

**Bills Committee on Revenue (Abolition of Estate Duty) Bill 2005**

We provide herewith information requested by Members at the Bills Committee meeting held on 2 June.

Payment by installment

2. Though interest accrues on unpaid duty at the rate of 4% per annum for the first six months from death and thereafter at 8% per annum, very few estates pay the duty and interest in one go.

Impact of abolition of estate duty

3. As mentioned at the meeting on 2 June, in New Zealand's experience, according to information IRD has obtained, abolition of estate duty brought about a 103% increase in its direct investment from abroad in 1993 (i.e. the year after its estate duty was abolished). The increase narrowed to 22% in 1994 and then remained at the 1994 level in 1995. The increase in direct investment in New Zealand in 1993 coincided with the abolition of its estate duty but of course it could be due to a variety of causes. It is difficult to isolate the effects of estate duty.

4. We have set out the changes in the size of Total Assets Under Management (AUM) for the asset management industry in Singapore's case as provided by HKMA (its AUM grew by 35% to S\$465.2 billion at end 2003 from that of S\$343.8 billion at end 2002). According to the Fund Management Activities Surveys (FMAC) conducted by the SFC, the AUM for Hong Kong's asset management industry was \$1,491 billion at end 2002 and the figure grew to \$2,250 billion at end 2003. However, it should be noted that the FMAS data published by the SFC included data, for the first time, from registered institutions, i.e. authorized Institutions. Hence direct comparison should not be made with the figure in 2002.

5. As we have stressed repeatedly, the changes in AUM/direct

investment figures are due to a variety of causes. It is difficult to isolate the effects of estate duty and the Administration has refrained from using such figures to demonstrate any possible impact of estate duty.

#### Other measures to further develop Hong Kong as an asset management centre

6. A table showing the recent initiatives taken by the SFC, including their target implementation dates, to facilitate the asset management business is at **Appendix I**. As for the profits tax exemption for offshore funds, we have completed extensive consultations on the detailed legislative proposals (including proposals on the anti-avoidance provisions) with the industry and plan to introduce the legislation into the Legislative Council soon.

#### Overseas Experience

7. According to the information we have to hand, Malaysia, Macau and New Zealand have no capital gains tax. Australia, Canada, India, Italy, Sweden and the USA have capital gains tax.

#### Procedures for estate administration after abolition of estate duty

8. A paper prepared by the Home Affairs Bureau (HAB) explaining the change in application procedures for grant of representation after abolition of estate duty is at **Appendix II**. The consultation letters/documents issued by HAB to the Law Society of Hong Kong, the Hong Kong Bar Association and the Hong Kong Association of Banks are at **Appendix III**.

Financial Services and the Treasury Bureau  
6 June 2005

**Recent initiatives taken by the SFC  
to facilitate the asset management business**

<b>Initiative</b>	<b>Aim(s)</b>	<b>Consultation Period / Time</b>	<b>(Target) Implementation Date</b>
Review of Hedge Funds Guidelines	<ul style="list-style-type: none"> <li>• To provide greater flexibility in recognizing the experience of fund manager's key personnel and to enhance transparency and safeguards for investors.</li> <li>• To seek public's comments as to whether the minimum subscription level should be lowered and restriction on collateralization should be relaxed</li> </ul>	26 May - 30 June 2005	Q4 2005
<p><u>REIT</u></p> <p>1. Proposed Relaxation of the Geographical Restriction on Overseas Investments by SFC-authorized REITs and Associated Issues</p> <p>2. Proposal on Investments in Real Estate Investment Trusts by Schemes Authorised under the Code on Unit Trusts and Mutual Funds</p>	<ul style="list-style-type: none"> <li>• To lift the geographical restrictions so that REITs may invest in real estate anywhere in the world;</li> <li>• To issue a Practice Note focusing on the obligations of REIT managers when investing in overseas investments; and</li> <li>• To consider a series of initiatives to further facilitate the development of REITs as an investment product.</li> </ul> <p>Proposed to allow investments in listed REITs by collective investment schemes authorised under the Code on Unit Trusts and Mutual Funds (collectively, the SFC-authorized schemes)</p>	<p>30 March – 30 April 2005</p> <p>25 February – 24 March 2005</p>	<p>June 2005</p> <p>In April 2005, the SFC has revised the relevant code to allow SFC-authorized schemes to invest in listed REITs.</p>

Initiative	Aim(s)	Consultation Period / Time	(Target) Implementation Date
Facilitation of UCITS III funds application	<p>UCITS III is a new set of regulations issued by the European Commission governing funds domiciled in the EU member states. Since many SFC authorised funds are domiciled in European jurisdictions, they are required to convert to meet the new EU regulations.</p> <ul style="list-style-type: none"> <li>• The SFC has been processing UCITS III fund applications and as of mid May 2005, 390 UCITS III funds have been authorized.</li> <li>• The SFC has conducted several meetings and reached consensus with the fund industry on a set of interim measures for the processing of UCITS III fund applications which include a fast track procedure.</li> <li>• A circular to intermediaries outlining these interim measures was sent out and a FAQ for investors was also launched and made available via the internet.</li> <li>• The SFC continues to monitor the regulatory changes in Europe with regards to UCITS III and liaise closely with overseas regulators and market participants. An external consultant has been engaged to assist in the research work</li> </ul>	<p>A series of meetings with HKIFA commenced on 1 Dec 2004.</p> <p>Consensus on the interim measures reached in early Feb 2005.</p> <p>Circular sent out on 31 March 2005.</p> <p>FAQ was launched on 22 March 2005.</p> <p>External legal consultant was engaged in early January 2005.</p>	March 2005

<b>Initiative</b>	<b>Aim(s)</b>	<b>Consultation Period / Time</b>	<b>(Target) Implementation Date</b>
	<p>on UCITS III legislation.</p> <ul style="list-style-type: none"> <li>The SFC is working towards a more permanent approach towards UCITS III fund applications and will conduct an extensive market consultation at a later stage.</li> </ul>		

## **Change in the Application Procedures for Grant of Representation after the Abolition of Estate Duty**

Following the abolition of estate duty, the application procedures for grant of representation would be much simplified. The ensuing paragraphs set out the change in such application procedures and the Administration's position towards the requirement for a schedule of property to be filed with the court on application for grant.

### **Existing Application Procedures**

2. Flowchart I at **Annex A** illustrates the existing application procedures for grant of representation.

3. At present, after the death of a person, the personal representative (either the executor specified in the will or the intended administrator) of the estate is required to file an estate duty return to the Estate Duty Office of the Inland Revenue Department (IRD) showing all assets and liabilities of the deceased. The table below lists the documents that are required to be filed by the applicant for estate duty clearance and those issued by the IRD after assessment and payment of duty, if any.

<b>Value of estate</b>	<b>Documents required to be filed</b>	<b>Documents issued by IRD</b>	<b>Number of cases in 2003/04</b>
Below \$400,000 without landed property, business and unquoted shares	Statement in lieu of Affidavit (SILA)	<ul style="list-style-type: none"> <li>• Certificate of Exemption</li> <li>• Authenticated copy of the SILA</li> </ul>	7,546
Over \$400,000 and below \$7,500,000 or below \$400,000 with landed property,	Affidavit for the Commissioner	<ul style="list-style-type: none"> <li>• Certificate of Exemption</li> <li>• Schedule of property</li> </ul>	7,816

business and unquoted shares			
Over \$7,500,000	Affidavit for the Commissioner	<ul style="list-style-type: none"> <li>• Certificate of Receipt of Estate Duty</li> <li>• Schedule of property</li> </ul>	258

4. The personal representative of the estate is required to clearly set out the assets and liabilities held by the deceased and an estimate of their value in the SILA or Affidavit for the Commissioner. On receiving the SILA/Affidavit, IRD proceeds to verify the assets and liabilities with third parties (if necessary), values the business interests (sole trader and partnership) and shares (quoted and unquoted), refers the landed properties (in personal name(s) and in the name of companies – if the shares are valued on asset basis) to the Rating and Valuation Department for valuation, and conducts bank enquiries to ascertain any omitted gift and asset. Any up-valuation of assets will be put up to the intended executor or administrator for agreement. If there is any discovery of omitted gift or asset, IRD will request the accountable person to file a Corrective Affidavit/Account for the Commissioner.

5. After the finalization of the assessment and the receipt of the estate duty, IRD will issue a Certificate of Exemption or a Certificate of Receipt of Estate Duty with the schedule of property or SILA as appropriate.

6. When making an application for a grant of representation, the personal representative is generally required to present the following documents to the Probate Registry –

- (i) the death certificate of the deceased;
- (ii) the will of the deceased, if there is one, plus one copy;
- (iii) a certificate or an affidavit of identity that shows the relationship between the deceased and the personal representative; and

- (iv) a Certificate of Receipt of Estate Duty with the schedule of property in duplicate or a Certificate of Exemption in duplicate with an authenticated copy of SILA issued by the IRD.

### **Application Procedures Following Abolition of Estate Duty**

7. Flowchart II at **Annex B** illustrates the proposed application procedures for grant of representation after abolition of estate duty.

8. Under our proposal, the IRD would no longer issue any certificate, SILA or schedule of property in respect of cases where the deceased passed away on or after the commencement of the new Ordinance. The personal representative of the deceased may apply to the Probate Registry direct for grant of representation by presenting the documents set out in paragraph 6(i)-(iii) above. The requirement of providing the court with exemption or duty-paid certificates issued by IRD would be dispensed with.

### **Schedule of property**

9. A schedule of property shows all the property in Hong Kong, including assets and liabilities, passing on the death of the deceased. Pursuant to section 23 of the Estate Duty Ordinance (Cap. 111), the schedule of property is annexed to the grant of representation. Beneficiaries and interested third parties may in practice refer to the schedule for establishing the link between the deceased and his assets and liabilities. Banks or debtors may make reference to the schedule and release monies to the personal representative. The Land Registry and share registrars may also refer to the schedule for allowing transfer of landed properties and shares respectively. Any person who, without lawful authority or reasonable excuse, deals with any asset not listed in the schedule of property is subject to penalty under the said section. These measures are intended to facilitate and ensure the collection of estate duty.

10. With the abolition of estate duty, there is no longer any revenue protection reason to retain the requirement of annexing the schedule of property to the grant. The Administration does not propose to make it a mandatory requirement for a schedule of property or similar document to be filed with the court on the following grounds –

- (i) the personal representatives are, in most cases, trusted persons or the closest relative of the deceased. Improper administration of the estate would unlikely be the norm;
- (ii) the cost in maintaining the function to vet the contents of the schedule would not be commensurate with the benefit, given that improper administration may be rare;
- (iii) the schedule of property merely provides an easier access to such information. Without such schedule, beneficiaries would still be able to obtain such information by other means (e.g. conduct land and companies search etc). Very often, such list is compiled by the personal representative only by making due inquiries with the beneficiaries;
- (iv) 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
- (v) 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).

11. Currently, vetting the contents of the schedule of property constitutes part of the process of the IRD in assessing whether the estate is dutiable. IRD would not vet any schedule or alike after abolition of estate duty, as there is no longer a revenue protection purpose to do so. If the Administration were to continue discharging the above-mentioned vetting function, we would have to charge a processing fee in order to

recover the costs of the service. (Currently, the operational expenses of the Estate Duty Office are covered by the estate duty collected.) The time required for beneficiaries to obtain a grant of representation would also be lengthened because of the considerable time taken to verify the value of the estate. This may cause unnecessary hardship to some families and SMEs.

12. While it would no longer be a mandatory requirement for the personal representative to file a schedule of property with the application for grant, the beneficiaries may still request the personal representative to prepare a list of assets and liabilities.

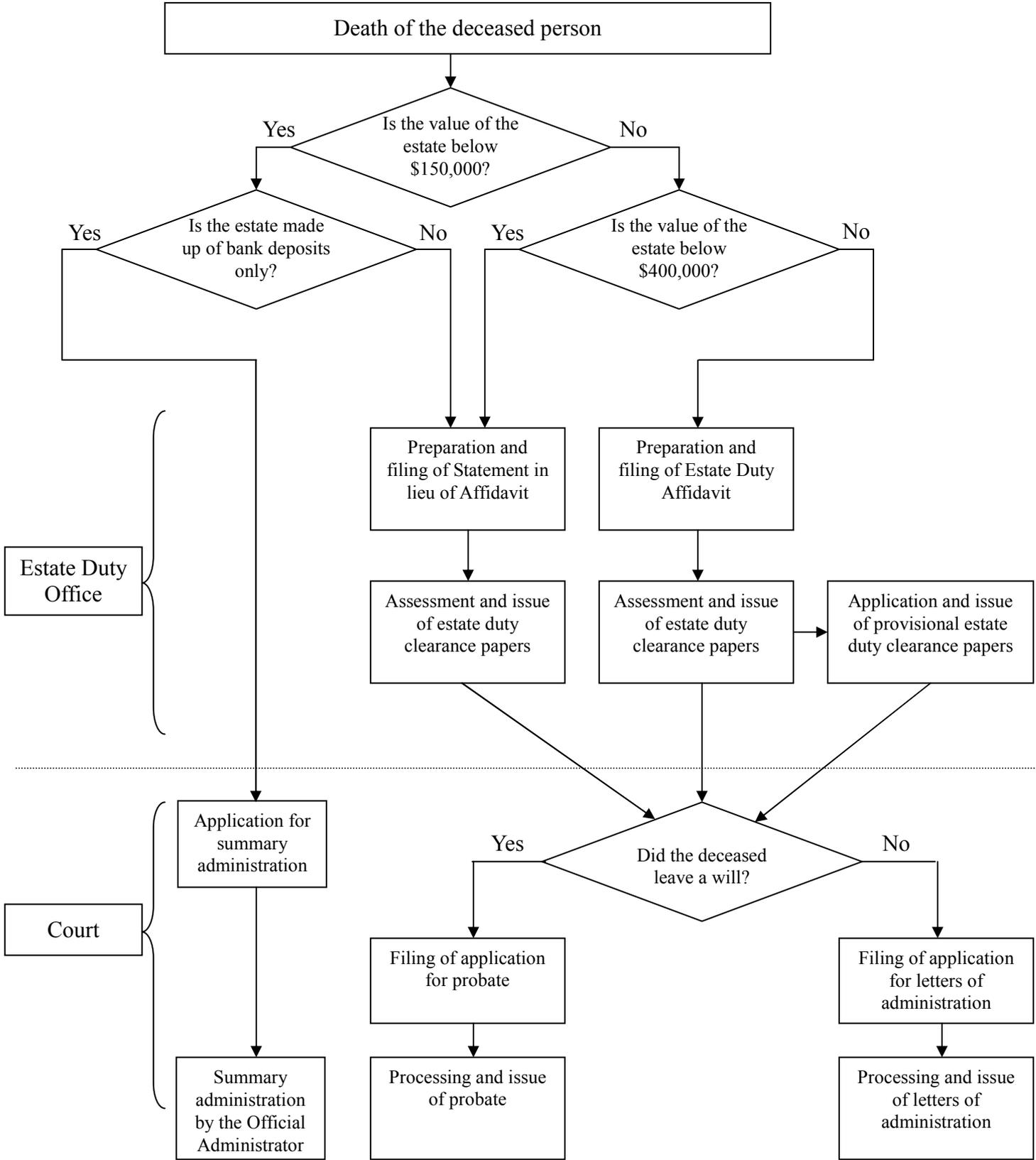
13. If necessary, beneficiaries may seek an account from the personal representative by instituting proceedings. In case the personal representative has collected and disposed of the assets of the estate without informing the beneficiaries, the latter could pursue their legal rights and remedies vis-à-vis the personal representative.

14. On balance, the Administration considers it unnecessary to retain the requirement of filing a schedule of property or similar document with the court for application for grant of representation. After all, the authority of the personal representative in handling assets of the deceased comes from the grant of representation.

*Home Affairs Bureau*  
*6 June 2005*

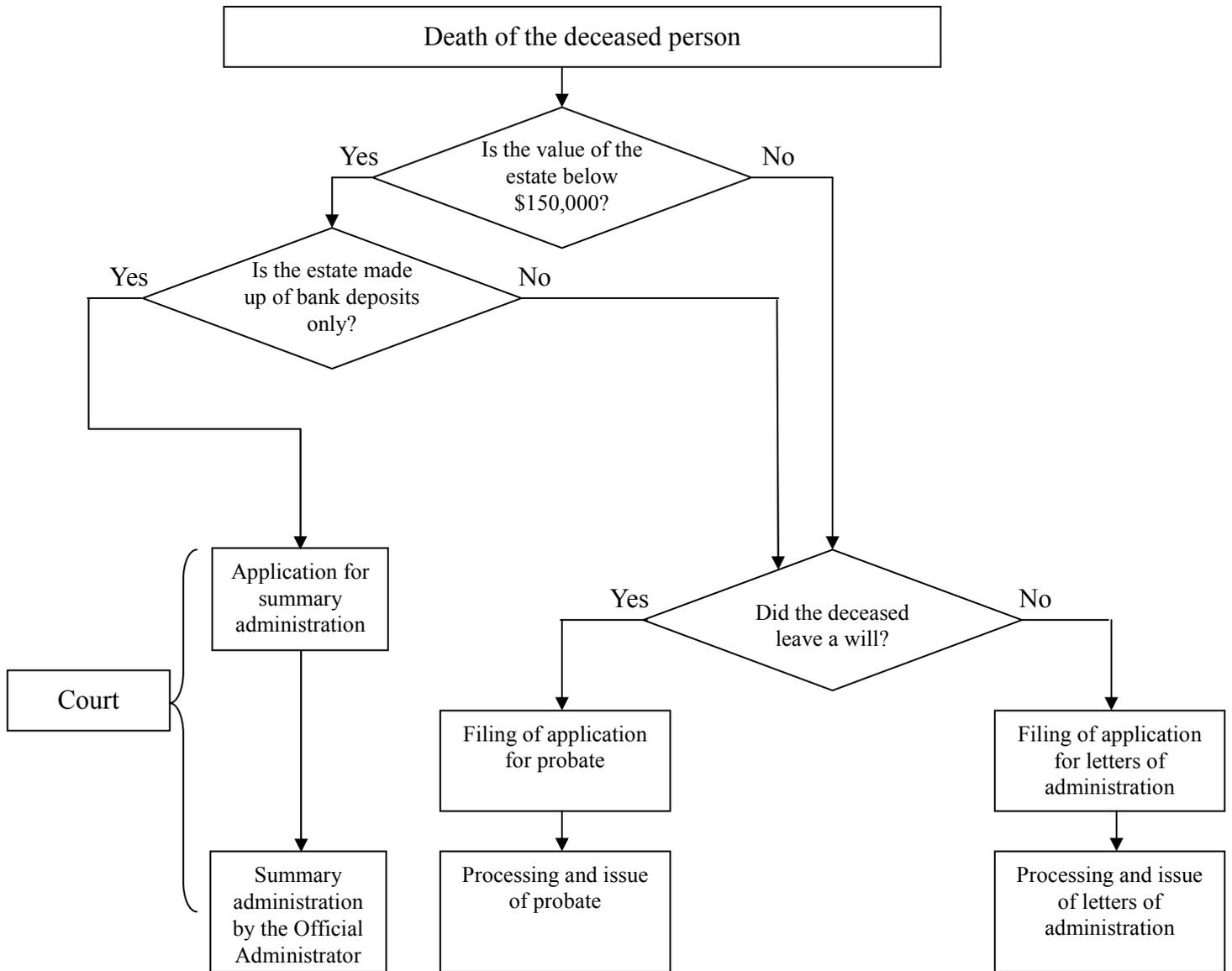
Flowchart I

Procedure for Application for Grant of Representation with Estate Duty



Flowchart II

Procedure for Application for Grant of Representation without Estate Duty



政府總部  
民政事務局

香港灣仔  
軒尼詩道一百三十號  
修頓中心三十一樓



Appendix III

GOVERNMENT SECRETARIAT  
HOME AFFAIRS BUREAU

31ST FLOOR, SOUTHERN CENTRE,  
130 HENNESSY ROAD,  
WAN CHAI,  
HONG KONG.

本局檔號 OUR REF. : HAB/CR/1/19/107 Pt. 2

來函檔號 YOUR REF :

電話 TEL NO. : 2835 1383

圖文傳真 FAXLINE : 2573 8461

10 May 2005

The Law Society of Hong Kong  
(Attn: Ms Joyce Wong  
Director of Practitioners Affairs)  
3/F Wing On Centre  
71 Des Voeux Road Central  
Hong Kong

*Dear Ms Wong,*

### **Revenue (Abolition of Estate Duty) Bill 2005**

I write to seek your comments on the Revenue (Abolition of Estate Duty) Bill 2005 (the Bill). The Bill is to implement the Financial Secretary's proposal in the 2005-06 Budget to abolish estate duty and will be introduced into the Legislative Council on 11 May. A copy of the Bill is enclosed at **Annex A** for reference.

The Administration proposes to amend the Estate Duty Ordinance (Cap. 111) (EDO) to the effect that estates of persons who passed away on or after the enactment date of the Bill will not be subject to estate duty. The EDO will be retained to deal with cases where the deceased pass away before the enactment date.

## **Proposed Changes After Enactment of the Bill**

A number of powers/requirements currently in the EDO would either be transferred or cease with the abolition of estate duty. The following paragraphs outline the proposed changes as set out in the Bill.

### ***(a) Preparation of schedule of property***

Currently, the Commissioner of Inland Revenue (CIR), through her Estate Duty Office, issues a certificate certifying payment of estate duty or exemption together with a schedule of property or a Statement in lieu of Affidavit (SILA) showing all assets and liabilities of the deceased, after assessment and payment of estate duty, if any. Under section 23 of the EDO (*copy at Annex B*), the schedule of property should be attached to applications to the court for grant of representation. The same section provides that any person who deals with any asset not listed in the schedule of property will be subject to penalty.

The Bill no longer requires a schedule of property to be filed with an application for a grant. Neither CIR nor other government authorities would issue the schedule of property, SILA or any similar documents. The time taken to obtain a grant in respect of a deceased person's estate would also be considerably shortened.

### ***(b) Residual powers under the Estate Duty Ordinance***

The following powers are currently exercised by CIR or her officers under the EDO to facilitate duty collection or revenue protection –

- (i) the power to inspect any document or article (section 14(8)). In practice, this translates in many cases into the authorization of representatives to inspect the contents of a deceased person's safe deposit box in the bank; and
- (ii) the power to authorize the release of funds from an estate for burial of the deceased or maintenance of the former dependants of the deceased (section 24(4)).

With the abolition of estate duty, there will no longer be any revenue protection reason to retain such powers.

Nonetheless, the Administration considers that the deceased persons' families or dependants should not be adversely affected because of

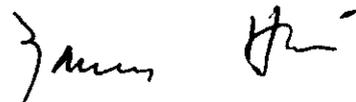
the change. The Administration proposes to empower the Secretary for Home Affairs to discharge specific functions and administratively delegate these to CIR for a period, tentatively the first year following the enactment of the Bill. This will ensure that the facility afforded to the public remains essentially unchanged for a period of time upon the abolition of estate duty. Details of the Administration's specific proposals are set out at **Annex C**.

We would very much appreciate it if the Law Society could benefit us with its views and comments on the proposals regarding the residual powers in the EDO as set out in the Bill by **31 May 2005**. We would also welcome discussions with representatives of your Society. Please give us a call for follow up arrangements.

The Administration would, in the meanwhile, also explore the possibility of having some of the above-mentioned residual functions performed by the private sector. We would write to seek your comments where necessary in due course.

Thank you.

Yours sincerely,



(Mrs Nancy Hui)

for Secretary for Home Affairs

c.c. Secretary for Financial Services and the Treasury (Attn: Ms Erica Ng)  
Judiciary Administrator (Attn: Mr Augustine Cheng)  
Commissioner of Inland Revenue (Attn: Mrs Teresa Chu)

Encls.

## **Revenue (Abolition of Estate Duty) Bill 2005**

### **Transfer of Residual Powers in Estate Duty Ordinance (Cap. 111) to the Secretary for Home Affairs**

The Revenue (Abolition of Estate Duty) Bill 2005 (the Bill) gazetted on 6 May 2005 is to implement the Financial Secretary's proposal to abolish the estate duty. For revenue protection purposes, the Estate Duty Ordinance (Cap. 111) (EDO) vests certain powers in the Commissioner of Inland Revenue (CIR). Some of these powers also afford a facility to the deceased person's family or dependants prior to the grant of representation.

#### **Access to the deceased's safe deposit box**

At present, the personal representative of the estate would apply to the Estate Duty Office for an appointment to take an inventory of the contents of the deceased's safe deposit box in the bank, if there is one. By virtue of section 14(8) of the EDO, CIR is empowered to require the bank to facilitate inspection of the contents of the safe deposit box. In the presence of a representative from the bank and the personal representative of the deceased, two tax inspectors from the Estate Duty Office would take inventory of the safe deposit box.

It is not uncommon for a person to keep his/her will, if there is one, in the safe deposit box. The new section 60C in Clause 9 of the Bill proposes to empower the Secretary for Home Affairs (SHA) to authorize personal representatives to inspect the contents of the deceased's safe deposit box in the bank. The main purpose is to avoid unnecessary complication in the applications for grant of representation.

If a person presents a Certificate for Necessity of Inspection of Bank Deposit Box issued by SHA, and produces sufficient proof of his identity to the bank concerned, the latter shall allow the holder of the certificate to inspect all items contained in the box for ascertaining whether there is any will or similar instrument of the deceased person in the safe deposit box, and whether any document or article specified in the certificate is contained therein. The bank shall also allow the holder to remove any items specified in the Certificate if they are found in the safe deposit box. In the event that the item removed is a will, the bank shall take copy of it.

## **Release of funds for burial expenses and maintenance**

The estate of a deceased is frozen upon his death until after clearance of the estate duty liability, if any, and the grant of probate or letter of administration thereafter. For revenue protection purpose, section 24 of the EDO provides for penalties in case of intermeddling. Currently, section 24(4) of the EDO provides an exception. Under the said section, CIR is empowered to authorize the use of a specified part of an estate for burial expenses and maintenance of former dependants of the deceased. The provision provides in some cases temporary relief for the deceased's family or dependants prior to the grant of representation by the court, which may take 1 – 12 months.

In order to maintain such a facility, section 60B in Clause 9 of the Bill seeks to empower SHA to authorize the release of money in the bank account of a deceased person for burial expenses and maintenance for former dependants of the deceased by issuing a Certificate for Necessity of Release of Money. Presentation of the Certificate and provision of sufficient proof of identity to the bank concerned shall be regarded as a request for withdrawal of the amount of money specified in the Certificate from the account duly made by the deceased person **as if** he were alive, and the bank shall make payment accordingly.