



Ascertaining the need for Special Needs Trusts in Hong Kong

– Survey administered jointly by the Faculty of Law, The University of Hong Kong and the Concern Group of Guardianship System and Financial Affairs

Report on Key Findings and Observations

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I. Introduction

1. Background

- 1.1 According to government statistics, between 71,000 and 101,000 people in Hong Kong have intellectual disability¹. While these individuals have the legal right to own assets, they may require support and guidance from their parents or caregivers to help them make complex financial decisions, and sometimes even to make these decisions on their behalf. With the advent of nuclear families, a declining birth rate and a rapidly ageing society, there is an urgent need for a safe and affordable mechanism to manage the assets for individuals with intellectual disability (hereafter 'ID') when their ageing parents or caregivers are no longer around to look after them.
- 1.2 In Hong Kong, there are in theory a few legal asset management tools available for individuals with ID. In practice, however, none is really suitable. First, while a parent can make a gift of their properties to his dependent with ID by will, it is hard to find a suitable individual to serve as executor of the will. Second, while donees of an enduring power of attorney can be given power to manage financial affairs of the donor, not all individuals with ID have the capacity to execute it in the first place. Third, although a guardianship order granted under Part IVB of the Mental Health Ordinance gives the guardian decision-making powers over the ward's affairs, it also caps the guardian's power of management to not more than HK\$15,000 per month (in the financial year 2015-2016) for the ward. Fourth, it is possible to appoint a committee of estate to manage the properties of an individual with ID, albeit this tool is rarely used because such individuals seldom own a significant amount of assets. Fifth, only those who are financially very well off can afford to establish a private trust and engage a professional trustee to manage the assets.
- 1.3 To address the drawbacks of these mechanisms, some countries have developed the Special Needs Trust (hereafter 'SNT'). Only individuals with special needs, typically defined as individuals with ID, are eligible to become beneficiaries under such trusts. They operate as pooled trusts with individualised accounts for clients in order to reduce the management fees payable by them. The pooled assets are transferred to a trustee, who either manages the assets itself or with the help of a custodian and / or fund manager. The trustee devises a care plan and budget for the dependent with special needs in consultation with his or her caregiver. The budget provides

¹ Census and Statistics Department, Social data collected via the General Household Survey: Special Topics Report No.62: Persons with disabilities and chronic diseases (December 2014), available at <http://www.statistics.gov.hk/pub/B11301622014XXXXB0100.pdf>.

the basis for the caregiver to apply for distributions for the dependent's maintenance.

- 1.4 To ascertain the needs and demands for the SNT in Hong Kong, the Faculty of Law of the University of Hong Kong launched a research project on establishing an SNT for individuals with ID in Hong Kong.²
- 1.5 As part of the research project, the Faculty of Law and the Concern Group of Guardianship System and Financial Affairs³ (hereafter 'Concern Group') jointly carried out a questionnaire survey in relation to the establishment of an SNT for individuals with ID. Among the available mechanisms such as the will, guardianship order, enduring power of attorney, private trust and special needs trust, the survey aims to find out, in particular, parents / caregivers' preferences in relation to the possibility of setting up a Special Needs Trust in Hong Kong.

2. Objectives

2.1 The objectives of the questionnaire survey are threefold:

- (1) To ascertain the knowledge and experience of parents/caregivers on existing legal mechanisms for financial planning for individuals with ID, including the will, enduring power of attorney, guardianship order and private trust.
- (2) To ascertain the views and preferences of parents/caregivers on establishing an SNT in Hong Kong, in particular in relation to the following :-
 - the possible structure of the SNT
 - the selection of trustees
 - the role of the government and non-governmental organizations
 - custody, investment and management of trust funds and trust accounts
 - personal supervision and care of the beneficiary

² The research is supported by RGC General Research Fund 2016-2017 (project number: 17612916). We would also like to thank Yulin Cheng, Charlotte Lam, Jeremy Lam, Ariel Ng, Jacky Tam, Tina Tsang, Clara Wong, and Alex Yeung for assistance with data processing and analysis.

³ The Concern Group of Guardianship System and Financial Affairs is established by a group of parents and caregivers of persons with intellectual disability. Its mission is to strive for a better adult guardianship system through examining its current weaknesses and seeking for improvements of the policies and institutions pertaining to adult guardianship. It is hoped that these efforts will enhance personal care and financial management arrangements for individuals with intellectual disability in Hong Kong.

- monitoring of the operation of the SNT
- (3) To explore the appropriate structural and operational model of an SNT for Hong Kong.
- 2.2 The present Report presents the key findings of the questionnaire survey and is divided into four sections: (I) Introduction; (II) Research Methodology; (III) Key Findings and Observations; and (IV) Conclusion.

II. Research Methodology

3. Questionnaire Survey

Design of the questionnaire

3.1 From our preliminary research and meetings with the relevant NGOs, there is a serious and imminent need to put in place a safe and reliable mechanism to manage assets devoted for the long-term care of individuals with ID. We therefore designed and carried out a territory-wide questionnaire survey (in both English and Chinese) to assess local parents'/caregivers' (i) knowledge and experience on existing financial and personal welfare planning tools for individuals with ID and (ii) views and preferences on the introduction of an SNT in Hong Kong.

3.2 The questionnaire consists of three main parts:

(1) Part A: Respondents' background information (e.g., age and information about their dependent);

(2) Part B: Respondents' knowledge and experience on existing financial and personal welfare planning tools for individuals with ID including the will, guardianship order, enduring power of attorney and private trust; and

(3) Part C: Respondents' views and preferences on SNT

The English version of the questionnaire can be found in the Appendix.

3.3 The respondents to the questionnaire include parents and caregivers of individuals with ID in Hong Kong. They are the primary caregivers of individuals with ID who have first-hand experiences with the existing financial and personal welfare planning tools for individuals with ID, and would be able to provide us with their views on (i) these tools and (ii) the introduction of an SNT in Hong Kong.

Preparation

3.4 Questionnaires were developed and piloted on about 30 parents/caregivers. Feedback given by the respondents was taken into account before finalising the questionnaire before distribution.

3.5 To ensure representativeness of the survey findings, the following measures were carried out :-

- (1) the questionnaire survey was conducted in both English and Chinese to reach both English- and Chinese-speaking parents/caregivers;
- (2) a questionnaire forum targeting at representatives of service agencies for individuals with ID, social workers and parents/caregivers was held at HKU on 9 March 2016 to explain the aims and objectives of the survey and key legal concepts, in order that respondents will have a full understanding of the background before filling out the questionnaires;
- (3) a website (<http://snt.support>) and a facebook page (<http://www.facebook.com/hkusnt>) were also developed to provide potential respondents (and the public more generally) with further information on the will, guardianship order, enduring power of attorney, private trust, and special needs trust; and
- (4) the Concern Group further conducted 13 briefing sessions to a large number of parent organizations, special schools, and service agencies for individuals with ID in Hong Kong.

Data collection

- 3.6 The questionnaire survey took place from 9 March to 28 May 2016. The questionnaires are anonymous. They were distributed to parents/caregivers through the following channels:
 - by email
 - through the above-mentioned agencies and organizations to parents/caregivers directly
 - online using Google Form through our website and FB pages
- 3.7 The completed questionnaires were submitted by the following methods: online submission (via Google Form); by email attachment to snt.support@hku.hk; collected in person by parents / representatives of service agencies and sent to HKU; or mailed to HKU by the respondents themselves.
- 3.8 To avoid double-counting, where the individual with ID is looked after by both parents or more than one caregiver, we have asked the main caregiver to only fill up one copy of the questionnaire for each dependent they are looking after.
- 3.9 A total of 2,513 valid questionnaires were received. The response is very encouraging.

III. Key Findings and Observations

4. Statistical analyses

4.1 Two methods of statistical analysis are used to analyse the survey results:

(1) Descriptive statistics were used to summarise the findings of the questionnaire survey. In the case of multiple answers, the total percentage might exceed 100%, since more than one answer could be selected by the respondents.

(2) Analysis to ascertain the relationship between the attributes of the respondents and their dependents on the one hand and the respondents' likelihood of participating in the SNT on the other.

The results of both methods of analyses are set out below.

4.2 With an effective sample size of 2,513 respondents, we are confident that the findings are representative of the views of the parents/caregivers in Hong Kong generally.

5. Descriptive analysis

5.1 Respondents' background information

5.1.1 The majority of the respondents (63%) are aged 30-59, whereas about 30% of them are 60 years old or above. About 75.2% of the respondents have dependent with ID who are aged 39 or below. Nearly 20% of the respondents have dependents with ID who are aged 40-69.

5.1.2 The overwhelming majority of the dependents with ID (83.5%) have mild or moderate intellectual disability, whereas 15 % of them have severe or profound intellectual disability. More than half of them (59.1%) have a secondary disability (multiple answers permitted) such as autism (66%) or physical disability (17.8%). The majority of them (64.7%) are receiving the government's Disability Allowance, and about 27.1% of them are receiving the government's Comprehensive Social Security Assistance. The majority of these dependents with ID (70.4%) are living with their family or relatives, whereas about 23.9% of them are staying in a government-subsidised hostel.

5.1.3 When the respondents were asked how they would like their dependent with ID to be looked after when they are no longer capable of doing so,

nearly half of them rank “staying in a government-subsidized hostel” and “by family or relatives” as the highest priority (42% and 40% respectively). Of the remaining respondents, 8.1% chose the other four specified options, each of which was ranked as the highest priority by less than 3% of the respondents. These less popular options are: living on his / her own and being looked after by a full-time / part-time professional staff (2.9%); living on his / her own and being looked after by a full-time / part-time domestic helper (2.7%); self-financed home supported by the government (1.9%); or staying in a private home (0.6%) as their top priority.

5.2 Respondents’ knowledge and experience on existing financial and personal welfare planning tools for individuals with ID

Will

5.2.1 The overwhelming majority of the respondents (93.2%) have not executed a will, whereas only 5.8% of the respondents have done so. Among those who have executed a will, most (78.9%) think that the will is either unable to satisfy their need or is only able to partly satisfy their need. On the other hand, among the respondents who have not executed a will, the most common reasons (multiple answers permitted) given by them are that (i) they do not have enough assets to support the dependent’s financial needs (38.8%); (ii) they are worried whether the executor can continue his service (28.4%); and (iii) they are worried about the executor’s trustworthiness (27.9%).

Guardianship

5.2.2 About 43.7% of the respondents are aware of the availability of guardianship, whereas 55.2% of the respondents are not aware of it. About 30.6% of the respondents consider the sum of HK\$15,000 per month insufficient to look after their dependent with ID and 56.2% of the respondents indicated that they would not be able to find a suitable guardian. The role of the parent as guardian of their dependent children comes to an end when their children reach the age of 18. Should circumstances be such that the respondent is no longer the guardian of their dependent with ID, the majority of them (92%) would like to be consulted by the guardian before the guardian makes any decision regarding their dependent with ID.

Enduring power of attorney

5.2.3 The vast majority of the respondents (82.7%) are not aware of the availability of the enduring power of attorney, compared to 15.8% of the

respondents who are aware of it. Nearly all the respondents (97.8%) have not set up an enduring power of attorney. The most common reasons (multiple answers permitted) indicated by them include: (i) they do not know enough about it (65.7%); (ii) they cannot find a suitable attorney (30.9%); and (iii) they are worried that the attorney will abuse his position and take their property (23.8%).

Private trust

5.2.4 Only 4.7% of the respondents indicated that they are able to set up an individual, customised private trust by engaging either a professional trustee (that charges about HK\$50,000 per annum) or a trusted friend who can serve as trustee for free. The majority of the respondents (72.5%) are not able to do so because of expensive fees and/or the difficulty of finding a reliable and gratuitous trustee.

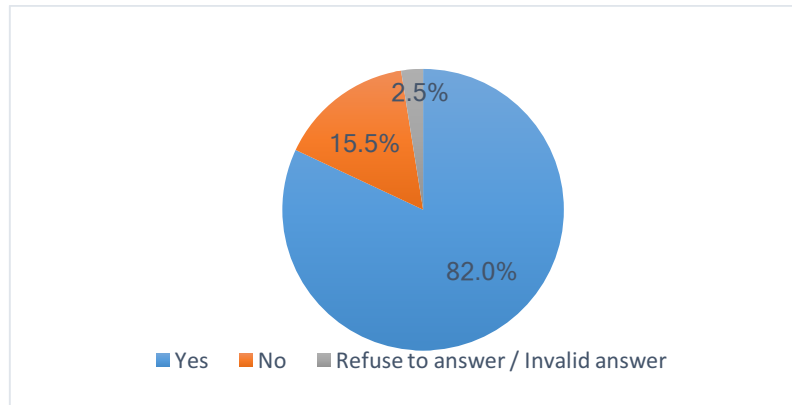
5.3 Respondents' views on SNT

5.3.1 If an SNT were to be set up, the vast majority of the respondents (82%) trust the Government to act as its trustee (**Figure 1**). In fact, when the respondents were asked if the Government did not act as trustee, what kind of non-governmental organization they would trust to play the role of trustee (**Figure 2**), nearly half of the respondents (46.3%) indicated that they would **only** trust the Government as the trustee. For the remaining 53.7% of respondents who would also trust non-governmental bodies as trustees, the respective percentages of their highest priority, in the order listed, are as follows:

- (a) a new charity accountable to the Government and formed by parent representatives of dependents with intellectual disability and professionals such as lawyers, accountants and social workers (26.4%)
- (b) an existing well-known charity accountable to the Government (10.9%)
- (c) a new charity formed by parent representatives of dependents with intellectual disability (4.7%)
- (d) Only 0.4% of the respondents would trust a private financial institution as the trustee of the SNT.

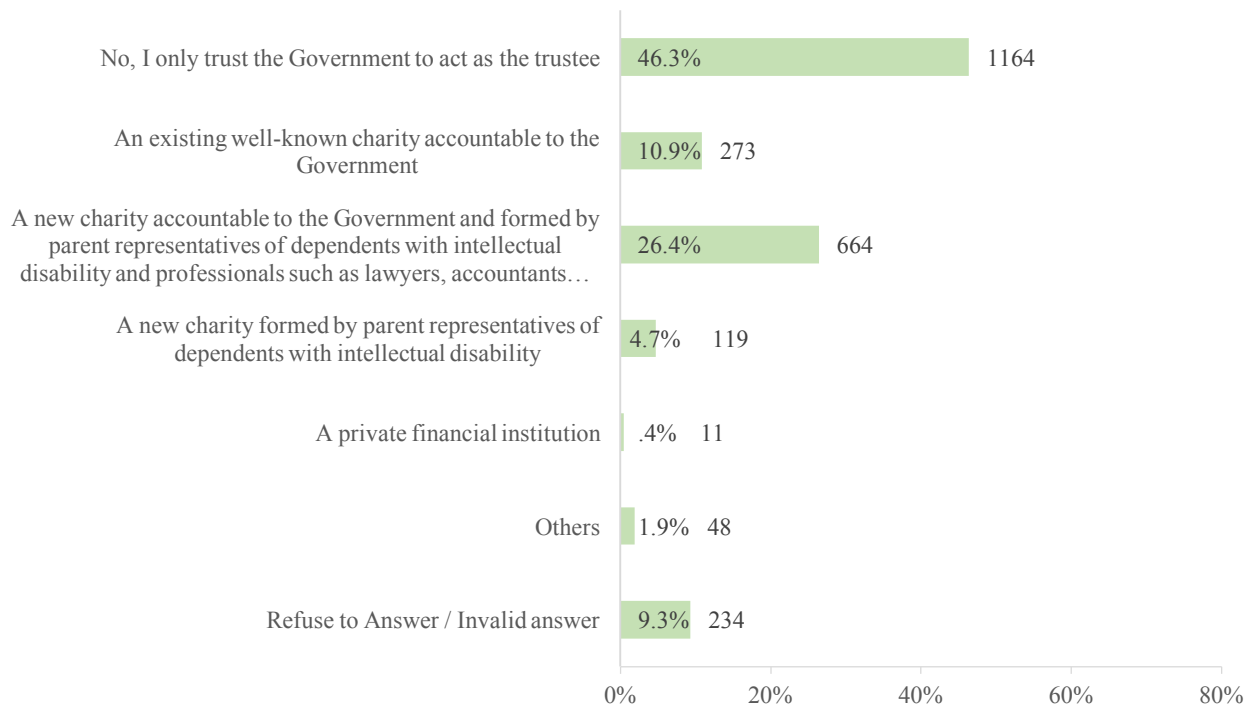
The results indicate clearly that it is the respondents' top priority to have the Government act as trustee of an SNT in Hong Kong; for nearly half of the respondents, the government is their exclusive choice of trustee. Even if this cannot be achieved, their second and third priorities are to have a non-governmental trustee that must be accountable to the Government.

Figure 1: Whether the respondent would trust the government acting as trustee of the SNT



Total Number of respondents: 2,513

Figure 2: Non-governmental organization trusted by the respondent to act as trustee of the SNT



Total number of respondents: 2,513

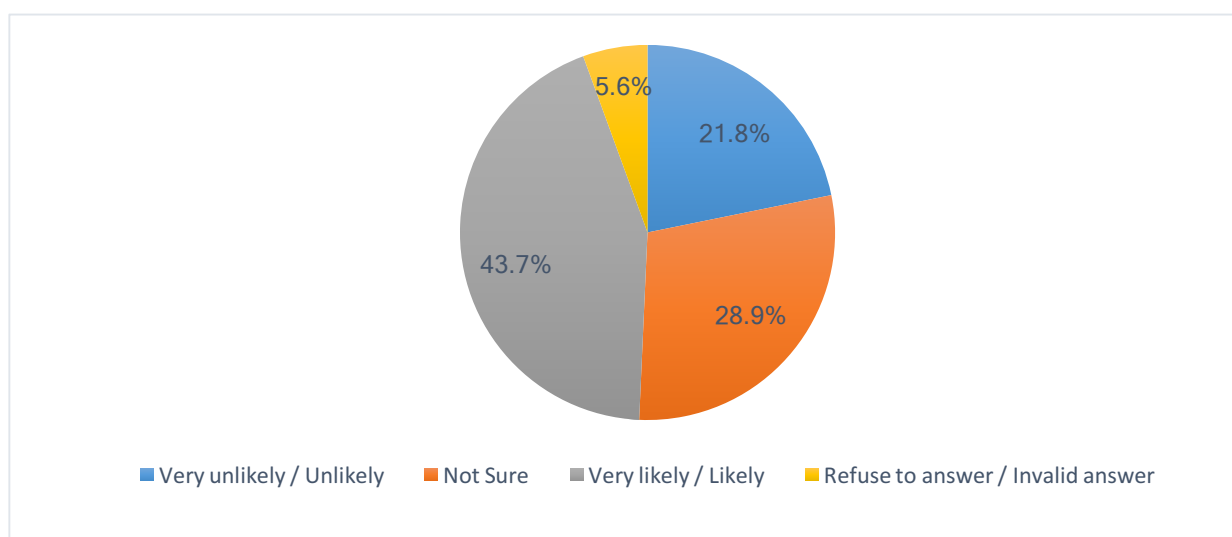
5.3.2 Should the situation arise where the SNT is managed by an NGO-trustee, half of the respondents (50.5%) indicated that they were not prepared to pay for the trustee’s service fee, whereas 35.3% of the respondents were prepared to pay less than 1.0% p.a. of the managed assets as service fee.

Only 2.7% of the respondents were prepared to pay a service fee which is more than 2% p.a. of the managed assets.

5.3.3 With regard to services to be provided by the SNT, most of the respondents would like the SNT to provide the following services (multiple services permitted): (i) provision of a case manager to monitor caring services provided by service provider to their dependent with ID who is living in the government-subsidized hostel (58%); (ii) custody and disbursement of the trust funds according to the respondent's wishes (57.7%); (iii) provision of a case manager to monitor and review the needs of their dependent with ID who is living in the community with family or independently (43%); and (iv) investment of the trust funds in a prudent way (32.4%).

5.3.4 On the whole, nearly half of the respondents (43.7%) are very likely / likely to participate in an SNT with the Government as the trustee and providing the above-mentioned services. About 21.8% of the respondents indicated that they are unlikely / very unlikely to participate in such a trust. There remains about 28.9% of the respondents who are not sure if they would participate in such a trust (**Figure 3**).

Figure 3: Whether the respondent will participate in the SNT?



Total number of respondents: 2,513

5.3.5 Amongst those who indicated that they are very unlikely / likely / not sure of whether they would participate in the SNT, almost 46.1% indicated, as the primary reason for their reservation, that they would still need to make other arrangements to address the personal supervision of their

dependent. In contrast, 19.8% indicated their primary reason for not joining or hesitating as concern about the long-term sustainability of the SNT and risk of embezzlement of funds by the government-trustee, whereas 16.3% considered the lack of minimum guarantee of fund returns as their primary reason. About 7.5% of the respondents indicated 'others' as the primary reason; and of these respondents, about one-third stated that they lacked the necessary assets to set up a trust or do not have sufficient understanding of the operation of the SNT.

6. Relationship between the attributes of respondents and their dependents and participation in the SNT

6.1 Further analysis was carried out to find out the relationship between the attributes of the respondents and their dependent with ID and the respondents' likelihood to participate in the SNT. Specifically, the latter's likelihood of participation is assessed against the following factors :-

6.2 Age of respondents

As compared to other age groups, respondents between 40 to 59 years old are most likely going to join the SNT (of 1317 respondents who are 40 to 59 years old, around 49% say they are likely or very likely to join, representing a net⁴ percentage of about 31%), whereas from 60 years old, interest gradually declines.

6.3 Age of dependent with ID

The results suggest that the younger the dependent with disability, the more likely respondents are to join the SNT. Specifically, respondents who have a dependent with ID who is aged 20 or below are most likely going to join the SNT (of the 996 respondents who have a dependent with ID aged 20 or below, over half (50.7%) are likely or very likely to join, representing a net percentage of 35.5%). Thereafter, the interest of the respondents gradually drops as the age of their dependent with ID grows. When their dependents with ID reach 40 or above, respondents who are unlikely to participate in the SNT exceed those who are likely to participate by about 2%.

⁴ The net percentage is calculated by deducting the percentage of respondents who are unlikely / very unlikely to join the SNT from those who are likely / very likely to join the SNT. For example, of the 1317 respondents who are 40 to 59 years old, 645 indicated that they are likely / very likely to join the SNT (i.e. 49%). At the same time, 242 respondents from this age group indicated that they are unlikely / very unlikely to join the SNT (i.e. 18%). The net percentage of respondents aged 40-59 who are likely / very likely is therefore 49%-18% = 31%.

6.4 Degree of intellectual disability of dependent with ID

About 45% of the 2,098 respondents who have a dependent with ID who has mild or moderate intellectual disability are likely / very likely going to join the SNT (net percentage of about 24%). However, interest gradually declines as the intellectual disability of the dependent with ID becomes more severe. The results suggest that the lesser the degree of intellectual disability of the dependent with ID, the more likely the respondents are to join the SNT.

6.5 Presence of secondary disability of the dependent with ID

47.9% of the 1,486 respondents (representing a net percentage of about 30%) with dependent with ID who has a secondary diagnosis of disability are likely / very likely to join the SNT, compared to a net percentage of 11% of respondents whose dependent with ID does not have a secondary diagnosis. The results suggest that respondents with dependent with ID who has a secondary diagnosis of disability (e.g., autism or physical disability) are more likely to join the SNT compared to respondents with dependent with ID who does not have a secondary diagnosis.

6.6 Receipt of social welfare benefits by dependent with ID

Nearly 50% of the 1,768 respondents whose dependent with ID is not in receipt of any social welfare benefits or is only receiving the government's Disability Allowance are likely / very likely to join the SNT (representing a net percentage of about 30% from these groups compared to a net percentage of only 1% for the 680 respondents whose dependent with ID is receiving the government's Comprehensive Social Security Assistance (hereafter 'CSSA')). The results suggest that respondents who have a dependent that is not receiving any social welfare benefits and those with dependent who is only receiving Disability Allowance are much more likely to join the SNT than those who are receiving CSSA.

6.7 Residential situation of the dependent with ID

Of the 1,770 respondents who are living with their dependent with ID, 48% are likely / very likely to join the SNT (net percentage of 30%). On the other hand, 601 respondents have placed their dependent with ID in government-subsidized hostels. Amongst this group, only 34.8% are likely / very likely to join the SNT (net percentage of 5%). The results suggest that respondents who are living with their dependent with ID are more likely to join the SNT.

6.8 Whether the respondent is able to find a suitable guardian

Of the 1,412 respondents who indicated that they would not be able to find a suitable guardian, 48.4% are likely / very likely to join the SNT (representing a net percentage of 29.2% compared to a net percentage of 13% of the respondents who are able to find a suitable guardian). The results suggest that respondents who would not be able to find a suitable guardian are more likely to join the SNT compared to respondents who would be able to find a suitable guardian.

6.9 Preferences on accommodation of dependent with ID when the respondents are no longer capable of looking after him/her

When the respondents were asked how they would want their dependent with ID to be looked after when they are no longer capable of doing so, 82% of them rank staying “in a government-subsidized hostel” and “with family or relatives” as the highest priority (42% (1,056 respondents) and 40% (1,006 respondents) respectively). Amongst the 42% respondents whose top priority is to stay “in a government-subsidized hostel”, 53% have a dependent with mild intellectual disability and 34% have a dependent with moderate intellectual disability.

Of the remaining respondents, 8.1% (201 respondents) chose the other four options as their top priority: living “on his / her own and looked after by a full-time / part-time professional staff” (72 respondents); “on his / her own and looked after by a full-time / part-time domestic helper” (68 respondents); “in a self-financed home supported by the government” (47 respondents); or “in a private home” (14 respondents).

The likelihood of these six groups in joining the SNT, ranked in the order of net percentages, is as follows:

- (i) living on his / her own and looked after by a full-time / part-time domestic helper (52%)
- (ii) living on his / her own and looked after by a full-time / part-time professional staff (43%)
- (iii) staying in a self-financed home supported by the government (40%)
- (iv) staying in a private home (36%)
- (v) living with family or relatives (24%)
- (vi) staying in a government-subsidized hostel (18%)

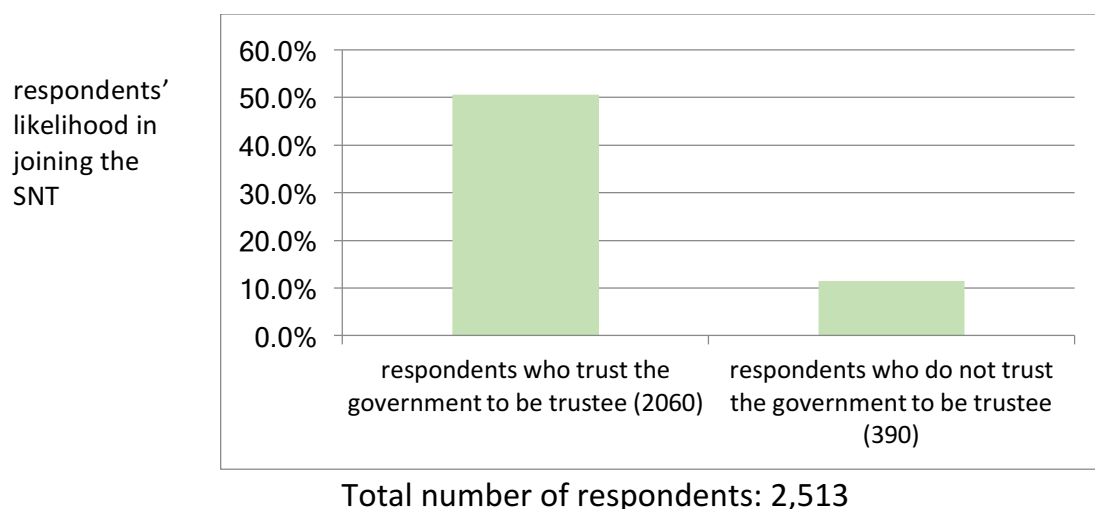
The analysis shows that there is considerable interest amongst respondents choosing all of these options in joining the SNT. Specifically, those who prefer their dependent with ID to live on their own or in private or self-financed accommodation are smaller in number, but they are most likely to join the

SNT. Respondents who prefer their dependent with ID to live with the family or relatives are the second largest group, and they still express a relatively strong wish to join the SNT (at 24% net). Even amongst respondents who are least likely to join the SNT, being those who wish their dependents with ID to stay in a government-subsidized hostel, there is a net percentage of 18% who are likely to join the SNT.

6.10 Whether the respondents trust government to act as trustee

Of the 2,060 respondents who trust the Government to act as its trustee, 50.6% (net percentage of 33%) indicated that they are likely / very likely to join the SNT. In contrast, only 11.5% (net percentage of -33%) of the 390 respondents who do not trust the Government to play the role of trustee are likely / very likely to join the SNT (**Figure 4**). The results suggest that respondents who trust the Government to play the role of trustee are significantly more likely to join the SNT compared to respondents who do not trust the Government to this role.

Figure 4: The relationship between the respondents' willingness to trust the government to act as trustee and their likelihood in joining the SNT



6.11 Respondents' preferences on other non-governmental organization to act as trustee

When asked what kind of non-governmental organization they would trust to play the role of trustee if the government does not act as trustee, 1,164 respondents indicated that they would only trust the Government as the trustee. Amongst them, over half (52.3%; net 33.2%) indicated that they are likely / very likely to join the SNT.

The respective net percentages of respondents who ranked the following as their top priority for acting as the trustee and who are likely / very likely to join the SNT are:

- (a) a new charity accountable to the Government and formed by parent representatives of dependents with intellectual disability and professionals such as lawyers, accountants and social workers: net 23.8%
- (b) an existing well-known charity accountable to the Government: 9.9%
- (c) a new charity formed by parent representatives of dependents with intellectual disability: 0%
- (d) a private financial institution: net -27.3%

A few observations can be made from the above results:

- (1) They reinforce the observation in paragraph 5.3.1 that the respondents' top priority – and the exclusive preference of almost half of them – is for the Government to act as trustee of an SNT to be introduced in Hong Kong.
- (2) If the Government did act as trustee, a considerably higher percentage of the respondents will likely or very likely join the SNT, as compared to a trustee that is formed by parent representatives and professionals *and* accountable to the government.
- (3) However, the respondents' interest in joining the SNT dropped significantly where: (i) the trustee is not formed by parent representatives, even though it is a well-established charity accountable to the Government; or (ii) the trustee is a newly established, parent-represented NGO that is not accountable to the Government. These results suggest that two factors are crucial to the respondents' likelihood in participating in the SNT, namely parent and professional leadership in trust management and government trusteeship (or at least government supervision of the trustee).

6.12 Respondents' preferences on services to be provided by the SNT

As mentioned in para. 5.3.3 above, the respondents would like the SNT to provide the following services:

- (i) Provision of a case manager to monitor caring services provided by service provider (net 35.8%)
- (ii) Custody and disbursement of the trust funds according to the respondents' wishes (net 31.5%)
- (iii) Provision of a case manager to monitor and review the needs of their dependent with ID (net 43.6%)
- (iv) Investment of the trust funds in a prudent way (net 45.1%)

If these services were provided by the SNT, 50-59% (a net percentage of 35.8-45.1%) of the respondents from these groups are likely / very likely to

participate in the SNT. The results suggest that all the proposed services provided by the trust are welcomed by the respondents, with prudent management of the trust fund and provisions of a case manager as the most appealing features.

IV. Conclusion

7. Summary

7.1 The results of the questionnaire survey demonstrate a strong demand for an SNT set up and managed by the government. Nearly half of the respondents are very likely or likely to participate in such an SNT. About 30% of the respondents are currently not sure if they would participate in such a trust. However, given that trust is still a relatively new and technical concept to most parents / caregivers, it is likely that a large proportion of these respondents may be attracted to this mechanism should further publicity and education about trust be carried out.

7.2 Based on the above statistical analyses, the SNT is most likely to appeal to the parents / caregivers :-

- who are aged 40-59;
- who are living with their dependent with ID;
- whose dependent with ID is aged 39 or below;
- whose dependent with ID has mild or moderate intellectual disability coupled with a secondary disability;
- whose dependent with ID is not in receipt of any social welfare benefits or is only receiving the government's Disability Allowance;
- who is unable to find a suitable guardian; and
- who wish their dependent with ID to live on their own (and be looked after by professional staff / domestic helper) or in private or self-financed accommodation when they are no longer able to look after the dependent with ID.

7.3 In addition, respondents are more likely to participate in an SNT with the following features :-

- the Government acts as trustee of the SNT. The findings suggest that respondents are very likely to join the SNT if the Government plays the role of the trustee.
- the service fees of the SNT do not exceed 1% per annum of the managed assets. 50.5% of the respondents are not prepared to pay for the trustee's service fee, whereas 35.3% of the respondents are prepared to pay less than 1.0% p.a. of the managed assets as service fee.
- The presence of parent representation in the office of trusteeship. While there is still some support for an SNT which is accountable to the government and formed by parent representatives, parents' interest

declines if the charity-trustee (even well-established) lacks parent representation.

- In relation to fund operation,
 - (i) provision of a case manager to monitor the services provided by service providers and review the needs of the dependent with ID;
 - (ii) prudent management of the trust fund; and
 - (iii) disbursement of the funds according to the respondents' wishes.

7.4 It is hoped that the findings of the questionnaire survey will contribute to the enhancement of the financial mechanisms for managing properties for the benefit of individuals with intellectual disability.

Appendix - Questionnaire (English version)

Ascertaining the need for Special Needs Trusts in Hong Kong – Survey administered jointly by Faculty of Law, The University of Hong Kong and the Concern Group of Guardianship System and Financial Affairs

Information Sheet

You are invited to participate in a research study conducted by Associate Professor Rebecca Lee & Professor Lusina Ho in the Department of Law at the University of Hong Kong.

PURPOSE OF THE STUDY

The purpose of the attached questionnaire survey is to ascertain the views and preferences of parents/caregivers in relation to the existing legal tools for financial planning for persons with intellectual disability, as well as the possibility of establishing a special needs trust in Hong Kong.

PROCEDURES

You will be asked to complete the attached questionnaire on an anonymous basis. This should take no more than 30 minutes.

POTENTIAL RISKS / DISCOMFORTS AND THEIR MINIMIZATION

You may find reflecting on your personal experience during the procedure somewhat uncomfortable and upsetting. Such discomforts, however, should be no greater than what we experience in everyday life.

COMPENSATION FOR PARTICIPATION

Your participation is on an entirely voluntary basis. No monetary remuneration will be offered for your participation.

POTENTIAL BENEFITS

Your participation in the questionnaire will help us understand (1) the difficulties encountered by you in finding a safe and reliable mechanism to manage assets devoted for the long-term care of your dependents with intellectual disability; and (2) your wishes and preferences in setting up Special Needs Trusts for your dependents with intellectual disability. Such information in turn could help inform future developments of the relevant areas of the law.

CONFIDENTIALITY & DATA RETENTION

All information obtained from the questionnaire survey will remain strictly confidential and be used for research purposes only. There are no personal identifiers in the questionnaire, and the information provided by you in this questionnaire will not be used in a manner which would allow identification of your individual responses. The anonymized data will be kept for a maximum of three years after publication of the first paper arising from the research project.

PARTICIPATION AND WITHDRAWAL

Your participation is voluntary. This means that you can choose to stop at any time without negative consequences.

QUESTIONS AND CONCERNS

If you have any questions or concerns about the research, please feel free to contact Associate Professor Rebecca Lee or Professor Lusina Ho at the Department of Law, The University of Hong Kong, Cheng Yu Tung Tower, Centennial Campus, Pokfulam Road, Hong Kong (Phone: 3917 2951; Email: snt.support@hku.hk).

If you have questions about your rights as a research participant, contact the Human Research Ethics Committee for Non-Clinical Faculties, HKU (2241-5267).

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Ascertaining the need for Special Needs Trusts in Hong Kong
– Survey administered jointly by Faculty of Law, The University of Hong Kong
and the Concern Group of Guardianship System and Financial Affairs

Dear Parents / Caregivers of Persons with Intellectual Disability,

According to government statistics, about 70,000 to 100,000 persons in Hong Kong have intellectual disabilities. While these individuals have the legal right to own assets, they may require support and guidance from their parents or caregivers to help them make complex financial decisions, and sometimes even to make these decisions on their behalf. When their parents or caregivers are no longer around, they need a safe and reliable mechanism of financial management. Such needs have become imminent as their parents or caregivers age.

To ascertain the needs and demands for such mechanisms in Hong Kong, the Faculty of Law of the University of Hong Kong and the Concern Group of Guardianship System and Financial Affairs* are jointly carrying out a survey through the attached questionnaire. Among the available mechanisms such as the will, guardianship order, enduring power of attorney, and special needs trust we would like to know, in particular, your preferences in relation to the possibility of setting up a Special Needs Trusts in Hong Kong.

In order to avoid double-counting, we would like to invite the main caregiver to only fill up one copy of the questionnaire for each dependent with intellectual disability that you or your family are looking after. An electronic copy of this questionnaire can also be downloaded from <http://snt.support> after March 9, 2016. You may also fill out this questionnaire online from the same website. Please rest assured that all information and data are collected without personal identifiers and will be kept confidential and used for the sole purpose stated above.

Upon completion, please return the questionnaire through your organization or by mail to the Faculty of Law, The University of Hong Kong, Cheng Yu Tung Tower, Centennial Campus, Pokfulam Road, Hong Kong [Attn: Special Needs Trust]. We appreciate your help in completing this survey. If you have any questions, you may contact Rebecca Lee or Lusina Ho of HKU Law at snt.support@hku.hk.

Rebecca Lee & Lusina Ho
Faculty of Law, The University of Hong Kong

Concern Group of Guardianship System and Financial Affairs

Please return the questionnaire on or before 28 May 2016.

*NB: The Concern Group of Guardianship System and Financial Affairs is established by a group of parents and caretakers of persons with intellectual disability. Its mission is to strive for a better adult guardianship system through examining its current weaknesses and seeking for improvements of the policies and institutions pertaining to adult guardianship. It is hoped that these efforts will enhance personal care and financial management arrangements for individuals with intellectual disability in Hong Kong.

Part A: Background information

1. Please provide information about yourself.

Gender: Female Male

Age: 20 and below 21-29 30-39 40-49
 50-59 60-69 70 and above

2. What is the age of your dependent with disability?

20 and below 21- 29 30-39 40-49
 50-59 60-69 70 and above

3. What is your dependent's degree of intellectual disability? Please tick one box.

- Mild grade
- Moderate grade
- Severe grade
- Profound grade

4. What is the secondary diagnosis of your dependent with intellectual disability? You may tick more than one box.

- None
- Physical disability
- Autism
- Other (please specify: _____)

5. Is your dependent with intellectual disability currently receiving social welfare benefits?

- Yes, Comprehensive Social Security Assistance
- Yes, Disability Allowance
- No

6. Is your dependent with intellectual disability living together with the family or in a residential home?

- Living with the family or relatives
- Living on his / her own and looked after by a full-time / part-time domestic helper
- Living on his / her own and looked after by full-time / part-time professional staff
- Staying in a government-subsidized hostel
- Self-financed home supported by the government
- Staying in a private home
- Others (Please specify _____)

**Part B: Existing financial and personal welfare planning tools
for people with intellectual disability**

Wills

Under the laws of Hong Kong, you may make a will to say how your assets will be distributed. You need to appoint an executor, who can be trusted to carry out your wishes under the will. You may leave your assets to anyone, such as your spouse and child(ren), including your children with intellectual disability. However, if your children do not have the capacity to manage the assets, a guardian will need to be appointed to manage it on their behalf. You may also set up a trust by will, in which case your assets will not be passed to your children with intellectual disability directly, but will be held on trust by the trustee (who may also be your executor), who will continue to manage your property throughout the lifetime of your dependent with intellectual disability.

If you do not make a will, your assets will be distributed according to the laws of Hong Kong. In general, this means that your surviving spouse will inherit all your personal chattels (such as personal effects, household items, cars and jewellery) and the first HK\$500,000 of the residual estate. Whatever that still remains will be divided into two halves, half for your surviving spouse and the other half will be shared by your children equally. If you do not have a surviving spouse, your assets will be shared by your children equally.

7. Have you executed a will?

- Yes
- No

8. Do you think the will can satisfy your need for making financial provisions for your dependent with intellectual disability after your passing?

- Completely satisfies my need (Please jump to Question 10.)
- Partly satisfies my need
- Unable to satisfy my need

9. What are your reasons for not having executed a will or taking the view that the will cannot completely satisfy your need? You may tick more than one box.

- I do not want to think about death
- I am still young and have not thought about this
- I do not know enough about the will
- Expensive fees
- I do not have enough assets to support my dependent's financial needs
- I am worried about the executor's trustworthiness (e.g. abusing his position and taking my estate)
- I am worried whether the executor can continue his service (e.g. his change of mind or health condition)
- I am satisfied with the legal provisions governing distributions without a will
- I have made other satisfactory arrangements

Guardianship

As parent, you are the guardian of your dependent children only until they reach the age of 18. When your dependent with intellectual disability reaches 18, and when the occasion arises for a decision about his personal, medical and financial affairs needs to be made, you or a relative may apply to the Guardianship Board to appoint a guardian to make such decisions for him. However, the Guardianship Board will only consider applications if a need to make such decisions arises, so it is not possible for you to appoint a guardian as soon as he turns 18, in the absence of such occasions.

The guardian can make decisions on where the person with intellectual disability lives and what medical treatment he receives. The guardian also has power to handle money for him/her, but the law limits the amount the guardian can handle for his/her maintenance to HK\$15,000 per month. This amount is the median monthly earnings released by the Census and Statistics Department, and is adjustable according to the General Household Survey. This means that the guardianship order cannot be used to manage a flat for your dependent adult to live, or to pass your wealth to him.

10. Are you aware of the availability of guardianship?

- Yes
- No

11. Do you consider the sum of HK\$15,000 per month sufficient to look after your dependent with intellectual disability?

- Yes
- No

12. Would you be able to find a suitable guardian?

- Yes
- No

13. If you are not the guardian, would you like to be consulted by the guardian before he/she makes any decision regarding your dependent with intellectual disability?

- Yes
- No

Enduring Power of Attorney (EPA)

Everyone faces the risk of losing mental capacity due to illness or accident. An enduring power of attorney allows someone (the donor) who is still mentally capable to appoint an attorney to take care of his financial matters in the event that he becomes mentally incapacitated. You may, for example, appoint an attorney to manage your financial affairs, even to sell or use your flats or other properties, when you are unable to do so; the attorney may use the assets to provide for your dependent with intellectual disability.

Unlike the guardian, there is no financial limit on the amount of property the attorney can handle on behalf of the donor. The attorney does not have the power to decide on where the donor should live and what medical treatment he receives. The attorney has full power to deal with the donor's assets without consulting the donor.

14. Are you aware of the availability of EPA?

- Yes
- No

15. Have you set up an EPA?

- Yes (Please jump to Question 17 of Part C.)
- No (Please proceed to Question 16.)

16. What are your reasons for not having set up an EPA? You may tick more than one box.

- I do not want to think about death
- I do not know enough about the EPA
- I am still young and have not thought about this
- Expensive fees
- I cannot find a suitable attorney
- I am worried that the attorney will abuse his position and take my property
- I have made other satisfactory arrangements

Part C: Special Needs Trust

A trust is created where an individual (settlor) transfers his property to his trustee to manage it for the benefit of a designated person (the beneficiary). One may set up a trust during one's lifetime, or in one's will, to pass designated property to a trustee to manage it for the benefit of one's dependent with intellectual disability. Of course, in reality, it is not easy to find a trustworthy trustee who is willing to serve in this role gratuitously, and who is likely to survive both the settlor and the beneficiary. While there are professional trustees, not many people are able to afford the high fees charged by professionals to set up and manage an individual trust tailor made for just one's own dependent with intellectual disability. To overcome these difficulties, some countries have developed the Special Needs Trust. In the Chief Executive's policy address 2016, the government has announced that the Labour and Welfare Bureau will establish a working group to explore the feasibility of establishing a public trust, with a view to providing affordable services for people with intellectual disability.

The Special Needs Trust is an affordable trust specially designed for people with special needs (including people with intellectually disability). The Special Needs Trust pools together funds contributed by individual participating settlors for management and investment. This allows the sharing of fees and hence lower fees for individual participants. To reduce the fees, such trusts usually only handle cash but not flats or shares. These assets will need to be liquidated before they could be transferred into the trust

To participate in such trusts, the caregivers with the help of the trustee and its case manager devises a care plan, which sets out the expenditures needed for the dependent, write a letter of intent that appoints the caregiver to succeed them and explains how the trust fund should be disbursed for the benefit of the dependent and after the dependent passes away, and then transfer an amount of money (a small sum such as about HK\$5,000) to set up the trust. They also execute a will to transfer a substantial amount from their estate into the trust on their death, e.g. they may instruct the executor to sell their flat and put the proceeds into the trust fund. Like in an MPF, the amounts designated for each beneficiary will be segregated, although the pooled funds will be invested, usually with a view to preserving the capital.

When the caregivers pass away, the trust will be activated. The trustee will then make periodic distribution to the succeeding caregiver according to the letter of intent and care plan. The trustee's case manager can make periodic (e.g. twice a year) visits to the dependent to check that the caregiver is looking after the dependent. Upon the dependent's passing, the trustee will distribute the surplus to any person(s) indicated in the letter of intent.

The main advantage of the Special Needs Trust is that financial assets devoted for the dependent are managed by a professional at an affordable fee. The trust also allows dependents to participate in the decision-making process of the caregiver if this is set out in the letter of intent.

Financial planning for your dependent with intellectual disability

17. How would you want your dependent to be looked after when you are no longer capable of doing so? Please indicate your order of priority, with 1 being the highest priority. There is no need to rank all options, but each option should receive a different ranking (ie no equal ranking for more than one option).

- _____ By family or relatives
- _____ Live on his / her own and looked after by a full-time / part-time domestic helper
- _____ Live on his / her own and looked after by full-time / part-time professional staff
- _____ Staying in a government-subsidized hostel
- _____ Self-financed home supported by the government
- _____ Staying in a private home
- _____ Others (Please specify _____)

18. Are you able to set up an individual, customised private trust for the benefit of your dependent with intellectual disability by

engaging a professional trustee (that charges about HK\$50,000 per annum) or a trusted friend who can serve as trustee for free?

- Yes
 No, because the fees are too expensive
 I cannot find a reliable and gratuitous trustee

Setting up and managing a Special Needs Trust

19. If a Special Needs Trust is to be established in Hong Kong, and the Government acts as trustee of such a trust, would you trust the government to play this role?

- Yes.
 No.

20. If the Government does not act as trustee, what kind of non-governmental organization would you trust to play the role of trustee? Please indicate your order of priority, with 1 being the highest priority. There is no need to rank all options, but each option should receive a different ranking (ie no equal ranking for more than one option).

- _____ No, I only trust the Government to act as the trustee
- _____ An existing well-known charity accountable to the Government
- _____ A new charity accountable to the Government and formed by parent representatives of dependents with intellectual disability and professionals such as lawyers, accountants and social workers
- _____ A new charity formed by parent representatives of dependents with intellectual disability
- _____ A private financial institution
- _____ Others (Please specify _____)

21. If the non-governmental organization listed in Q20 acts as the trustee, how much are you prepared to pay to such trustees to administer the trust? 1% in the following choices represents management fee in HKD\$10,000 for each 1 million per annum. Please mark "N/A" if you are not prepared to pay for the trustee service.

- N/A
- Less than 1.0% p.a. of the managed assets
- 1.0% to less than 2.0% p.a. of the managed assets
- 2.0% to less than 3.0% p.a. of the managed assets
- 3.0% to less than 4.0% p.a. of the managed assets
- 4.0% p.a. and above of the managed assets

22. If a Special Needs Trust can be set up, what services would you like it to provide? You may tick more than one box.

- Custody and disbursement of your trust funds according to your wishes
- Investment of the trust funds in a prudent way
- Provision of a case manager to monitor and review the needs of your dependent who is living in the community with family or independently
- Provision of a case manager to monitor caring services provided by service provider to your dependent who is living in the government-subsidized hostel
- Other (please specify: _____)

23. If a Special Needs Trust with the necessary features mentioned in Q22 is established, and the government acts as the trustee of such a trust, will you participate in such a Trust?

- Very Unlikely (Please proceed to question 24.)
- Unlikely (Please proceed to question 24.)
- Not Sure (Please proceed to question 24.)
- Likely (Please proceed to question 25.)
- Very Likely (Please proceed to question 25.)
- Other (please specify: _____)

24. What are the reasons for your reservation about a Special Needs Trust in which the government acts as trustee? You may tick more than one box and please rank from 1 (primary reason) onwards. There is no need to rank all options, but each option should receive a different ranking (ie no equal ranking for more than one option).

- _____ There is no minimum guarantee of fund returns
- _____ I still need to make other arrangements to address the personal supervision of my dependent
- _____ Worried about the long-term sustainability of the Trust and embezzlement of funds by the government trustee
- _____ Other (please specify:-
_____)

25. Other comments:

Thank you for your participation!