Revenue (Abolition of Estate Duty) Bill 2005 The Administration's Response to the submission from the Law Society of Hong Kong dated 31 May 2005

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2. Suspension of the EDO	
(paragraphs 2.1 to 2.4 of submission)	
The Revenue (Abolition of Estate Duty)	The Bill does not only effect a suspension of estate duty. Once the
Bill 2005, in not "repealing" the Estate	Bill is passed, the estate duty will cease to be payable in respect of
Duty Ordinance (Cap. 111) (EDO) but	people dying on or after the commencement of the Ordinance.
allowing it to remain on the statute	There is no built-in mechanism for reviving the estate duty. It will
book, will only have the effect of	take the introduction and enactment of another bill to impose estate
"suspending" its operation from the	duty again. In that sense, the abolition is as permanent as if it were
commencement of the Bill. This means	effected by the repeal of EDO.
that estate duty could be easily	
re-introduced at a later stage with	We will need to apply the provisions of EDO in a number of years to
unfortunate consequences. In order to	come in respect of people dying before the effective date of the new
achieve certainty, the Bill should be	Ordinance. If we were to adopt the Law Society's suggestion of
drafted to state that –	repealing EDO but saving its effect for transitional purposes, the
	Ordinance would normally have to be taken out of the Laws of Hong
(a) the estate duty is abolished with	Kong. This would create an undesirable situation in which the

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effect from March 16, 2005; but	provisions are in active operation but they are no longer in the Laws
	of Hong Kong.
(b) for transitional purposes the EDO	
will continue to apply to the estates	The Administration's policy intent to abolish estate duty is very clear
of those persons who die before the	and this has been clearly reflected in the Bill. Australia and New
date of abolition.	Zealand adopted a similar legislative approach when abolishing their
	estate duty in 1978 and 1992 respectively.
	As for the date of effecting the abolition, we consider it more
	appropriate to give effect to the abolition of estate duty as from the
	date of enactment of the enabling legislation. This is in line with our
	policy of not conferring new legal provisions with retrospective
	effect. It would also remove uncertainties, obviate the possibility of
	unnecessary preparation and filing of affidavit, etc. to the Estate Duty
	Office and the possible need for making refunds.

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3. Existing Safeguards	
(paragraphs 3.1 to 3.8 of submission)	
A prudent approach should be adopted	The Administration does not propose to make it a mandatory
in the legislative process to ensure the	requirement for a schedule of property or similar document to be filed
interests of the beneficiaries will	with the court on the following grounds –
continue to be well safeguarded.	
Whilst there may no longer be any	(a) the personal representatives are, in most cases, trusted persons or
revenue protection reason for the	the closest relative of the deceased. Improper administration of
requirement, the obligation of the	the estate would unlikely be the norm;
personal representative and other	
accountable persons such as a recipient	(b) the cost in maintaining the function to vet the contents of the
of "gift" from the deceased, surviving	schedule would not be commensurate with the benefit, given that
joint owners and any other trustees	improper administration may be rare;
holding assets on behalf of the deceased	
to prepare a full inventory and account	(c) the schedule of property merely provides an easier access to such
of properties comprised in a deceased's	information. Without such schedule, beneficiaries would still be
estate should be made mandatory.	able to obtain such information by other means (e.g. conduct land
Furthermore, there should be clear	and companies search etc). Very often, such list is compiled by

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provisions that assets not disclosed in
the inventory list cannot be dealt with
by the personal representative. This is
essential not only for the protection of
interested parties to avoid
misappropriation of assets, but for
various practical purposes to ensure
proper administration of the estate: e.g.
to enable the personal representative and
the Probate Registry to identify the
appropriate beneficiaries entitled to the
estate; to facilitate the registration
process by the Land Registry, etc. and to
avoid unnecessary family disputes on
the administration and distribution of
the estate.

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the personal representative only by making due inquiries with the beneficiaries;

- (d) the preparation of a schedule of property or similar document takes time. Without such a requirement, we envisage that the personal representative would be able to obtain the grant of representation in a much shorter period of time, and the assets of the deceased could be dealt with much earlier. This could help alleviate the hardship caused to small and medium enterprises due to the freezing of assets; and
- (e) the personal representative may, if necessary, be required to file a true and perfect inventory and account to the court under section 56 of the Probate and Administration Ordinance (Cap. 10) (PAO).

On presentation of a grant of representation clearly identifying the executor or intended administrator and sufficient proof of identity, the Land Registry would be able to process the registration for transfer of ownership of landed property. The schedule of property is not

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	required.

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4. Court Fees	
(paragraphs 4.1 to 4.2 of submission)	
As the proposals in paragraph 3.8 may	It is Government policy that fees charged by the Government should in
probably lead to an increased role and	general be set at levels adequate to recover the full cost of providing the
workload of the Probate Registry, the	goods or services. If the Committees' proposals will lead to an
Committees believe that the Court fees	increase in costs, as pointed out by the Committees, the increase will
should be commensurate with the work	ultimately be reflected in the appropriate fees. If there is any
ultimately required of the Probate	subsequent change to the Administration's proposal impacting the level
Registry.	of court fees, the Judiciary Administrator will also assess the actual
	impacts on fees.

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5.2 Safe Deposit Box	
(paragraphs 5.2.1 to 5.2.5 of	
submission)	
(i) Whereas the main objectives of	(i) Currently the two officers from the Inland Revenue Department
opening the safe deposit boxes of a	(IRD) take inventory of the contents of the safe deposit box for
deceased should be to ascertain the	revenue protection purpose. Following the abolition of estate
existence of the will and to prepare	duty, there is no revenue protection purpose to require the
an inventory of its contents, it has	compilation of a schedule of property, including those assets in the
not been made an automatic	safe deposit box. As a schedule of property is not necessary for
requirement for an inventory list of	application for grant of representation, we propose not to make it a
its contents to be prepared when a	requirement for an inventory to be taken during the inspection of
safe deposit box is opened for	the safe deposit box. Nonetheless, the personal representative
inspection in the future. It is	may, if necessary, be required to file a true and perfect inventory
unclear if the Secretary for Home	and account to the court under section 56 of the PAO.
Affairs (SHA) will impose this as a	
condition in every certificate.	
(ii) What is or is not a will is a question	(ii) The mis-handling of testamentary instruments could be avoided by

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of law and under the proposed new regime, there is a real risk of e.g. a home-made will in the form of a letter or other informal format being released or tampered with or mislaid before legal advice can be obtained.

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administrative measures, for example, by attaching a condition to the effect that the bank can release any document purporting to be a "will" to the holder of the certificate only if the latter is clearly identified as the executor in that purported testamentary instrument, as under the current practice.

Further, given the importance of the will and codicil, the Administration proposes that the existing practice of making a copy of the will and placing it inside the box upon its removal be retained. This arrangement could also be one of the conditions attached to the certificate for inspection.

- circumstances the SHA will issue a certificate to permit the holder to open the safe deposit box to ascertain the existence of and take possession of "documents or article other than the Will" and what
- (iii) It is equally unclear under what (iii) The purpose of allowing "documents or articles other than the will" to be released to the holder of the certificate is to retain the existing practice where the Commissioner for Inland Revenue (CIR) would allow the removal of such documents as marriage certificate, birth certificate and documents belonging to persons other than the deceased, either to support the application for grant of representation or other purposes.

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5.3 Release of funds for burial	
expenses and maintenance	
(paragraphs 5.3.1 to 5.3.7 of	
submission)	
(i) The Government should provide	(i) About 600 applications for release of funds for funeral expenses
statistics on the number of instances	and 20 applications for maintenance of former dependants under
where the power of the CIR under	section 24(4) of the EDO are received each year.
section 24(4) of the EDO has been	
invoked to justify the need for such	
power.	
(ii) Given the possible conflict with the	(ii) Maintenance for former dependants
judicial power under Cap. 481, there	In practice, CIR would only authorize the release of money from
is also a need to define clearly in the	the estate for maintenance of "former dependants" who would be
legislation the types of person that	beneficiaries under the will of the deceased or intestacy. In
the SHA could consider to be "fit	exercising her power under section 24(4) of the EDO, she would
and proper" to apply for a certificate	normally only authorize the release of money for maintenance of
and to be "former dependents"	the spouse and unmarried children. CIR would require supporting

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under the new Section 60B of the	documents such as marriage certificate and birth certificate. As
PAO.	regards other persons claiming to be former dependants such as
	parents and common law spouses, CIR would require the personal
	representative to produce proof that such persons have interests in
	the estate. In the absence of proof, CIR would reject the
	application and suggest the applicant to apply for a court order
	under section 3 of Cap. 481. (In practice, the scope of section 4 of
	Cap. 481 (powers of court to make order) is wider since the
	applicant will not be restricted to beneficiaries under the will or
	intestacy and the amount ordered to be paid may exceed the legal
	entitlement of the applicant under the will or intestacy.)
	We intend to follow the current practice in future, including the
	condition that the bank concerned shall make maintenance
	payments to the former dependant by monthly installments. This
	should help alleviate the hardship of the former dependants of the
	deceased and protect the interests of other beneficiaries.

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	<u>Funeral expenses of the deceased</u>
	Whereas the power to authorize release of funds for maintenance
	would only apply to "former dependants" of the deceased, the
	Administration proposes to empower SHA to authorize the release
	of funds for meeting funeral expenses to any person who appears to
	SHA to be a "fit and proper person" to be the holder of the
	certificate. Currently, about 200 to 300 out of the 600 applications
	received each year regarding funeral expenses are made by persons
	such as siblings, grandchildren, nephews, nieces and friends of the
	deceased. Most of them are not the executor or intended
	administrator and have no interest in the estate. They merely
	assist with the funeral service of the deceased because (a) the
	widow/widower/parents have not recovered from the death of
	his/her spouse/child; (b) the children are minors; or (c) no next of
	kin is found.
	In line with the current practice, the applicant would be required to
	provide documentary proof of relationship with the deceased and a
	quotation from the funeral service supplier. The bank concerned

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	would be required to make direct payment by cashier's order to the
	funeral service supplier specified in the certificate.
	In cases of fraud or provision of a false statement, SHA may,
	depending on the circumstances of the case in question, consider
	legal action under section 36 of the Crimes Ordinance (Cap. 200)
	and/or section 16A of the Theft Ordinance (Cap. 210). According
	to IRD's records, no fraudulent application has ever been made.
(iii) It is submitted that the SHA should	(iii) SHA would follow the existing internal guidelines of IRD, and set
only be empowered to authorize the	ceilings for application for release of money from the estate for
release of a "fair amount" for these	funeral expenses of the deceased and maintenance of former
purposes.	dependants of the deceased respectively. Currently, the ceilings
	set by IRD for such applications are as follows –
	(a) Funeral expenses: If the applicant is the spouse or child
	of the deceased, the maximum amount allowed for
	application is half the value of the estate of the deceased,
	but the amount shall not exceed \$20,000. If the
	(a) Funeral expenses: If the applicant is the spouse or child of the deceased, the maximum amount allowed for application is half the value of the estate of the deceased

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	applicant and the deceased are of relationships other than
	the above, the maximum amount allowed for application
	is half the value of the estate of the deceased, but the
	amount shall not exceed \$10,000.
	(b) Maintenance: The amount of money that CIR would allow to be released from the estate for maintenance of former dependants would not exceed the legal entitlement of such applicants under the will or intestacy. The bank concerned would be required to make monthly payments to the applicant for a maximum period of three months. If the grant of representation has not been obtained after three months, the applicant may apply again.
	We consider these guidelines and ceilings can guard against abuses that result in the benefits of other beneficiaries being adversely
	affected.

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(iv) The legislation should specify	(iv) We are advised that under the common law, an authority will be
clearly the liabilities in cases where	liable for wrongful exercise of statutory power. It is not common
there should be wrongful release of	or necessary for such legal position to be expressly spelt out in a
documents or assets from the estate	statutory provision.
under the proposed Section 60B and	
60C of the PAO.	

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