

Revenue (Abolition of Estate Duty) Bill 2005

Matters Arising from the Bills Committee Meeting on 14 July 2005

This paper sets out the Administration's response to Members' comments at the Bills Committee meeting held on 14 July.

Warning Clause in the Form for Schedule of Assets and Liabilities

2. We have clarified with the Judiciary regarding its position on the warning clause in the Form for Schedule of Assets and Liabilities. (A draft Form for the Schedule was previously provided for the Bills Committee's reference vide Revised Annex A to LC Paper No. CB(2)2267/04-05(01).) The Judiciary confirmed that it has no objection to the suggestion of indicating the nature of the penalty in the warning clause in the Form for the Schedule. It proposes to further revise the wording of the warning clause as follows –

“Pursuant to section 60H of the Probate and Administration Ordinance (Cap. 10), all companies, banks, firms and shops and other persons to whom a copy of this Schedule may be presented should not deal with any property of the deceased not set out therein. A person who fails to comply with section 60H commits a criminal offence and is liable to a fine and an additional penalty.”

The above wording should suffice for the purpose of warning members of the public against intermeddling with the estate of the deceased.

Grace Period for Intermeddling Provisions

3. In its letter copied to the Chairman of the Bills Committee dated 14 July, the Law Society of Hong Kong expressed concern that the proposed 6-month time limit within which the intending personal representative (“PR”) is required to apply for a Grant will pose difficulties for the PR in practice. It proposes to lengthen the 6-month time limit to 12 months given that this is the period within which a PR is

presently required under the Estate Duty Ordinance (“EDO”) to deliver accounts to the Commissioner of Inland Revenue so as to avoid an increase in the rate of duty.

4. The 12-month period referred to in the Law Society’s submission is the period within which a PR has to file accounts to the Inland Revenue Department (“IRD”). Section 16(1) of the EDO provides that where any account is delivered after the lapse of 12 months from the death, the estate duty shall be charged at twice the rates unless the accountable person satisfies the Commissioner that there is a reasonable excuse for the delay. Section 16(1A) further extends the 12-month period to 18 months if the grant is obtained from a competent court outside Hong Kong.

5. We appreciate that in some cases it could take some time to collect evidence to establish the PR’s right to administer the estate, especially since the family would have to deal with funeral and related matters in the months immediately following bereavement. (Currently, about 75% of Statement in Lieu of Affidavit (“SILA”) cases, i.e. simple estates with value below \$400,000, and about 50% of the non-SILA cases were filed within 6 months from the date of death of the deceased.) Many would also regard filing a corrective affidavit to IRD less onerous than applying to the court for an amendment of the grant. Hence, the PR would try and ensure that the Schedule of Assets and Liabilities represents a complete list before applying for grant. Consequently, a longer period than that allowed for the filing of estate duty accounts to IRD may be required.

6. We therefore consider the Law Society’s proposal reasonable, and propose to lengthen the exemption period for intermeddling in the new section 60H from 6 months to 12 months for applications for grant of representation under section 24 of the Probate and Administration Ordinance (“PAO”), and 18 months for applications for sealing of foreign grants under section 49 of the PAO.

Exemption from Intermeddling Provisions

7. **Annex A** sets out our position on the Law Society's suggestion to exempt personal representatives or third parties dealing with small estates from the intermeddling provisions.

Jointly Leased Safe Deposit Box

8. Annex A to LC Paper No. CB(2)2157/04-05(01) sets out our proposal regarding jointly leased safe deposit boxes. Under the proposal, the surviving renter will not be authorized to remove any documents other than his/her own documents of no valuable consideration from the safe deposit box until the court has issued a grant of representation in respect of the estate of the deceased renter (unless with the co-operation of the PR in circumstances that comply with the provisions in the new section 60H). This is to safeguard the interests of estate beneficiaries and relevant third parties.

9. We appreciate the Law Society's reservation on this proposal. The Hong Kong Association of Banks ("HKAB") also wishes to learn more about the detailed arrangements regarding the provisions in the proposed section 60C of the Bill and the timeline of implementation before further commenting on the proposal. We will arrange a meeting between the Law Society, HKAB and the Administration to explain the issues. We would inform the Bills Committee on the outcome in due course.

Changes in Application Procedures

10. **Annex B** sets out the changes in the application procedures for grant of representation, summary administration and sealing of a foreign grant following the commencement of the Revenue (Abolition of Estate Duty) Ordinance 2005.

Home Affairs Bureau
20 July 2005

Exemption for the Personal Representatives of Small Estates from Intermeddling

Introduction

At the meeting on 14 July 2005, while discussing LC Paper No. CB(2) 2248/04-05(01) entitled “Intermeddling Provisions”, Members expressed concern that personal representatives (“PR”) would be obliged to apply for grant of representation under the proposed intermeddling provisions in the Probate and Administration Ordinance, Cap. 10 (“PAO”) following the abolition of estate duty. Members were also concerned that this might cause difficulties for the beneficiaries of an estate of little monetary value and increase the caseload of the Probate Registry. The Bills Committee noted that Section 24(3A) of the Estate Duty Ordinance, Cap. 111 (“EDO”) provides exemption from the intermeddling provisions for executors and administrators of small estates, and requested the Administration to consider the inclusion of a similar exemption under the new section 60H under the PAO.

Exemption for Executor or Administrator of Small Estates under the EDO

2. The Intermeddling Provisions under the EDO are for revenue protection purposes. Estate duty is levied on estates of a value of \$7.5 million and above. Instead of requiring the intending PRs of small estates (basically referring to an estate of the deceased not exceeding \$400,000 in value and which does not involve landed property, a business or share of a business, or shares in a company not quoted on The Stock Exchange of Hong Kong Ltd.) to file an Affidavit for the Commissioner, Section 14A(1) of the EDO requires the intending PR in question to file a Statement in lieu of Affidavit (“SILA”), a simple return.

3. In 2004-05, 7 319 SILA applications were filed with the Inland Revenue Department (“IRD”). The figure represents 45.6% of the total applications for estate duty clearance (16 064) filed with the IRD. For

details of the breakdown of applications for estate duty clearance, please refer to the **Appendix**.

Probate and Administration of Estates not exceeding \$150,000

4. Section 15 of the PAO empowers the Registrar of the High Court, in his capacity as the Official Administrator, without any legal formality, to administer an estate that does not exceed \$150,000 in value. In practice, these involve estates that are wholly made up of money only, e.g. bank deposits. The applicant must be a person entitled in priority in terms of his/her beneficial interest in the estate. And the Official Administrator does not require the application to be supported by a Certificate of Exemption issued by the IRD.

5. In respect of other cases involving estates of a value of not exceeding \$150,000, applications for grant of representation must be supported by a Certificate of Exemption issued by the IRD together with the SILA or a Schedule of Property for non-SILA cases.

6. In 2004, the court handled 2 362 applications for summary administration of the estate by the Official Administrator. The figure for applications for grant of representation in respect of an estate of a value not exceeding \$150,000 for the same period is 4 337. For details of the breakdown of applications for summary administration and grant of representation in respect of estates not exceeding the value of \$150,000, please refer to the **Appendix**.

7. As stated above, section 24(3A) of the EDO provides exemption from the intermeddling provisions for executors and administrators of estates that have been exempted under section 14A(1) (i.e., estates not exceeding \$400,000). Strictly speaking, the PR should then proceed to apply for grant, or if the value of the estate does not exceed \$150,000, for summary administration under section 15 of the PAO. However, we understand that in practice some banks would rely on the SILA and release money deposited with them to the PR, without requiring the PR to present a grant of representation. We appreciate Members' concern that without any exemption clause, the proposed intermeddling provisions

might cause difficulties to the PRs and beneficiaries of small estates and might increase the caseload of the Probate Registry. Our proposal is to introduce an exemption clause which is similar to the existing section 24(3A).

Proposal

8. The definition of a small estate under the EDO, i.e. one of a value not exceeding \$400,000, is no small sum to the general public. Its value is set with reference to \$7.5 million, the value that triggers the levying of estate duty. Neither do we consider \$150,000 a reasonable threshold for exemption from the intermeddling provision. We need to strike a balance between the aim of safeguarding the interest of the beneficiaries and that of not imposing unnecessary burden on them. We should also be mindful that the Secretary for Home Affairs (“SHA”), unlike the Commissioner of Inland Revenue, has no authority to ascertain and verify the assets and liabilities of the estate.

9. On balance, we propose to exempt the intending PR of estates of a value not exceeding **\$50,000** and wholly made up of money only, e.g. bank deposits, from the intermeddling provisions. We would move CSAs to this effect.

Proposed Arrangements

10. We propose that the intending PR should file an affidavit with the SHA, declaring that the total value of the estate of the deceased does not exceed **\$50,000** and the estate is wholly made up of money only, e.g. bank deposits, with details. If the affidavit is in order, SHA would issue a notice confirming receipt of the affidavit that was filed pursuant to the exemption clause in the new Ordinance, and that accordingly the PR and any third parties dealing with the estate of the deceased shall be exempted from the intermeddling provisions under the proposed section 60H.

11. Strictly speaking, such exemption does not affect the PR’s need to apply for summary administration before anyone can, as a matter of

civil law, administer the estate. In practice, if the banks are prepared to release money deposited with them to the PR upon production of the confirmation notice issued by SHA (see paragraph 10 above), the PR may not find it necessary to apply for summary administration.

Home Affairs Bureau
20 July 2005

Statistics on local deaths, applications for estate duty clearance & applications with the Probate Registry

Local Deaths

1. Number of local deaths per year¹

Calendar year	2000	2001	2002	2003	2004
Number	33,993	33,305	34,316	36,421	37,322

Estate Duty (ED) Clearance

2. Breakdown of applications filed with the Estate Duty Office

Financial year	2000/01	2001/02	2002/03	2003/04	2004/05
SILA ²	6,444	7,192	7,228	7,597	7,319
Non-SILA	7,436	7,382	7,999	8,057	8,745
Total	13,880	14,574	15,227	15,654	16,064

3. Breakdown of finalized applications (including applications submitted in earlier years)

Financial year	2000/01	2001/02	2002/03	2003/04	2004/05
SILA	6,268	7,053	7,315	7,546	7,397
Non-SILA and Non-dutiable	6,978	7,346	7,732	7,816	8,263
Non-SILA and Dutiable ³	318	302	298	258	271
Total	13,564	14,701	15,345	15,620	15,931

¹ Source: Hong Kong Monthly Digest of Statistics

² SILA cases are those applications for ED clearance where the value of the estate is below \$400,000 and the estate does not consist of landed property, business and unquoted shares.

³ Dutiable cases include those applications for ED clearance where the exemption thresholds are below \$7,500,000, depending on the date of the death of the deceased person.

Applications with the Probate Registry

4. Number of applications for summary administration by the Official Administrator, where the value of the estate is below \$150,000

Calendar year	2000	2001	2002	2003	2004
Number	1,889	1,974	2,179	2,110	2,362

5. Breakdown of applications for grant of probate or letters of administration

Calendar year	2000	2001	2002	2003	2004
Applications where the value of the estate is below \$150,000	*	*	4,041	4,294	4,337
Other applications	*	*	6,148	6,040	6,128
Total	8,924	8,991	10,189	10,334	10,465

* The Probate Registry does not keep the statistics.

6. Total number of applications for sealing of foreign grants

Calendar year	2000	2001	2002	2003	2004
Number	66	73	57	63	65

**Changes in the Application Procedures for
Grant of Representation, Summary Administration and
Sealing of Foreign Grants Following the Commencement of the
Revenue (Abolition of Estate Duty) Ordinance 2005**

This paper sets out the changes in the application procedures for grant of representation following the commencement of the Revenue (Abolition of Estate Duty) Ordinance 2005 (the new Ordinance). In addition to the details of the existing arrangements set out in Appendix II to an earlier paper dated 6 June 2005, LC Paper No. CB(2)1832/04-05(01), we have also included the existing application procedure for summary administration and sealing of foreign grants for Members' reference.

Application procedures in respect of estates of persons who passed away before the commencement of the new Ordinance

2. Flowchart A at **Appendix I** illustrates the application procedures for grant of representation and summary administration in respect of estates of persons who passed away before the commencement of the new Ordinance.

Procedures at the Estate Duty Office

3. At present, after the death of a person, the personal representative ("PR") (either the executor specified in the will or the person entitled in priority to administer the estate) of the estate is required to file an estate duty return with 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.

Value of estate	Documents required to be filed	Documents issued by IRD
Below \$400,000 without landed property, business or unquoted shares	Statement in lieu of Affidavit (“SILA”)	<ul style="list-style-type: none"> • Certificate of Exemption • Authenticated copy of the SILA
Over \$400,000 and below \$7,500,000 or below \$400,000 with landed property, business or unquoted shares	Affidavit for the Commissioner	<ul style="list-style-type: none"> • Certificate of Exemption • Schedule of Property
Over \$7,500,000	Affidavit for the Commissioner	<ul style="list-style-type: none"> • Certificate of Receipt of Estate Duty • Schedule of Property

4. The PR 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 executor or intending 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.

Procedures at the Probate Registry

6. Where the value of the estate does not exceed \$150,000 and the estate is wholly made up of money, no estate duty clearance is required. The person entitled in priority to administer the estate may make direct application to the Official Administrator for summary administration under section 15 of the Probate and Administration Ordinance (Cap. 10) (“PAO”). In respect of other cases, after obtaining estate duty clearance according to the procedures set out in paragraphs 3 to 5 above, the PR may apply to the court for –

- (a) grant of probate or letters of administration under section 24 of the PAO;
- (b) summary administration by the Official Administrator under section 15 of the PAO; or
- (c) sealing of a foreign grant under section 49 of the PAO.

Appendix II tabulates the documents required to be presented to the Probate Registry for making the above applications in respect of the estates of persons who passed away before or on or after the commencement date of the new Ordinance.

Amendment to the Schedule of Property

7. If the PR discovers any inaccuracy or omission in the Schedule of Property before a grant is issued by the court, he should file a Corrective Affidavit with IRD. IRD will amend the Schedule of Property and forward it to the Probate Registry. The Probate Registry will annex the amended Schedule of Property to the grant upon issuance.

8. If the PR discovers any inaccuracy or omission in the Schedule of Property after a grant is issued by the court, he should file a Corrective Affidavit together with the grant with IRD. IRD will amend the Schedule of Property and forward it together with the grant to the Probate Registry. The Probate Registry will amend the grant, with the

amended Schedule of Property annexed to it, and return it to the PR upon receipt of the latter's Affidavit.

Application procedures in respect of estates of persons who passed away on or after the commencement of the new Ordinance

9. Flowchart B at **Appendix I** illustrates the proposed application procedures for grant of representation and summary administration in respect of estates of persons who passed away on or after the commencement of the new Ordinance. It also illustrates an alternative path that a PR may take in respect of an estate the value of which does not exceed \$50,000 and which is wholly made up of money.

Procedures at the Probate Registry

10. Following the commencement of the new Ordinance, the PR may apply to the Probate Registry direct for grant of representation, summary administration or sealing of a foreign grant. There is no longer any requirement of estate duty clearance papers. Instead, the PR will be required under the new law to file with the Probate Registry a verifying affidavit and a Schedule of Assets and Liabilities in duplicate. Same as the contents of the Schedule of Property prepared on the basis of the Affidavit for the Commissioner, the proposed Schedule of Assets and Liabilities would only cover the assets and liabilities (including liabilities contracted outside Hong Kong but charged on Hong Kong assets) of the deceased in Hong Kong as at the date of his/her death. The PR is not required to put a value on the assets stated therein except in respect of the amount of cash.

11. Please refer to **Appendix II** for a list of documents required to be presented to the Probate Registry for making applications in respect of estates of persons who passed away on or after the commencement date of the new Ordinance.

Amendment to the Schedule of Assets and Liabilities

12. If the PR discovers any inaccuracy or omission in the Schedule of Assets and Liabilities, regardless of whether the discrepancy is discovered before or after a grant is issued by the court, he should file with the Probate Registry a Corrective Affidavit and an Additional Schedule of Assets and Liabilities in duplicate, together with the grant in case one has already been issued by the court. The Probate Registry may then amend the grant and annex a duplicate of the Additional Schedule of Assets and Liabilities to the amended grant, in addition to the Schedule of Assets and Liabilities already annexed thereto.

13. Draft Forms of the above-mentioned affidavits and schedules applicable under the new procedures have been provided for the Bills Committee's reference vide LC Paper No. CB(2)2267/04-05(01) and LC Paper No. CB(2)2284/04-05 dated 13 and 14 July respectively.

Small estates

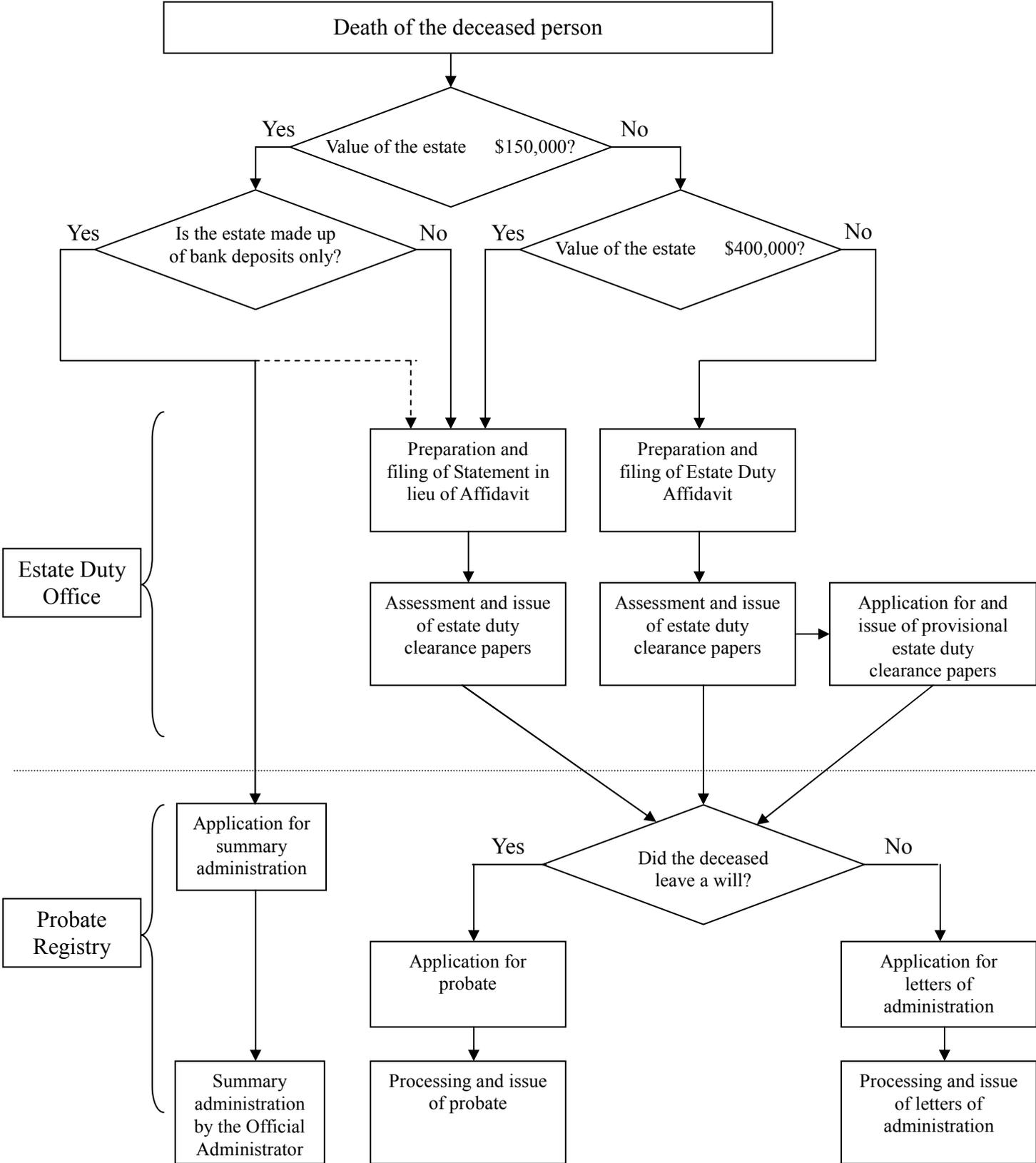
14. We propose that where the total value of the estate of the deceased does not exceed **\$50,000** and where the estate is wholly made up of money only, e.g. bank deposits, the PR may file an affidavit with the Secretary for Home Affairs ("SHA"), declaring that the total value of the estate of the deceased does not exceed **\$50,000**, and that the estate is wholly made up of money only (with the details of the bank accounts). If the affidavit is in order, SHA would issue a notice confirming receipt of the affidavit that was filed pursuant to the exemption clause in the new Ordinance, and that accordingly the PR and any third parties dealing with the said estate of the deceased shall be exempted from the intermeddling provisions under the proposed section 60H.

15. We would move CSAs to effect the proposals regarding the new application procedures in respect of estates of persons who passed away on or after the commencement of the new Ordinance.

Home Affairs Bureau
20 July 2005

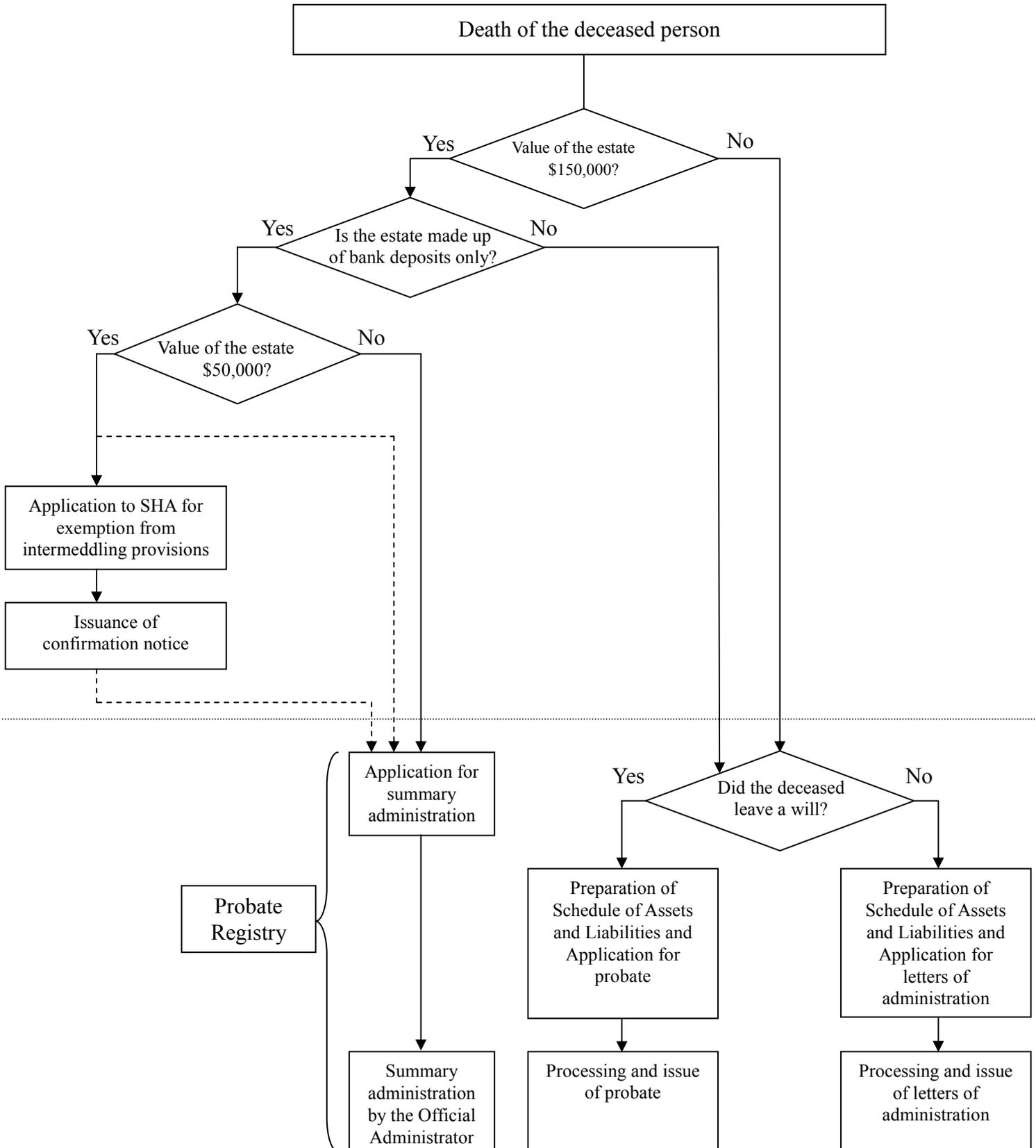
Flowchart A

Procedure for Application for Grant of Representation or Summary Administration where the deceased passed away BEFORE the commencement of the new Ordinance



Flowchart B

Procedure for Application for Grant of Representation or Summary Administration where the deceased passed away ON OR AFTER the commencement of the new Ordinance



**Documents required to be presented to the Probate Registry for making applications
in relation to the administration of estates**

Type of application	Where the deceased passed away	
	before the commencement date of the new Ordinance	on or after the commencement date of the new Ordinance
Grant of probate or letters of administration	<ol style="list-style-type: none"> 1. An application in the form of an affidavit 2. Death certificate of the deceased 3. Will of the deceased, if there is one, plus one copy 4. A certificate or an affidavit of identity that shows the relationship between the deceased and the personal representative 	
	<ol style="list-style-type: none"> 5. 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 IRD 	<ol style="list-style-type: none"> 5. A verifying affidavit with the Schedule of Assets and Liabilities in duplicate

Type of application	Where the deceased passed away	
	before the commencement date of the new Ordinance	on or after the commencement date of the new Ordinance
Summary administration (where the value of the estate does not exceed \$150,000 and the estate is made up of money only)	<ol style="list-style-type: none"> 1. An application in the form of an affidavit 2. Death certificate of the deceased 3. All documents related to the estate, e.g. bank passbooks 4. A certificate or an affidavit of identity that shows the relationship between the deceased and the applicant (if there are other people equally entitled to share in the estate, e.g. children of the deceased, their relationship with the deceased should also be proved) 	
		<ol style="list-style-type: none"> 5. A verifying affidavit with the Schedule of Assets and Liabilities in duplicate

Type of application	Where the deceased passed away	
	before the commencement date of the new Ordinance	on or after the commencement date of the new Ordinance
Sealing of foreign grant	1. An application for sealing the foreign grant 2. The foreign grant and an attested copy of it	
	3. 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	3. A verifying affidavit with the Schedule of Assets and Liabilities in duplicate