

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

### **Practices in Overseas Jurisdictions**

At the request of the Bills Committee at its meeting on 14 July 2005, we attach herewith for Members' reference two tables on the arrangements in relation to application for probate and letters of administration, inspection of safe deposit box of the deceased as well as release of money from the estate of the deceased in Singapore, New Zealand, the United Kingdom and three Australian states (Victoria, South Australia and Queensland).

2. Members may wish to note that the tables were compiled on the basis of information extracted from relevant websites.

*Home Affairs Bureau  
1 September 2005*

**Table 1 – Probate Practices in Singapore, New Zealand and the United Kingdom**

| Singapore   | New Zealand   | United Kingdom   |
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| <b>Estate duty</b>  |   |  |
| In operation  | Abolished on 17 December 1992   | In operation as inheritance tax  |
| <b>Authority</b>  |   |  |
| Subordinate Court/Supreme Court   | Probate Office/Supreme Court  | Probate Service/Supreme Court  |
| <b>Relevant laws</b>  |   |  |
| 1. Probate and Administration Act, Cap 251 [Cap 251]<br>2. Estate Duty Act, Cap 96 [Cap 96]<br>3. Public Trustee Act, Cap 260 [Cap 260]<br>4. Rules of Court, Order 71 Non-Contentious Probate Proceedings [Rule] | 1. Administration Act 1969 [Act]<br>2. High Court Rules, Part 8 – Probate and administration [Rule] | 1. Administration of Estates Act 1925 [1925 Act]<br>2. Stamp Act 1815, section 37<br>3. Administration of Estates (Small Payments) Act 1965 [1965 Act]<br>4. Supreme Court Act 1981 [1981 Act]<br>5. The Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004 [Regulation]<br>6. Non-Contentious Probate Rules 1987 [Rule] |

| <b>Application procedures for probate or letters of administration</b>   |  |   |
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| <p>1. To apply for probate or letters of administration, the following documents are required –</p> <ul style="list-style-type: none"> <li>(a) the petition under Form 168;</li> <li>(b) the administration oath by the petitioner;</li> <li>(c) death certificate;</li> <li>(d) the will, if applicable; and</li> <li>(e) caveat search certificate – a certificate setting out the result of caveat search in a specified Form 168A.<br/>[Rule 5]</li> </ul> | <p>1. Every application for probate of the will or letters of administration of the estate of any deceased person shall be made by ex parte application. The facts necessary to prove the validity of any will or codicil in respect of which probate is sought and the entitlement of the applicant to the grant of administration shall be proved by affidavit in form 51 or form 52 or form 53 or form 54 or form 55 or form 56 or such other form as may be appropriate. [Rules 632 and 634]</p> | <p>1. Any application for probate or letters of administration must be supported by the following documents –</p> <ul style="list-style-type: none"> <li>(a) form PA1 – probate application form;</li> <li>(b) either the return of estate information form IHT205 for excepted estates or form D18 – a probate summary for non-excepted estates (The personal representative of a non-excepted estate needs to complete and file a full IR Affidavit form IHT200 with the Inland Revenue Department (IRD));</li> <li>(c) original will and codicil(s); and</li> <li>(d) death certificate.</li> </ul> <p>[Excepted estates mean estates below the inheritance tax exemption threshold (currently £275,000) and meet certain criteria – section 4 of the Regulation.]</p> |
| <p>2. The reason for any late application after 6 months from death must be set out in the petition. [Rule 5(6)]</p>   | <p>2. No schedule of assets and liabilities need to be filed in support of the application.</p>  | <p>2. In relation to excepted estates, the Probate Registry will interview and ask the applicant to swear an oath which the Probate Registry has prepared on the basis of the information in the application form. The</p>  |

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|  |  | grant will then be posted to the applicant and the form IHT205 passed to IRD within 7 days of the issue of grant – section 7(3) of the Regulation.   |
| 3. If the Registrar is satisfied that all the documents are in order, the petition for probate or letters of administration will be approved.  |  | 3. For non-excepted estates, the Probate Registry returns the form D18 with section A completed to the applicant after the interview and his/her swearing of the oath. The applicant should then send form IHT200, the supplementary pages, the form D18 and his payment of inheritance tax, if any, to IRD. If the applicant pays the right amount of tax, IRD will endorse the form D18 and return it direct to the Probate Registry, who will then post the grant to the applicant. |
| 4. After the Registrar approves the petition, the petitioner should settle estate duty matters as follows –<br>(a) If the estate is dutiable or non-dutiable but involves gift inter vivos or business interests or business premises or residential properties exceeding S\$9,000,000 in aggregate, or other movable property |  |  |

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| <p>exceeding S\$600,000 in aggregate, he should file an estate duty return (Form ED) to the Estate Duty Department. The Commissioner of Estate Duties will, after assessment and receipt of the duty, issue a certificate and schedule of property to the Court. Such schedule of property will be annexed to the grant of representation.</p> <p>(b) For other non-dutiable estate, the petitioner should file forms SC direct to the Subordinate Court for the extraction of the grant. And the forms SC4, 5, 6, 7 and 8, as may be appropriate, will be annexed to the grant.</p> |  |  |
| <p>5. No grant of representation shall be issued by any court until the Commissioner of Estate Duties has certified in a certificate to be filed in court that the estate duty return has been delivered and the estate duty payable in respect of the estate has been paid or that he has allowed payment to be postponed under section 42 of Cap 96. [section 41(1) of Cap 96]</p>   |  |  |

| <b>Release of funds without the production of a grant of probate or letters of administration</b>  |   |  |
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| <p>1. The selling or transfer of shares in the deceased's securities account with the Central Depository (Pte) Limited or CPF Investment Account under the Central Provident Fund Act, Cap 36, where the aggregate market value of the shares in the account, as at the date of his death, does not exceed S\$50,000, are exempted from the intermeddling provision. [sections 43(5) &amp; 44 of Cap 96]</p> | <p>1. Where any person has died and at the time of his death the person was a registered holder of Government stock of a nominal value not exceeding NZD11,000 or of local authorities stock of a nominal value not exceeding NZD11,000 or of both, the registrar of such stock may, in its discretion and without requiring any person to obtain administration, register as holder of the stock any person who proves to its satisfaction:</p> <p>(a) that the registered holder has died and administration of his estate has not been obtained in New Zealand; and</p> <p>(b) that he is either beneficially entitled to the stock under the will or on the intestacy of the deceased stockholder; or entitled to obtain in New Zealand administration of the estate of the deceased stockholder.</p> <p>[section 64(1) of the Act]</p> | <p>If the total assets in the estate are under £5,000, the special procedures under the 1965 Act can be used. This means that an application for a Grant of Probate or of a Grant of Letters of Administration need not be obtained in order to, for instance, encash (or transfer) the Building Society account or the Post Office Savings Bank account. An organization agreeing to adopt the 1965 Act procedures usually requires a statutory declaration. Each organization has its own requirements and forms under the 1965 Act.</p> |
| <p>2. Where any person dies leaving property in Singapore not exceeding S\$50,000 in value (without deduction for debts), the Public Trustee, after satisfying himself that no petition</p>  | <p>2. Where the registered holder of shares or debentures dies, whether before or after the commencement of this Act, and the value of the shares or debentures does not exceed NZD</p>   |  |

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| <p>for letters of administration is pending, may, if he thinks fit, by writing signed by him declare that he undertakes to administer such property [section 62 of Cap 251]. But the Public Trustee will be unable to administer in estates where -</p> <ul style="list-style-type: none"> <li>(a) there are conflicting claims to the estate or dispute among beneficiaries;</li> <li>(b) the estate has claims from creditors;</li> <li>(c) the deceased has shares or other interest in unlisted companies;</li> <li>(d) the deceased was a partner, sole proprietor or had interests in firms or other business;</li> <li>(e) the deceased was the sole lessee (owner) of a HDB flat and there are minor interests; and</li> <li>(f) there are pending law suits which involve the deceased.</li> </ul> | <p>11,000, the directors of a company to which this section applies may, without requiring the production of probate or letters of administration, register, as the holder of the shares or debentures, any person who proves to their satisfaction —</p> <ul style="list-style-type: none"> <li>(a) that he or she is entitled to be so registered under the will or intestacy of the deceased holder; or</li> <li>(b) that he or she is entitled to obtain probate of the will of the deceased holder or letters of administration of that person's estate; or</li> <li>(c) that in neither case has any grant of probate or letters of administration been made or resealed in New Zealand in respect of the deceased holder.</li> </ul> <p>[section 64A of the Act]</p> |  |
| <p>3. Any person who in the opinion of the Public Trustee would be entitled to apply to the court for an order for the administration of an estate, the gross capital value whereof is proved to the satisfaction of the Public Trustee to be less than S\$5,000, may apply to the Public Trustee to administer the estate, and where any such application is made, and it appears to the Public</p>  | <p>3. In the event of the death of any person to whom any sum of money not exceeding NZD 11,000 is payable by the trustees of a superannuation fund, a society, a bank, an employer of the deceased person at or within 6 months before the date of his death, a local authority, a trustee corporation, or the Crown respectively, it shall be lawful for the trustees of</p>  |  |

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| <p>Trustee that the persons beneficially entitled are persons of small means, the Public Trustee shall administer the estate, unless he sees good reason for refusing to do so [section 6 of Cap 260].</p> | <p>the superannuation fund, society, bank, employer, local authority, trustee corporation, or the Crown, as the case may be, without requiring administration of the estate of that deceased person to be obtained in New Zealand, and on receiving such evidence as it considers satisfactory that the person has died and that administration of his estate has not been obtained in New Zealand, to pay the sum or any part thereof to any of the following persons:</p> <ul style="list-style-type: none"> <li>(a) the widow, widower, [surviving civil union partner,] or children of the deceased person;</li> <li>(aa) a surviving de facto partner of the deceased person;</li> <li>(b) the persons beneficially entitled to the estate of the deceased person under the will or on the intestacy of that person;</li> <li>(c) any person appearing to be entitled to obtain administration of the estate of the deceased person in New Zealand;</li> <li>(d) any person related by blood or marriage [or civil union] to the deceased person who undertakes to maintain the children of that person who are minors or any of them; and</li> <li>(e) any person who [has and is exercising the role of providing day-to-day care for] any of the</li> </ul> |  |
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|  | <p>children of the deceased person who are minors;</p> <p>provided that no payment shall be made to any person unless he applies for or consents to receive that payment. [section 65(2) of the Act]</p>  |  |
|  | <p>4. It shall be lawful for the trustees of a superannuation fund, a society, a bank, an employer of the deceased person at or within 6 months before the date of his death, a local authority, a trustee corporation, or the Crown, respectively, out of the money to which section 65(2) of the Act applies, to pay the funeral expenses of a deceased person, or to refund the amount of those expenses to any person who has paid them, in any case where no person has applied for or consented to receive payment of the money under subsection (2) of this section.</p> <p>[section 65(3) of the Act]</p> |  |
|  | <p>5. Where money is payable by a bank in the event of the death of any person and comprises money in a separate investment account under the National Savings Act 1940 and also other money, the provisions of subsections (2) and (3) of this section (see paragraphs 3 and 4 above) shall</p>  |  |

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|  | <p>apply separately to the amount of money in the investment account and to the amount of other money as if each such amount was the only amount payable by the bank in the event of the death of that person.</p> <p>[section 65(4) of the Act]</p>   |  |
|  | <p>6. Where, by virtue of a policy or policies of insurance within the meaning of the Life Insurance Act 1908, a sum of money not exceeding NZD11,000 (including profits but not including any money that may be payable to or deductible by the company liable under the policy or policies) has become payable to the administrator of a deceased person, it shall be lawful for the company, without requiring administration of the estate of the deceased person to be obtained in New Zealand, and upon receiving such evidence as it considers satisfactory that the person has died and that administration of his estate has not been obtained in New Zealand, to make payment of the sum or any part thereof to any of the persons to whom payment may be made under paragraphs (a) to (e) of section 65(2) of the Act (see paragraph 3 above). [section 65(5) of the Act]</p> |  |

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|  | <p>7. Every person to whom money is paid pursuant to this section shall be liable to apply the money in due course of administration, and the maker of the payment may, if he thinks fit, without being liable to see to the application of the money, require any such person to give sufficient undertakings, by bond or otherwise, that the money so paid will be so applied.<br/>[section 65(7) of the Act]</p> |  |
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| <b>Safe deposit box</b>  |  |  |
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| <p>1. If the value of contents in the box with the bank as at the date of death of the deceased is S\$10,000 or below, the beneficiaries of the estate can claim the items kept in the boxes without estate duty clearance subject to the bank's or financial institution's policy and conditions. But before then, they should give the bank or financial institution a declaration of the value of the contents to the best of their knowledge.</p>  | <p>No statutory provision or administrative arrangement.</p> | <p>No statutory provision or administrative arrangement.</p> |
| <p>2. If the estate had assets other than the contents of the safe deposit box and the key deposit, or the total value of contents of the box exceeds S\$10,000 with the bank, the executor or administrator or accountable person should take an inventory of the contents of each box in the presence of a bank officer and his lawyer or representative of the law firm (if any), and declare the market values of the contents as at the date of death and other assets in appropriate forms. The executor or administrator may not claim the items kept in the box without estate duty clearance.</p> |  |  |

| <b>Resealing of foreign grant</b>   |  |   |
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| <p>Resealing of a foreign grant could be applied for under section 47 of Cap 251 by petition under Form 168, supported by a separate affidavit verifying petition (form 29 of Appendix B) stating that the petitioner deposes to the truth of the contents of the petition.</p> | <p>Application for resealing of a foreign grant is governed by section 71 of the Act. No affidavit is required. Probate or letters of administration granted in any place out of New Zealand shall not be received in evidence of the title of any person to any estate in New Zealand until the probate or letters of administration is resealed in New Zealand.</p> <p>[section 73 of the Act]</p> | <p>Resealing of a foreign grant is provided by Rule 39. Such application need not be supported by an oath. [Rule 8]</p> |

| <b>Penal provision for intermeddling offence</b>   |   |  |
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| <p>1. Except as provided under section 43 (5) of Cap 96, if any person takes possession of or in any way administers any part of an estate of a deceased person in respect of which estate duty is leviable or of the income of any part of that estate without obtaining probate or letters of administration of that estate within 6 months after the death of the deceased or within 2 months after the termination of any action or proceeding respecting the will or the right to letters of administration, if there is any such action or proceeding which has not ended within 4 months after such death, he shall forfeit to the Government the sum of S\$1,000 and shall also be liable to pay to the Government double the amount of duty leviable. [section 44(2) of Cap 96]</p> | <p>No, the intermeddler will only be charged as executor in his own wrong. [section 52 of the Act]</p> <p>No time limit has been set for the filing of any application for grant.</p> | <p>If any person takes possession of and in any manner administers any part of the estate of any deceased person without obtaining probate or letters of administration within six calendar months after the death of the deceased or within two calendar months after the termination of any suit or dispute respecting the will or the right to letters of administration (which has not been ended within four calendar months after the death of the deceased), every person so offending will be subject to a penalty of £100.<br/>[the amended section 37 of the 1815 Act]</p> |
| <p>2. Any person who, without reasonable excuse to be allowed by the Commissioner of Estate Duties, deals with shares standing in the name of a deceased person or pays any sum on policy of life assurance, not set out in the schedule of property, is liable to pay such sum not</p>  |   |  |

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| exceeding S\$500 as the Commissioner may determine. [section 43(3) of Cap 96] |  |  |
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| <b>Schedule of property to be annexed to the grant</b>   |   |  |
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| <p>1. A schedule of the property of a deceased person in respect of which estate duty has been paid in such form as may be prescribed or a certificate that payment of estate duty has been postponed or will be made by installments authenticated by the signature of the Commissioner shall be annexed to the grant of representation. Such schedule shall contain a description of all the property passing on the death of a deceased person whether estate duty is leviable on such property or not. [section 41(2) of Cap 96]</p> | <p>The applicant for grant is not required to file any inventory of assets and liabilities.</p> | <p>No statutory requirement has been identified.</p> |
| <p>2. If, after the issue of a grant of representation in respect of a deceased person, it is discovered that any property passing or deemed to pass on his death has not been included in that schedule, then upon payment of all estate duty, if any, in respect of such property the Commissioner shall cause particulars of the property to be entered in that schedule or shall issue a supplementary schedule. [section 41(3) of Cap 96]</p>   |   |  |



**Table 2 – Probate Practices in Victoria, South Australia and Queensland in Australia**

| <b>Victoria</b>   | <b>South Australia</b>   | <b>Queensland</b>  |
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| <b>Estate duty</b>  |  |  |
| Abolished on 1 January 1984   | Abolished on 1 January 1980  | Abolished on 1 January 1977  |
| <b>Authority</b>  |  |  |
| Probate Office/Supreme Court  | Probate Office/Supreme Court   | Probate Office/Supreme Court   |
| <b>Relevant laws</b>  |  |  |
| 1. Administration and Probate Act 1958 [Act]<br>2. Supreme Court (Administration and Probate) Rules 1994 [Rule] | 1. Administration and Probate Act 1919 [Act]<br>2. Probate Rules 2004 [Rule] | 1. Succession Act 1981 [1981 Act]<br>2. Public Trustee Act 1978 [1978 Act]<br>3. Uniform Civil Procedures Rules 1909 – Cap 15 [Rule] |

| <b>Application procedures for probate or letters of administration</b>  |  |  |
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| <p>1. The applicant or his solicitor must advertise, not less than 14 days before the date of his application, in a local daily newspaper, his intention to apply for a grant of probate or letters of administration. [Rule 2.03]</p>  | <p>1. The applicant need not publish a notice of his intention to apply for grant.</p>   | <p>1. The applicant must publish, not less than 14 days before the date of his application, in a local daily newspaper and Queensland Law Reporter, a notice of his intention to apply for a grant of probate or letters of administration, and give, not less than 7 days before filing the application, the public trustee a copy of the notice. [Rules 598 and 599]</p> |
| <p>2. The applicant is required to file an originating motion together with the following documents –</p> <ul style="list-style-type: none"> <li>(a) an affidavit;</li> <li>(b) the will, if applicable;</li> <li>(c) death certificate;</li> <li>(d) an inventory of all known assets in Victoria and elsewhere with gross value, and a statement of known liabilities, as at the date of death [Rules 2.02 and 2.04]; and</li> <li>(e) an affidavit by him or his solicitor or the authorized agent of his solicitor of publication of notice and searches – will, caveat and previous application for grant – with the advertisement as an exhibit. [Rule 2.05]</li> </ul> | <p>2. The following documentation is required for a grant of probate or administration –</p> <ul style="list-style-type: none"> <li>(a) draft probate/letters of administration (with will annexed);</li> <li>(b) executors/administrators’ oath; and</li> <li>(c) affidavits of assets and liabilities together with the statement marked “A” – a statement of assets and liabilities of the deceased wherever situated.</li> </ul> <p>[Rule 11.01]</p> | <p>2. The application for grant must be supported by an affidavit together with an affidavit of publication and service. No inventory of assets and liabilities is required. [Rules 602 and 609]. But the Court will not issue a grant on intestacy within 30 days after death. [Rule 612]</p>   |

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| <p>3. Any late application for grant after 3 years from death must be explained by affidavit. [Rule 6.02]</p> | <p>3. Every applicant must, for the purposes of section 121A (1) of the Act, lodge with the application an affidavit, in the Form No 68, disclosing the assets and liabilities of the deceased [only local assets and liabilities for deceased persons domiciled outside Australia – if it is uncertain whether an asset is situated, or a liability arose, in Australia or elsewhere, they will be taken as local asset or liability – section 121A(7a) of the Act] at the date of the deceased’s death which are known to the applicant at the time of making the application. [Rule 8.01]</p> |  |
|   | <p>4. An executor, administrator or trustee of the estate of a deceased person must, pursuant to section 121A(2) of the Act, lodge at the Registry an affidavit in the Form No 69, disclosing the assets and liabilities not previously disclosed under Rule 8.01 which come to his or her knowledge while acting in that capacity, provided that where there are liabilities only which have not been previously disclosed, then such disclosure may be made by letter to the Registrar. [Rule 8.02]</p>  |  |

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|  | <p>5. If the affidavit lodged for the purposes of Rule 8.01 or Rule 8.02 is inaccurate or incomplete, unless the Registrar otherwise directs, a further affidavit must be lodged with the Registrar correcting the inaccuracy or supplying the deficiency.</p> <p>[Rule 8.03]</p> |  |
|  | <p>6. Except with the leave of the Court or the Registrar, no grant shall be issued within 28 days from the death of the deceased. [Rule 10.03]</p>   |  |

**Release of funds without the production of a grant of probate or letters of administration**

1. The employer of the deceased employee may release any money or personal property holding on account of the deceased employee not exceeding in the aggregate of AUD12,500, without requiring the production of probate or letters of administration, to his surviving partner (spouse or domestic partner) or his child or any other person appearing to be entitled to his estate, subject to the filing of a statutory declaration that the net value of his estate will not exceed AUD25,000. [section 32 of the Act]

1. The Treasurer may, in his discretion, direct that any sum not exceeding AUD2,000 owed to a deceased Government employee by the Government or held by a Government hospital to a patient, immediately before death, be paid to the surviving spouse of the deceased or to any other person to whom he deems it just to pay it, or that such sum shall be divided among any of such persons. But the Treasurer may refuse to give such direction unless such indemnities or undertakings as he thinks necessary are given. [sections 71(1), (2) and (3) of the Act]

1. Where any person dies domiciled in Queensland or leaving property situated in Queensland, and the gross value of the person's property in Queensland which would pass to the person's personal representative is estimated by the public trustee at the time of the election not to exceed AUD150,000, and there is no grant of administration in force in Queensland, the public trustee may, in all cases where the public trustee is entitled to obtain an order to administer, in lieu thereof file in the court an election, in the form approved by the public trustee, to administer the estate with the will or on intestacy as may be the case. [section 30(1) of 1978 Act] But if, after filing an election to administer, the gross value of the property to be administered is found to exceed the sum of AUD180,000, the public trustee shall, as soon as practicable thereafter, file in the court a memorandum under the public trustee's hand stating the fact, and proceed in the ordinary manner to obtain an order to administer. [section 33(2) of 1978 Act]

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| <p>2. If a person dies leaving property not exceeding AUD25,000 or (in cases where the only person or persons entitled to take the property of the deceased person under the will or to share in the distribution of the surplus of the estate of such person is or are the children only or the partner only or the partner and children only or the sole surviving partner of such person) not exceeding AUD 50,000 in value, State Trustees Ltd. may elect under section 11A of the Trustees Companies Act 1984 to administer the estate subject to the publication in a local daily newspaper of a notice of intention to administer the estate. And State Trustees is to be taken to have been granted probate of the will or administration of the estate at the expiry of 14 days after the publication of the notice.</p> | <p>2. The manager of any authorized deposit-taking institution (ADI) may close and release the balance on any account held by a deceased customer or depositor not exceeding AUD2,000 to his widow or her husband without any proof other than the death of such customer or depositor and the identity of his widow or her husband, provided that no probate or letters of administration has been produced to him within 3 months after death. [section 72(1) of the Act]</p> | <p>2. Where the value of the assets of the estate of a deceased person coming into the hands or under the control of the public trustee in respect of which estate the public trustee would be entitled to file an election does not, apart from the value of any interest in land, exceed AUD75,000, the public trustee may apply such assets in or towards the payment of any claim of which the public trustee has knowledge or to the persons entitled thereto, without filing an election to administer and it shall not be necessary for the public trustee to cause advertisements to be published calling on creditors to prove their debts. [section 35 of 1978 Act]</p> |
| <p>3. A trustee company may elect to administer the estate of a deceased person the gross value of which is estimated not to exceed AUD50,000, provided that –</p> <ul style="list-style-type: none"> <li>(a) no grant has been made to any person;</li> <li>(b) the trustee company would be entitled to</li> </ul>  |   |   |

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| <p>the grant;</p> <p>(c) the election is filed after the expiry of 14 days after the publication in a local daily newspaper of a notice of intention to file the election; and</p> <p>(d) an inventory of the estate is attached.</p> <p>The filing of an election is to be taken to be the grant of probate or administration to the trustee company. But if after filing an election, the gross value of the estate is found to exceed AUD60,000, the trustee company must apply for a grant. [section 11A of the Trustee Companies Act 1984].</p> |  |  |
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| <b>Safe deposit box</b>   |  |  |
| No statutory provision or administrative arrangement.   | No statutory provision or administrative arrangement.  | No statutory provision or administrative arrangement.  |
| <b>Resealing of foreign grant</b>   |  |  |
| <p>When probate of the will or letters of administration of the estate of any deceased person who has left any property whether real or personal within Victoria has been granted by any court of competent jurisdiction in the UK or in any of the Australasian States or any other countries as specified by the Governor in Council, the executor or administrator may, either personally or by a legal practitioner on his behalf or by his lawful attorney, produce the same to the registrar and file a verified copy thereof, accompanied by an affidavit stating that an advertisement of the notice of intention to apply for seal of the Court was duly published in one of the local daily newspapers at least 14 days before the making of the affidavit. [sections 81 and 83 of the Act]</p> | <p>Application for the re-sealing of a grant under section 17 of the Act may be made either by the executor or administrator or his lawful attorney or his authorized practitioner. The application must be accompanied by an oath of the applicant together with an Affidavit of assets and liabilities and the Statement “A” which is a statement of assets and liabilities. [Rules 50.01, 50.02 and 8.01]</p> | <p>The executor or administrator, or his lawful attorney, may make an application, supported by an affidavit, for the resealing of a foreign grant. No notice of intention to apply for reseal needs to be made unless there are debts owing at the date of the application in Queensland. [Rules 616 and 617]</p> |



| <b>Penal provision for intermeddling offence</b>  |   |  |
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| <p>If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives or holds the estate or any part of the estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the estate received or coming to his hands, or the debt or liability released, after deducting any payment made by him which might properly be made by a personal representative. [section 33(1) of the Act]</p> | <p>1. Any person dealing with any asset of the estate of a deceased person must satisfy himself by examination of the Registrar’s certificate, or on the basis of some other reliable evidence, that the asset has in fact been so disclosed in accordance with section 121A of the Act. Any person who fails to do so is guilty of a summary offence and liable to a penalty not exceeding AUD2,000. [section 44 of the Act]</p> | <p>1. Where any person, not being a person to whom a grant is made, obtains, receives or holds the estate or any part of the estate of a deceased person otherwise than for full and valuable consideration, or effects the release of any debt or liability due to the estate of the deceased, the person shall be charged as executor in the person’s own wrong to the extent of the estate received or coming into the person’s hands, or the debt or liability released, after deducting any payment made by the person which might properly be made by a personal representative to whom a grant is made. [section 54(1) of the 1981 Act]</p> |
|   | <p>2. An executor, administrator or trustee of an estate, who disposes of an asset of the estate in respect of which disclosure has not been made to the Court, is guilty of a summary offence and liable to a penalty not exceeding AUD2,000. [section 121A(5) of the Act]</p>   | <p>2. An executor who has intermeddled in the administration of the estate before applying for a grant of probate may renounce his or her executorship notwithstanding his or her intermeddling. [section 54(2) of the 1981 Act]</p>   |
|   | <p>3. The Governor may stay or compound proceedings for any penalty, and may reward</p>   |  |

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|  | any person who informs of any offence against the Act or assists in the recovery of any penalty. [section 129 of the Act] |  |
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| <b>Schedule of property to be annexed to the grant</b> |  |                          |
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| No statutory requirement                               | <p>1. No statutory requirement, but on the filing of an affidavit under Rule 8.01 or Rule 8.02 by the executor, administrator or trustee of the estate of a deceased person, the Registrar shall issue to such executor, administrator or trustee as evidence of disclosure (for the purposes of section 44(1) of the Act), a photocopy of the statement of assets and liabilities annexed to such affidavit with the Registrar's certificate attached, certifying the same to be a true copy of the statement of assets and liabilities disclosed to the Court pursuant to section 121a of the Act. [Rule 9.01]</p> | No statutory requirement |
|  | <p>2. In addition to the Certificate issued under Rule 9.01 the Registrar may on the lodgment of a certificate in the Form No. 70, by an executor, administrator or trustee of the estate of a deceased person, describing an asset (or assets) which has (or have) been disclosed to the Court in compliance with section 121a of the Act certify, for the purposes of section 44(1) of the Act, that such asset has been disclosed. [Rule 9.02]</p>  |                          |