had already been rejected. There was thus an evident and inescapable tension between the wishes of the second family and those of Mdm Lim, the Respondent and Siew Eng.

(g) As for Hock Eng and his family, they were in an impossible position. If the Note was not upheld, they stood to lose an enormous amount since the only beneficiary under the intestacy regime set out in the ISA would be Hock Eng, with his one-sixth or one-sixteenth share of the

estate (depending on whether or not the second family was entitled to share in the estate); moreover, as we have noted above (at [11]), even that would have gone to his creditors. In contrast, if the Note was upheld, then although Hock Eng's share of the estate thereunder would still have ended up in the hands of his creditors, his wife and his children would receive a substantial part of the estate free of the creditors' interests. Hence, putting the Note at risk was not a viable option for Hock Eng and his family.

(h) The problem was that upholding the Note in its entirety did not seem tenable to Hock Eng and his family either because: (i) the second family was standing firm in its claim for half of Mr Kuek's estate; and (ii) Mr Chia evidently believed there was a real risk that the second family might prevail and had told Hock Eng and his wife so.

(i) In these circumstances, it is unsurprising that, as it turned out, Hock Eng and his family were prepared to give up a very substantial portion of what they stood to receive under the Note in order to buy peace with the second family.

(j) The insuperable difficulty with this is that it made no sense whatsoever of the notion of honouring Mr Kuek's wishes. In the end, Mdm Lim, the Respondent and Siew Eng were the only ones who "honoured" Mr Kuek's wishes in the sense of limiting themselves to what had been provided for them under the Note, while everybody else cut a deal that they were happy with, ignoring Mr Kuek's wishes.

76 Mr Chia seemingly missed all this. To put it at its most innocuous, he simply focused on the $200,000 that the Respondent, Mdm Lim and Siew Eng were each to receive under the Note, without even pausing to consider why they might each have agreed to accept that sum in full satisfaction of their more substantial legal rights under the intestacy regime set out in the ISA. In the final analysis, it beggars belief that the Respondent would have agreed to give up what she was legally entitled to under the intestacy regime had she known that Mr Kuek's wishes were not being honoured by the other members of the two families. Yet, this is what Mr Chia says he thought was the position. In our judgment, this is simply untenable.

77 We return here to how Mr Chia had advised the parties. Prior to the execution of the Deed of Consent, it had been an open question as to whether the second family was entitled to share in Mr Kuek's estate under the intestacy regime set out in the ISA. That depended on the likelihood of Mdm Goh being recognised as a lawful spouse and, crucially, on the likelihood of the Letter of Consent being upheld by the court. If the Letter of Consent was upheld, then regardless of whether or not Mdm Goh was recognised as a lawful spouse, the second family's share of Mr Kuek's estate would be limited, as agreed under the Letter of Consent, to what had been apportioned to it in the Note.

78 As mentioned above, on 13 May 2010, Mr Chia told the Respondent (among other members of the first family) that he considered it likely that the Letter of Consent *would* be upheld by the court. The Respondent, on this basis, would have thought it likely that all the signatories to the Letter of Consent (including herself as well as the second family) would be bound by it and, in turn, by the distribution set out in the Note. The 18 May 2010 Letter, in which Mr Chia expressed the opposite view that the Letter of Consent might be overridden by "the default position provided by the law of intestacy", was not sent to the Respondent (nor to Mdm Lim and Siew Eng), but was instead sent only to Hock Eng. Mr Chia claimed that he explained the contents of that letter to the Respondent, Siew Eng and Mdm Lim at the 18 May 2010 meeting. We reject this assertion because Mr Chia's evidence was that the 18 May 2010 Letter did not reflect a materially different position from that which he had communicated at the 13 May 2010 meeting. In short, his position in court was *not* that he did tell the Respondent on 18 May 2010 that the intestacy regime under the ISA might override

the Letter of Consent; rather, his position was that he maintained his earlier view to the contrary as conveyed on 13 May 2010, namely, that the Letter of Consent would likely be upheld by the court. Hence, in our judgment, Mr Chia, on his own evidence, never put forward to the Respondent (or to Siew Eng and Mdm Lim) at the 18 May 2010 meeting a position which was different from that communicated five days earlier at the 13 May 2010 meeting.

79 In our judgment, this conclusion as to what Mr Chia had actually told the Respondent (as well as Mdm Lim and Siew Eng) about the likelihood of the Letter of Consent being upheld becomes inescapable when we consider the transcript of the 7 May 2012 meeting, which we mentioned earlier at [27] above. To recapitulate, Mr Chia called the 7 May 2012 meeting at his office with the members of the first family in order to give those members of the family who were entitled to a share of the sum of $1.65m their respective cash entitlements (as mentioned at [27] above, Mdm Lim was absent from this meeting as she was in hospital at that time). The questions that the Respondent and Siew Eng asked Mr Chia at this meeting demonstrate that they had expected the eventual settlement with the second family to result in a distribution which was by and large in line with Mr Kuek's wishes as expressed in the Note. This expectation is consistent with the fact that the Respondent and Siew Eng had gone into the 7 May 2012 meeting being aware of only Mr Chia's earlier advice of 13 May 2010 concerning the Letter of Consent (*ie*, that it was likely that that letter would be upheld by the court), and not his subsequent advice in the 18 May 2010 Letter (which was sent only to Hock Eng) that there was a real risk of the Letter of Consent being considered invalid. In short, there had simply been no reason at all for the Respondent (and likewise, Siew Eng), prior to the 7 May 2012 meeting, to expect that the members of the second family would receive much more under the settlement negotiated by the Appellants than what Mr Kuek had apportioned to them under the Note. And had the second family's share indeed been limited to more or less what had been allotted to it under the Note, the Respondent's interest in the matter (namely, seeing Mr Kuek's testamentary wishes honoured) would have been met.

80 We turn to the actual exchange between Mr Chia on the one hand, and the Respondent and Siew Eng on the other at the 7 May 2012 meeting. Mr Chia started by setting out the background that led to the execution of the Deed of Family Arrangement. It is significant to point out that in the course of his recollection of the events, he said:

> … So, during that time, it was agreed among everyone that, okay, everyone would follow [the Note]. … Then the younger ones [*ie*, Hock Eng's children] could go fight over this matter with [Mdm Goh's] side and think of a way to ask them to settle, hor? However, in short, no matter how it was settled, your … this … the money as indicated on [the Note], can't be less, right? … Other things could be used for negotiation with them but not your money, hor? So, in July, we came to such an agreement. …

Mr Chia was suggesting here that the Respondent, Siew Eng and Mdm Lim had agreed to accept what they had each been given under the Note in lieu of their respective entitlements under the intestacy regime set out in the ISA, and that as long as they received their allotted sums of money under the Note, they were indifferent to what else transpired. Again, we are struck that even assuming Mr Chia genuinely believed this to be true, he did not stop even once to ask why they would agree to this.

81 Returning to the discussion at the 7 May 2012 meeting, Siew Eng's first question to Mr Chia was whether the second family would be abiding by the Note:

[Siew Eng]: No, no … I would like to ask hor, let's say we proceed according to [the Note], then, if … for instance … will Geok Hua and the rest be proceeding according to [the Note] as well?

[Mr Chia]: Geok Hua and the rest? Geok Hua, no … Geok Hua and the rest, no lah, because they have settled the matter with us, otherwise, we would have fought it out in court. … So, of course, at the time when this was signed, it was also to let the younger ones [*ie*, Hock Eng's children] go settle with them lah. They took their share, their share as stated on [the Note], and settled with them. Whatever it is, it was agreed at that time that yours wouldn't be touched lah, hor, to be fair to you, because, mainly, it was to make sure that this would neither be taken out nor touched lah, hor. From [the second family's] side, actually, if there were a fight with [the second family], mainly [the First Appellant's] and Yong Wei's [shares] would be used to negotiate with them lah to distribute that lah, hor. But whatever it is, it suffices to say that according to [the Note], yours wouldn't be touched. … ***They'll*** ["[t]hey" being the second family] ***definitely be getting a slightly bigger share lah … our own side*** [*ie*, Hock Eng's family] ***will be getting a slightly smaller share, so that they will get a slightly bigger share.*** …

[emphasis added in bold italics]

82 The fact that Siew Eng asked whether the second family would be adhering to the Note is telling because again, it demonstrates that she and the Respondent had gone into the 7 May 2012 meeting expecting the members of the second family to also abide by the Note, notwithstanding that they had, by signing the Deed of Consent, authorised the Appellants to negotiate a settlement with the second family. When Mr Chia replied that the second family would get "a slightly bigger share" and that Hock Eng's family would get "a slightly smaller share", he was not being truthful. Significantly, the Respondent pressed the point and made repeated efforts to establish precisely how much larger a share of Mr Kuek's estate the members of the second family would receive under the settlement reached with them:

[Respondent]: A little more … little bit … what do you mean by "a little bit", how much is "a little bit" …

[Mr Chia]: We're still calculating at this point lah, there are still certain things that have to be … have to be … paid – a little here, a little there, hor, then … I don't know either lah, how much the total amount of their share is going to be in the end. …

[Respondent]: Then how much is the total in cash and stocks now?

[Mr Chia]: If it's based on the date of death lah, ah … including the two houses [*ie*, the Toh Tuck Road Property and the Jurong Kechil Shophouse], ***mainly it's in the two houses*** lah, hor, the houses are already a few millions, hor. Approximately … eh … adding in the houses, approximately $10 million lah, hor. … But ***mainly it's in the two houses*** lah, the rest ... [inaudible]

[Respondent]: Let's not talk about the houses lah. …

…

[Respondent]: This means that … what I want to know is, eh … *taking out the $1.65 million, the rest is … in actual fact how much are the cash and stocks?*

[Mr Chia]: Roughly a few millions lah, this 0.6, adding it … around $4 million more, approximately, cash.

[Respondent]: How much is the cash?

[Mr Chia]: *Totalling the cash, it's approximately $3 million. Including this lah, there is about $3 million. And then, the stocks are about, in excess, some $2 million more lah.* I don't have the figure with me now, hor, but it's approximately this lah.

[emphasis added in italics and bold italics]

83 The way Mr Chia addressed the Respondent's questions about the value of Mr Kuek's residuary estate left much to be desired. He did not directly answer those questions. Instead, he obfuscated, and in our judgment, he was disingenuous in claiming that the value of Mr Kuek's estate was "mainly … in the two houses". The residuary estate was valued at approximately $8.3m in the declaration of estate duty which the Appellants made to the Commissioner of Estate Duties on 31 October 2011 (see [4] above). Mr Chia had by then replaced Mr Goh (of M/s P S Goh and Co) as the first family's solicitors, and he must have assisted the Appellants to prepare that declaration. Independent of that, Mr Chia knew, as at the date he sent the 23 June 2010 Letter to Mr Singham, that the cash and stocks in Mr Kuek's residuary estate were (as stated in that letter) worth about $7.6m as at 31 December 2007. Therefore, it was misleading for him to have said that the value of the estate was mainly tied up in "the two houses". His final estimation of the value of the stocks and cash in the residuary estate at about $5m was also well off the mark. Finally, as to his claim that the members of the second family would be receiving only "a slightly bigger share" than the share allotted to them under the Note, their share of Mr Kuek's estate would in fact go up from about 5.8% under the Note to about 36% under the Deed of Family Arrangement. A six-fold increase can hardly be called a "*slightly* bigger" [emphasis added] one. It was not open to Mr Chia to hide behind the fact that he did not have the figures offhand to address the questions which the Respondent posed at the 7 May 2012 meeting. Given that that meeting was held at his office, he should have been able to easily retrieve the relevant documents to answer the Respondent's questions truthfully and professionally had he been minded to do so. The truth is that Mr Chia was doing what he could to leave the Respondent with the impression that under the Deed of Family Arrangement, the members of the second family would receive only "a little bit" more than what they would have received under the Note. If Mr Chia had told the Respondent at the outset that he thought there was a real risk of the second family's claim for a share of Mr Kuek's estate succeeding, one would have expected this to have been mentioned at once as the explanation for the seemingly generous deal that the Appellants had, on behalf of the first family, eventually struck with the second family.

84 On this point, as we have indicated above, we also find that in fact, Mr Chia believed that the second family's application for Mdm Goh and Geok Hua to be added as co-administrators of Mr Kuek's estate (with a view to realising the second family's rights under the intestacy regime set out in the ISA) was not straightforward, and he had told Hock Eng, but not the Respondent (nor Mdm Lim and Siew Eng), that there was a real risk of that application succeeding. This explains the terms on which the settlement with the second family, as encapsulated in the Deed of Family Arrangement, was eventually struck. For the avoidance of doubt, we express no view at all on the merits of the second family's claim to be entitled to participate in the distribution of Mr Kuek's estate under the intestacy

regime; but we make this point here because if, indeed, Mr Chia did believe that the second family had a strong case, then it suggests that he actively concealed what he considered to be the true position from the Respondent (as well as from Mdm Lim and Siew Eng). It is not necessary for us to reach a conclusion as to whether Mr Chia actively and deliberately misled the Respondent, Mdm Lim and Siew Eng, or whether this was just a matter of his failing to pay sufficient attention to ensure that they understood the true position. This is because regardless of whether or not they were intentionally misled, the fact remains that the information withheld from them was material information which had not been made available to them before they entered into the Deed of Consent.

85 To conclude our analysis of the non-disclosure of the strength of the second family's claim for a share of Mr Kuek's estate under the intestacy regime set out in the ISA, in our judgment:

(a) Mr Chia formed the view that there was a good chance that the Letter of Consent would *not* be upheld by the court, and that the second family had a strong claim to participate in the distribution of Mr Kuek's estate under the intestacy regime.

(b) The Respondent (and likewise, Mdm Lim and Siew Eng) was not apprised of these matters.

(c) Mr Chia only told the Respondent (as well as Mdm Lim and Siew Eng) that the Letter of Consent would likely be upheld by the court.

(d) The Respondent therefore expected the eventual settlement with the second family to be largely in line with the provisions in the Note when she agreed, via the Deed of Consent, to authorise the Appellants to negotiate an amicable settlement on the first family's behalf.

(e) The Respondent was content in those circumstances to agree to the Deed of Consent because her interest in the matter had been to see Mr Kuek's testamentary wishes, as set out in the Note, honoured as a whole. It would have made no sense for her to forgo her lawful entitlement under the intestacy regime and abide by the Note if most of the other members of the first and second families were not doing so.

(f) Had the Respondent been told, prior to the execution of the Deed of Consent, that the second family's claim for a share of Mr Kuek's estate under the intestacy regime had a significant likelihood of success, she would likely have stood by the intestacy regime, or at least awaited the resolution of the second family's claim.

86 We are therefore amply satisfied that the strength of the second family's claim for a share of Mr Kuek's estate under the intestacy regime was a material fact that ought to have been disclosed to the Respondent before she executed the Deed of Consent. It was not thus disclosed. The Deed of Consent should be set aside just on this point alone. But, there is more.

*The size of Mr Kuek's estate*

87 The size of Mr Kuek's estate, in particular, the residuary estate, was also withheld from the Respondent (as well as from Mdm Lim and Siew Eng). The Respondent should have been informed of this because it would have been material for her to know the value of Mr Kuek's total estate, inclusive of the residuary estate, when deciding whether to agree to abide by his wishes as set out in the Note. Only then would she have known what she was giving up by adhering to the distribution provided for under the Note instead of proceeding under the intestacy regime set out in the ISA. Mr Chia was oblivious to this point because he focused only on what the Respondent was entitled to receive under the Note. If he thought he had *any* duty towards the Respondent, it was confined to

ensuring that her interest in the amount of $200,000 allotted to her under the Note was not affected. There was no justification for Mr Chia to take so narrow a view in this regard. But, given that that was how he perceived matters, it is likely that he did not think it was necessary for him to inform the Respondent of the full extent of Mr Kuek's estate prior to her signing the Deed of Consent on 8 July 2010, even though he already had this information as at 23 June 2010.

88 Hock Eng and Mdm Ho knew about the value of Mr Kuek's residuary estate at an earlier date. It is worth noting again that the affidavit which Hock Eng filed in support of his application in September 2007 to be appointed as the administrator of Mr Kuek's estate contained a statement which set out the amount of cash which Mr Kuek had in his bank accounts as well as statements which set out the stocks that Mr Kuek held (see [13] above). In the course of cross-examination, Mdm Ho accepted that she had helped to obtain those documents, which she then passed to Mr Goh, the solicitor acting on behalf of the estate then. Therefore, by September 2007, Hock Eng and Mdm Ho undoubtedly knew the value of Mr Kuek's residuary estate. In fact, it is likely that they knew this even earlier than that because they and their children had moved into Mr Kuek's matrimonial home (*ie*, the Toh Tuck Road Property) shortly after his death. They would therefore have had access to any documents that Mr Kuek might have left behind in the house containing details of his assets. We are satisfied that the Judge was correct to find that the value of Mr Kuek's residuary estate was never revealed to the Respondent before she signed the Deed of Consent. The most telling indication of this is the fact that the Respondent was anxious to establish the size of the residuary estate at the 7 May 2012 meeting and repeatedly asked Mr Chia questions concerning it; so too the fact that Mr Chia prevaricated on this when questioned by the Respondent.

89 Before us, counsel for the Appellants, Dr G Raman ("Dr Raman"), referred to the Appellants' declaration of estate duty to the Commissioner of Estate Duties on 31 October 2011, where the residuary estate was valued at approximately $8.3m, and said that the Respondent would have known about this. Dr Raman also contended that the Respondent had been given the essential information as to the size of the residuary estate at the 7 May 2012 meeting. On the latter point, we have already highlighted that the information which Mr Chia did eventually give the Respondent at this meeting, after considerable persistence on her part, was misleading. In any case, both of Dr Raman's arguments run into an insuperable difficulty. The pertinent question is not what the Respondent's state of knowledge was in October 2011 or May 2012; rather, it is whether the Respondent was aware of the size of Mr Kuek's residuary estate prior to the execution of the Deed of Consent. For the reasons set out above, we are satisfied that she was not. We are also satisfied that the suppression or non-disclosure of this information affords an additional ground for setting the Deed of Consent aside. The materiality of this information lies simply in the fact that without it, the Respondent did not know what she was giving up in abiding by the Note and what Hock Eng's family, who did have this information, stood to gain.

90 Given our decision that the Deed of Consent could and should be set aside on grounds of non-disclosure of material facts, we do not need to consider its effect.

***Whether the Appellants could continue as administrators***

91 We turn now to the second key issue in this appeal (see [43(b)] above). The Appellants contended that it would be a "legal impossibility" for them to continue as the administrators of Mr Kuek's estate if the Deed of Consent were set aside because their appointment was predicated on the validity of that document. In our view, this argument is misconceived. As the Respondent pointed out, the Appellants' authority and status as administrators in fact stem from the court order dated 12 April 2011 granted by the Subordinate Courts, and not from the Deed of Consent. That court order is not affected by the invalidation of the Deed of Consent.

92 We consider that it is a matter for the Appellants to decide whether they will continue as the administrators of Mr Kuek's estate or seek to discharge themselves by making the necessary application with supporting grounds, having regard to any steps which they may already have taken in distributing the assets in the estate.

**Coda on Mr Chia's handling of the administration of Mr Kuek's estate**

93 We recently restated, in *Mahidon Nichiar bte Mohd Ali and others v Dawood Sultan Kamaldin* [2015] SGCA 36 ("*Mahidon Nichiar*") at [139]–[151] and [154]–[157], the key principles applicable to solicitors who act in a particular transaction for multiple clients with diverse and potentially conflicting interests. Regretfully, this case presents yet another occasion where it seems to us that a solicitor has failed to discharge his basic professional duties when representing multiple clients in such a situation.

94 A solicitor who is approached by an administrator or an executor of an estate for his advice may often consider that he represents the estate as a whole, but may nonetheless be content to receive instructions from and communicate with the administrator alone. This will usually not pose any difficulties where an administrator has already been appointed, the beneficiaries have already been identified and the various beneficiaries' interests are not conflicting or potentially conflicting in any sense. But, where the solicitor's brief entails advising on and documenting the arrangements between *potential* beneficiaries whose interests *are or may be conflicting*, the matter can be far more complex. Depending on the circumstances of the case, the solicitor may owe duties not just to the individual who approached him for his advice, but also to the other potential beneficiaries. It is important that the solicitor be cognisant of the possibility of a conflict of interest arising in such circumstances.

95 The facts in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 ("*Ahmad Khalis*") provide an example of precisely such a situation. That case involved an individual ("Ali") who died intestate. His ten children, his wife and his mother's estate were the beneficiaries of his estate. The principal asset in the estate was a piece of property. His second son ("Rasid") approached a solicitor and instructed him to file a petition for letters of administration on the basis that he (Rasid) was to be the sole administrator of Ali's estate. The solicitor met eight of the 11 surviving members of the family and addressed certain misgivings which they had about Rasid becoming the sole administrator. In due course, Rasid was appointed as the sole administrator. The solicitor then assisted Rasid to prepare and file a "Transmission Application", which made him the sole registered proprietor of the aforesaid property. Subsequently, the solicitor acted for Rasid in mortgaging that property to secure a loan from a bank. Although the solicitor sent Rasid three letters urging him to seek the assent of his family before mortgaging the property, it appears that this was not done. Rather, the solicitor accepted Rasid's bald assertion that what he was doing was in the interests of the beneficiaries. The mortgage was lodged and Rasid obtained the loan, which he applied for his own purposes. The other beneficiaries were unaware of the fact that Rasid had become the sole registered proprietor of the property and that he had mortgaged it to a bank to obtain a loan for his own use. Two of the beneficiaries later lodged a complaint against the solicitor to the Law Society of Singapore, which initiated disciplinary proceedings against the solicitor. The matter eventually came before the High Court.

96 One issue before the court was whether an implied retainer had arisen between the solicitor and the other beneficiaries. The court stated that on an objective assessment of the facts, an implied retainer had arisen because the solicitor had advised eight of those beneficiaries on their misgivings about Rasid becoming the sole administrator (see [95] above). Additionally, the court considered that the solicitor must have considered the other beneficiaries as his clients because he had tried to

protect their interests by getting Rasid to obtain their consent before mortgaging the property (see *Ahmad Khalis* at [67]).

9 7 *Ahmad Khalis* was a case where the solicitor denied that he owed any duties to other beneficiaries on the basis that they were not his clients. The court found otherwise and proceeded to consider whether the solicitor had breached the professional duties which he owed to the other beneficiaries. In the present case, Mr Chia admitted that he had been engaged to act on behalf of all the members of the first family at the material time (see [15] above). Furthermore, the matter that he was advising them on was fraught with many potential pitfalls because there was a fixed pool of assets that had to be shared between all the potential beneficiaries of Mr Kuek's estate. Any gain to any one potential beneficiary would have resulted in a corresponding loss to one or more of the other potential beneficiaries. Given those circumstances, coupled with the fact that Mr Chia was aware that he was acting not just for Hock Eng (the then administrator of Mr Kuek's estate) and his family but also for other potential beneficiaries in the first family, it was incumbent on him to proceed with due deliberation and caution when navigating the situation so as to ensure that no single potential beneficiary's interests were put before the interests of any of the other potential beneficiaries whom he was representing. However, his actual handling of the administration of Mr Kuek's estate was woefully inadequate.

98 We first set out what a similarly situated solicitor should have done before considering how Mr Chia's handling of the matter fell short in many, if not all, respects:

(a) First, the solicitor should have attempted to fully apprehend each beneficiary's interest in the winding up of the deceased's estate. This would have required the solicitor to come to terms with not just each beneficiary's pecuniary interest, but also any relevant non-pecuniary interest which each beneficiary might have in the matter (for instance, as was the case here, one or more of the beneficiaries might have an interest in seeing the deceased person's non-binding testamentary wishes honoured).

(b) Having understood each beneficiary's interest, the solicitor would then have to direct his mind to the issue of whether the various beneficiaries' interests were conflicting or potentially conflicting in any way.

(c) If there was a potential or actual conflict of interest, the solicitor would have to consider whether it was possible for him to act for all the beneficiaries in a competent and even-handed manner without compromising any beneficiary's interests. If the solicitor considered that he could do so, he should then seek to obviate the conflict by seeking all the beneficiaries' informed consent to his acting on behalf of all of them notwithstanding the existence of the conflict (see r 28 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed), *Mahidon Nichiar* at [141] and *Ahmad Khalis* at [74]). While it will usually be possible for the solicitor in such a scenario to act for all the beneficiaries in a competent and even-handed manner and to obtain their informed consent to his acting for all of them concurrently, there will be cases where it will simply be impossible for the solicitor to discharge his obligations towards all the beneficiaries without his being put in a situation where he is forced to prefer the interests of one beneficiary over the interests of one or more of the other beneficiaries. V K Rajah JC (as he then was) alluded to this problem in *Lie Hendri Rusli v Wong Tan & Molly Lim (a firm)* [2004] 4 SLR(R) 594, where he noted that the tension between the conflicting requirements of confidentiality and disclosure which a solicitor owed concurrently to multiple clients might *bar* the solicitor from representing multiple parties for a particular transaction (at [50]). In such cases, the solicitor would have to extricate himself from the conflict by declining to act for one or more of the parties. If the solicitor continues to act for only one or some of the parties, he must take steps

expeditiously to ensure that the other parties are not labouring under the assumption that he continues to act on their behalf (see *Ahmad Khalis* at [74]).

(d) Where the solicitor decides to deal with an actual or potential conflict of interest by obtaining the informed consent of all the beneficiaries whom he intends to represent, he would have, at the bare minimum, to communicate *directly* with these diversely interested beneficiaries and explain to them how their respective interests might diverge. He would have to explain the ways in which he might be constrained in acting for them. He should also keep them apprised at the outset of the possibility that he might have to discharge himself from acting for them if, in the course of the retainer, he were to reach a point where he has difficulty advising all of them in a competent and even-handed manner. His duty to obtain informed consent also requires him to advise the diversely interested beneficiaries to seek independent legal advice. If any beneficiary declines to do so, the solicitor should record this in writing, and as a matter of prudence, should also consider asking that beneficiary to sign a written confirmation of his decision not to seek independent legal advice. Lastly, the solicitor should obtain from each beneficiary a written acknowledgement of that beneficiary's informed consent to his acting concurrently in the same matter for other beneficiaries with conflicting or potentially conflicting interests (see *Mahidon Nichiar* at [143], [149] and [150]).

(e) The duty to communicate directly with diversely interested beneficiaries does not necessarily end once the solicitor has obtained their informed consent to his acting on behalf of all of them despite their conflicting or potentially conflicting interests. Rather, this obligation may well continue throughout the course of the retainer. It goes without saying that the solicitor cannot take at face value one beneficiary's word that he is keeping the other beneficiaries informed of the progress of the matter. Additionally, the solicitor may have a duty to communicate directly with all the beneficiaries even if they have all expressly authorised one particular beneficiary to act on their behalf (see *Mahidon Nichiar* at [145]).

99 Regretfully, Mr Chia's handling of the administration of Mr Kuek's estate fell short in almost every respect. First, he failed to understand the Respondent's interest in the winding up of the estate. He simply assumed that she would have been satisfied as long as she received the $200,000 which she was entitled to under the Note. He did not pause to consider why she would have been willing to give up her more substantial rights under the intestacy regime set out in the ISA in exchange for the gift of $200,000, which represented just a fraction of what she stood to inherit under the intestacy regime.

100 Second, Mr Chia was evidently oblivious to the possibility of a conflict of interest between Hock Eng's family on the one hand, and the Respondent, Mdm Lim and Siew Eng on the other. Hock Eng's family had an interest in upholding the Note. However, Hock Eng and his wife were under the impression, whether correctly or not, that it was unlikely that the Note would be upheld by the court because Mr Chia had told them (but not the Respondent, Mdm Lim or Siew Eng) that the second family's claim for a share of Mr Kuek's estate under the intestacy regime set out in the ISA had a significant likelihood of success. In those circumstances, Hock Eng and his family were prepared to give up a significant portion of what they stood to receive under the Note in order to settle the second family's claim. The settlement with the second family, which was eventually encapsulated in the Deed of Family Arrangement, was negotiated on this basis. However, that settlement rode completely roughshod over the Respondent's interest, which was to see Mr Kuek's wishes as set out in the Note honoured in their entirety or very nearly so. Mr Chia was simply unaware of, or perhaps indifferent to, the existence of this conflict of interest. Therefore, he did not do any of the things which, in our judgment, a similarly situated solicitor ought to have done (which is to deliberate on whether he could advance all the parties' interests in a competent and even-handed manner without

compromising any party's interests; if he thought he could do so, obtain the parties' informed consent to his acting for them concurrently despite their conflicting or potentially conflicting interests; and so on).

101 Third, Mr Chia repeatedly failed to communicate material information directly to the Respondent, Mdm Lim and Siew Eng. We reiterate that the solicitor's duty to communicate *directly* with diversely interested clients may well continue throughout the course of the retainer. The situation was aggravated here because Mr Chia evidently did not convey matters of material importance to the Respondent, Mdm Lim and Siew Eng. Specifically, Mr Chia did not tell them, prior to the execution of the Deed of Consent on 8 July 2010, that the second family's claim for a share of Mr Kuek's estate under the intestacy regime set out in the ISA had a significant likelihood of success; he also did not inform them of the total value of Mr Kuek's estate even though he already had this information as at 23 June 2010. Furthermore, after the Deed of Consent was executed, he ceased communicating with the Respondent, Mdm Lim and Siew Eng altogether, and communicated only with Hock Eng's family. Under cross-examination, Mr Chia contended that he had been instructed that Mdm Ho kept the Respondent, Mdm Lim and Siew Eng informed of the details of the negotiations between the two families (see [25] above):

> Q: You have earlier confirmed that between the 8th of July 2010 to the – to November – 11th of November 2010, the [Respondent], [Siew Eng] and [Mdm Lim] were never informed of the settlement, right?
>
> A: *Never informed by me*.
>
> Q: Yes, by –
>
> A: *But after I've informed* ***my clients*** , I'm not sure if my clients –
>
> Q: Good.
>
> A: Well, my instructions are they did, through [Mdm Ho]. Well, that's – that's my instructions then. But whether they –
>
> …
>
> A: … [The Respondent, Mdm Lim and Siew Eng] were *not informed by me*, yes. But by the [Appellants] or [Mdm Ho], that – that is not something that I can confirm. But *my instructions are that they are informed through [Mdm Ho]* …
>
> [emphasis added in italics and bold italics]

102 We make two points in relation to this. First, we find it telling that Mr Chia referred to only certain members of the first family – namely, Hock Eng's family – as "[his] clients". In our judgment, this accurately reflected his frame of mind at the material time. He only considered Hock Eng's family as his clients, and completely overlooked the fact that the Respondent, Mdm Lim and Siew Eng were his clients too at that time. He owed the latter three persons duties of disclosure as well and should not have withheld material information from them.

103 Second, as is evident from what we said earlier at [98(e)] above as well as *Ahmad Khalis* at [67] and *Mahidon Nichiar* at [144], a solicitor who represents multiple clients in the same transaction cannot simply rely on bald assertions by one client as regards matters that relate to the other clients.

It may be essential for the solicitor to communicate directly with each client, among other things, to confirm the instructions which he has received from one client purportedly on behalf of the other clients, and also to keep the other clients apprised of developments in the transaction concerned. In the present case, Mr Chia could not fairly have relied on Mdm Ho's assurance that she was keeping the Respondent, Mdm Lim and Siew Eng informed of the details of the negotiations between the two families had he been alert to the conflict of interest that existed in relation to Hock Eng's family on the one hand, and the Respondent, Siew Eng and Mdm Lim on the other.

104 Lastly, not only did Mr Chia neglect to keep the Respondent, Mdm Lim and Siew Eng apprised of material information, he also prevaricated and failed to come clean even when the Respondent pressed him for details concerning the size of Mr Kuek's residuary estate at the 7 May 2012 meeting. As we stated at [83] above, he misled the Respondent as to the size of the residuary estate, and also as to the share of Mr Kuek's estate which the members of the second family would receive under the Deed of Family Arrangement as compared to their share under the Note.

105 In our judgment, Mr Chia's handling of the matter fell well short of the standards expected of an advocate and solicitor.

**Conclusion**

106 For all these reasons, we dismissed the appeal. We affirmed the Judge's orders and ordered the Appellants to pay the Respondent $20,000 by way of the costs of the appeal (inclusive of disbursements). We also made the usual consequential orders.