



THE  
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OF HONG KONG  
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Our Ref  
Your Ref  
Direct Line

Probate  
HAB/CR 1/19/107 Pt.6

BY FAX (25738461) AND BY HAND

14 July 2005

Mrs. Nancy Hui  
Government Secretariat  
Home Affairs Bureau  
31/F., Southorn Centre,  
130 Hennessy Road,  
Wanchai, Hong Kong.

Dear Mrs. Hui,

**REVENUE (ABOLITION OF ESTATE DUTY) BILL 2005**

Thank you for your letter dated 5 July 2005.

The Society's Probate Committee has considered the Administration's recent papers on:

- (1) Schedule of Property and the Intermeddling Provisions [5 July 2005];
- (2) Arrangements for the Inspection and Inventory-taking of a Safe Deposit Box ("SDB") with Joint Renters [July 2005] and;
- (3) Intermeddling Provision [11 July 2005]

***Schedule of the Deceased's Assets and Liabilities ("Schedule") and other Specified Forms***

The Committee welcomes the Administration's proposal to introduce statutory provisions to require an application for Grant of Representation to be supported by a Schedule verified by affidavit, and for the Schedule to be annexed to the Grant. Such proposals, were indeed made in response to the Society concerns.

You may like to know that we have been in diligent contact with the Judiciary on the new specified forms to be introduced, which will include the following:

- the Schedule;
- Additional Schedule;
- Affidavit verifying the Schedule; and
- Corrective Affidavits.

| President     | Vice-Presidents                                     | Council Members                                                               | Secretary General                                                       |                                                                             |                                                                         |                 |
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| Peter C.L. Lo | Lester G. Huang<br>Wong Kwai Huen<br>Junius K.Y. Ho | Michael J. Lintern-Smith<br>Ip Shing Hing<br>Billy W.Y. Ma<br>Sylvia W.Y. Siu | Cecilia K.W. Wong<br>Denis G. Brock<br>Alex T.H. Lai<br>Kenneth S.Y. Ng | Andrew Jeffries<br>Stephen W.S. Hung<br>Dieter L.T. Yih<br>Ambrose S.K. Lam | Joseph C.W. Li<br>Amirali B. Nasir<br>Melissa K. Pang<br>Thomas S.T. So | Patrick R. Moss |

I attach for your information copies of our recent correspondence with the Judiciary:

- Doc. 1** - my email dated 12 July 2005 to the Registrar of the High Court setting out the Committee's comments on the proposed forms
- Doc. 2** - email dated 13 July 2005 from Ms. Vega Wong of the Judiciary attaching the latest set of forms

The Judiciary has, in response to our comments, included a standard interpretation clause in the forms of "*Affidavit*" and "*Corrective Affidavit*" and delete item A11 from the Schedule. We understand that the Judiciary does not agree that the warning clause should make reference to the penalty for non-compliance, for reason that this may necessitate amendments to the specified forms each time the penalty will be adjusted in future.

What remains outstanding, so far as the specified forms are concerned, is our proposal to limit Item A3 of the Schedule to SDBs opened "in the sole name of the deceased". We understand the Judiciary would like to reserve its position until the final policy on joint SDBs is agreed. The reasons for our proposal are set out in my attached email to the Judiciary and you will see later in this letter the Committee's proposals regarding the arrangements for joint SDB.

***Intermeddling Provision***

The Committee noted the Administration's proposal to introduce, for estates of deceased persons who died on or after the commencement of the new Ordinance, provisions similar to S. 23 and 24 of the EDO. These, as proposed, will prohibit intermeddling by:

- any party with any part or any part of the income of the estate not shown in the Schedule verified by affidavit and annexed to the grant; and
- any person (other than the executor or the person entitled in priority to the administration of the estate) without filing an application for grant supported by a Schedule verified by affidavit.

In the case of an intending personal representative ("PR"), intermeddling will take place if he/she deals with any part of the estate or the income thereof:

- within 6 months from the death of the deceased and fails within the said period to file an application for grant supported by a Schedule verified by affidavit; or
- after the expiration of the said 6 months without first filing an application for grant supported by a Schedule verified by affidavit.



Whilst the exact forms of the intermeddling provisions are yet to be seen, on which the Committee reserves its right to make comments, the Committee has the following concerns on the present proposals:

- (1) the Committee is concerned that the proposed 6-month time limit within which the intending 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-month given that this is the period within which a PR is presently required under the Estate Duty Ordinance to deliver accounts to the Commissioner of Inland Revenue so as to avoid an increase in the rate of duty.
- (2) the Committee notes that at present, for small estates involving only a bank account with a small sum, say, HK\$10,000, some banks are prepared to release the balance to the beneficiary on production of (a) estate clearance paper; (b) proof of the beneficiary's relationship with the deceased; and (c) an indemnity given by the beneficiary. However, the banks will not be able to do so in future with the new intermeddling provisions. The Committee proposes that the Secretary for Home Affairs ("SHA") should be empowered to grant exemption to the intermeddling provision in appropriate circumstances.

***Arrangement for the Inspection and Inventory-taking of a SDB with Joint Renters***

The Committee notes with grave concern the Administration's proposed arrangements regarding joint SDBs opened by the deceased and others. The combined effects of the proposed intermeddling provisions and the arrangements regarding joint SDBs will mean that the surviving renter will be denied access to the joint SDB until the issuance of a Grant. The only way the surviving renter could get back his belongings from the joint SDBs is to apply to the SHA for a Certificate under the newly proposed S. 60C of the Probate and Administration Ordinance ("PAO"). The criteria on which the SHA will exercise discretion under S. 60C remain to be seen but it is understood that his power will be very limited and this will only be a transitional arrangement.

The Committee considers the proposed arrangements to be undesirable for the following reasons:

- (1) Whilst the SDB may be in the joint names of the deceased and others, its contents may not belong to the deceased and form part of the deceased's estate. Currently, where there is a SDB contract with a clear survivorship clause, banks will be obliged by the contract to allow the surviving renter access to the SDB and to take possession of its contents upon the death of the other renter. The Committee does not consider that it is appropriate for the Government to intrude into the contractual relationship between the banks and their customers;
- (2) the PR or beneficiary may not have any interest in the contents of the joint SDB with the result that a lot of joint SDBs may remain frozen, to the detriment of the surviving renter. As stated previously, the surviving renter cannot apply for a grant, and the chances of success in his application under S.60C of PAO will be slim.



The Committee notes that in the case of a joint SDB, the only options are to give possession of its contents either to the PR or the surviving renter. However, the present proposal of the Administration for the PR to have an overriding right to deal with the contents of a joint SDB upon the death of one of the joint renters irrespective of the bank mandates will represent a change of the existing practice, pose difficulties for the surviving renter and should not be preferred.

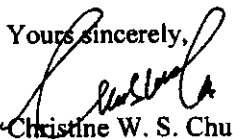
The Committee proposes that:

- (1) the present bank practice regarding the joint SDB should continue, namely, that banks should follow the relevant bank mandate and allow access of the joint SDB to the surviving renter upon the death of the other renter, as appropriate;
- (2) to protect the interests of beneficiaries from the risk of intermeddling, an inventory list of all SDBs, whether in the sole or joint name(s) of the deceased, should be prepared for the information of the PR;
- (3) to avoid any future dispute on the right to disclose the contents of the SDB, there should be clear provision empowering the SHA and the banks to provide a copy of the inventory list to the PR;
- (4) the SHA should publish clear guidelines on his exercise of power under the new S.60B and 60C of the PAO and consult the Law Society prior to the formal publication of such guidelines.

In view of the different practices maintained by the banks on dealings with joint SDBs, the Committee considers that it will be helpful for a joint meeting to be convened among the Hong Kong Association of Banks, the Law Society and the Administration to discuss and agree on the appropriate arrangements.

Lastly, the Committee notes with concern the Administration's proposal to require "the intending PR/surviving renter" to prepare an inventory of the SDB in the presence of authorized officer and an officer of the bank. Whilst inventories are presently prepared by estate duty officers who have expertise in preparing such document, the Committee trusts that in future, the "authorized officer" should be the appropriate person to prepare the inventory instead of leaving the task to "the PR/surviving renter".

Yours sincerely,



Christine W. S. Chu

Assistant Director of Practitioners Affairs

c.c.: Miss Vega Wong, Administrative Assistant to the Chief Justice  
Hon. Miriam Lau Kin-yee, Chairman of the Bills Committee

Encl.

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( Doc. 1 )

From: Christine CHU  
To: christophercchan@judiciary.gov.hk  
Date: 12/07/2005 pm 12:47:48  
Subject: Revenue (Abolition of Estate Duty) Bill 2005

Dear Mr. Registrar Chan,

Thank you for your email dated 8 July setting out the comments of the Judiciary on our proposed form of Schedule of Assets and Liabilities of the deceased ( "the Schedule" ).

The Probate Committee noted and agrees with the Judiciary that there should be a separate affidavit for the Schedule and only the Schedule but not the verifying affidavit should be annexed to the Grant. This, as you have pointed out, will protect the personal data of the deponent from unnecessary disclosure.

The Committee' s comments on the various forms are as follows:

**The Schedule**

In considering the Schedule, one should bear in mind the Administration' s proposal to include in the Bill provisions against intermeddling with any part or any part of the income of the estate not shown in the Schedule. It is therefore very important that the Schedule should be confined to include only assets and liabilities of the deceased in Hong Kong as at the date of death including the accrued income but not otherwise.

***Item A3 - Safe Deposit Box ( "SDB" )***

The Committee proposes that Item A3 should only annex the inventory of any SDB held under the sole name of the deceased. For SDB held under the joint names of the deceased and others, it is probable that some of its contents may not belong to the deceased. Under the present practice, SDB held under the joint names of the deceased and others will not be included in the deceased's estate unless the contents show otherwise. For joint SDBs, it is thought to be more appropriate that instead of providing a full inventory in the Schedule, only those assets which come under the deceased's estate would need to be separately listed under the appropriate items in the Schedule.

***Item A11 - Property Held by the Deceased as Joint Tenant or Tenant in Common***

The Committee does not agree to the proposed item as it will give the misleading impression that joint properties form part of the deceased' s estate. For properties held by the deceased as tenant in common, instead of specifying this as a separate category, these properties could be included under the other specific items or under "other assets" with the interest of the deceased being clearly specified

**Affidavit/Affirmation or Corrective Affidavit/Affirmation**

***Warning Clause***

Depending on the final form of the intermeddling provisions, the Committee suggests that reference should also be made in the warning clause to the penalty for non-compliance.

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*Interpretation Clause*

For the sake of completeness, the Committee suggests that a standard interpretation clause be inserted at the end of the forms.

We hope that the above comments are acceptable to you and shall be copying this email for the information of the Administration. We shall also further liaise with you as to the need to make appropriate amendments to Probate Forms 1B, 2B & 3B

Regards,  
Christine

Christine W. S. Chu  
Assistant Director of Practitioners Affairs  
The Law Society of Hong Kong

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(Doc.2)

From: <vegaswwong@judiciary.gov.hk>  
To: <CHU@hklawsoc.org.hk>  
Date: 13/07/2005 pm 06:50:24  
Subject: Abolition of Estate Duty - Specified Forms

Dear Christine,

I refer to our telecon this afternoon.

2. As directed by Registrar, HC, I attach a revised Form for the Schedule of Assets and Liabilities. Item 11 about "Property held by deceased as joint tenant or tenants in common" has been deleted as suggested by the Law Society.

3. I am copying this to HAB, which is requested to send the revised Form to the Bills Committee.

4. Please accept our apologies for any inconvenience caused.

Regards,  
Vega

----- Forwarded by Vega SW Wong/JUD/HKSARG on 13/07/2005 18:44 -----

Vega SW Wong  
13/07/2005 11:11

To: CHU@hklawsoc.org.hk  
cc: Christopher C Chan/JUD/HKSARG@Judiciary  
Nancy WWW HUI/HAB/HKSARG@HAB  
Alex YT CHAN/HAB/HKSARG@HAB  
Daisy LY Chung/JUD/HKSARG@Judiciary  
Wendy MY Pin/JUD/HKSARG@Judiciary  
Subject: Abolition of Estate Duty - Specified Forms

Dear Christine,

As directed by Registrar Chan, I attach the following draft Specified Forms, which have been sent to the HAB for submission to the Bills Committee meeting tomorrow. The draft Forms are prepared on the basis of our understanding of HAB's latest proposal, and have into account the comments from the Law Society.

2. I should be grateful if you would send the same for the attention of the Law Society's Probate Committee. Thank you for your kind attention.

Regards,  
Vega  
Tel: 2825 4244

- A.      Schedule of Assets and Liabilities
- B.      Additional Schedule of Assets and Liabilities
- C.      Affidavit verifying the Schedule
- D.      Corrective Affidavits

CC:            <christophercchan@judiciary.gov.hk>,  
<Nancy\_WWW\_HUI/HAB/HKSARG%~~HAB~~@judiciary.gov.hk>,  
<Alex\_YT\_CHAN/HAB/HKSARG%~~HAB~~@judiciary.gov.hk>, <daisylychung@judiciary.gov.hk>,  
<pstoajad@judiciary.gov.hk>

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This is the exhibit “ -1” referred to in the  
Affidavit/Affirmation  
of \_\_\_\_\_ sworn/affirmed before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Commissioner for Oaths

**SCHEDULE OF ASSETS AND LIABILITIES of the deceased in Hong Kong as at the date of death (“the Schedule”)**

Name of Deceased: \_\_\_\_\_ (“the Deceased”).

Hong Kong Identity Card/Passport Number \_\_\_\_\_

Date of Death: \_\_\_\_\_

**A. ASSETS**

1. CASH (Please specify amount) HK\$ \_\_\_\_\_

2. CASH AT BANK

| <u>Names of Banks</u> | <u>Account No.</u> | <u>Balance as at date of death</u> |
|-----------------------|--------------------|------------------------------------|
|-----------------------|--------------------|------------------------------------|

|       |       |       |
|-------|-------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |

3. SAFE DEPOSIT BOX

| <u>Bank</u> | <u>Box No.</u> | <u>Contents</u><br>(as shown in the inventory list annexed) |
|-------------|----------------|-------------------------------------------------------------|
|-------------|----------------|-------------------------------------------------------------|

**4. STOCKS, SHARES AND UNIT TRUSTS**

Number of Shares

Companies/Trusts

**5. BUSINESS**

Name

Business Registration Number

Percentage

**6. HOUSEHOLD GOODS**

(including picture, jewels, furniture, etc.)

**7. MOTOR VEHICLES AND SHIPS**

(Please specify Registration Numbers)

**8. LAND AND BUILDINGS**

**9. INSURANCE POLICIES AND MPF ACCOUNTS**

(Specify name of insurance company, fund names, policy numbers and account no.)

**10. CHOSE IN ACTION**

(Including debts due to the deceased, accrued rentals, compensation, utility deposits, interest in the other estate and claims).

**11. PROPERTY HELD BY DECEASED AS TRUSTEE OR AS  
MANAGER OF CHO OR TONG**

**12. OTHER ASSETS**  
(i.e. properties not covered by the above heads)

**B. LIABILITIES**

| <u>Name of Creditors</u> | <u>Description of debt</u> |
|--------------------------|----------------------------|
|--------------------------|----------------------------|

**NOTE**

This Schedule is verified by Affidavit/Affirmation by the executor/administrator pursuant to Section 15A/\*24A/\*49A of the Probate and Administration Ordinance (Cap. 10). The accuracy or truthfulness of the information disclosed herein has not been verified by the Probate Registry or the High Court, which is not required by law to do so.

**WARNING**

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.

Dated the            day of            20   .

**ADDITIONAL SCHEDULE OF ASSETS AND LIABILITIES of the deceased in Hong Kong**  
**("Additional Schedule") as at the date of death**

**This Additional Schedule should be read together with the SCHEDULE OF ASSETS AND LIABILITIES and all previous Additional Schedules, if any.**

Name of Deceased: \_\_\_\_\_

Hong Kong Identity Card/Passport Number: \_\_\_\_\_

Date of Death: \_\_\_\_\_

**Particulars of Additional Assets/Liabilities**

| Item | Description |
|------|-------------|
|      |             |

**Amendment to the particulars of the Schedule of Assets and Liabilities/\*Additional Schedule of Assets and Liabilities previously filed**

| Previous Item | Correct Description (in replacement of previous Description) |
|---------------|--------------------------------------------------------------|
|               |                                                              |

**NOTE**

This Additional Schedule is verified by Affidavit/Affirmation by the executor/administrator pursuant to Section 15A/\*24A/\*49A of the Probate and Administration Ordinance (Cap. 10). The accuracy or truthfulness of the information disclosed herein has not been verified by the Probate Registry or the High Court, which is not required by law to do so.

**WARNING**

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 Additional Schedule may be presented should not deal with any property of the deceased not set out in the Schedule of Assets and Liabilities as corrected by this and any previous Additional Schedule(s), if any.

Dated \_\_\_\_\_.

**AFFIDAVIT/AFFIRMATION verifying the SCHEDULE OF ASSETS AND LIABILITIES**

I/\*We, [name(s)], [Hong Kong Identity Number/Passport Number\_\_\_\_\_] of [Address] the intending Administrator(s)/\*Executor(s) named in the Will of the Deceased, hereby (jointly and severally\*) make oath/\*solemnly sincerely and truly affirm and say that –

1. I/\*We have prepared/\*caused to be prepared the Schedule of Assets and Liabilities exhibited hereto marked “\_\_\_\_-1”.
2. To the best of my/\*our knowledge, information and belief as at the date hereof, such Schedule of Assets and Liabilities contains true and correct information of the assets and liabilities of the Deceased in Hong Kong as at the date of death.

SWORN/\*AFFIRMED by the abovenamed     )  
\_\_\_\_\_, at \_\_\_\_\_, )  
Hong Kong, this \_\_\_\_\_ day of \_\_\_\_\_ )  
the same (including the said Schedule) having )  
been duly interpreted to the )  
affirmant/\*deponent in \_\_\_\_\_ dialect )  
of the Chinese language by \_\_\_\_\_ )

Before Me,

Solicitor, HKSAR/\*A Commissioner for Oaths  
(firm name)

I, [name of interpreter], of [address], [description], make oath/\*solemnly and sincerely affirm that I well understand the English and the Chinese languages and that I have truly, distinctly and audibly interpreted the contents of the above Affidavit/\*Affirmation and the said Schedule to the deponent [insert name], and that I will truly and faithfully interpret the oath/\*affirmation about to be administered to him.

SWORN/\*AFFIRM by the )  
abovenamed \_\_\_\_\_, )  
\_\_\_\_\_, Hong Kong,) )  
this day of \_\_\_\_\_)

Before me,

Solicitor, HKSAR/\*A Commissioner for Oaths  
(firm name)

\*Delete as appropriate

**CORRECTIVE AFFIDAVIT/\*AFFIRMATION made before Grant**  
**verifying the ADDITIONAL SCHEDULE OF ASSETS AND LIABILITIES**

I [name] of [address] [description] make oath/do solemnly and sincerely affirm and say as follows:

1. The deceased died on \_\_\_\_\_ [date] \_\_\_\_\_.
2. I refer to the Schedule of Assets and Liabilities exhibited to my previous Affidavit/\*Affirmation filed herein on [date] marked " -1" ("the Schedule").
3. Since the filing of that Affidavit/\*Affirmation, it has come to my knowledge that the Schedule is inaccurate.
4. I have accordingly prepared/\*caused to be prepared an Additional Schedule of Assets and Liabilities, which is exhibited hereto marked " -2" ("the Additional Schedule"), to correct the inaccuracy in the Schedule.
5. To the best of my knowledge, information and belief as at the date hereof, the Schedule as corrected by the Additional Schedule contains true and correct information of the assets and liabilities of the deceased in Hong Kong as at the date of death.

AFFIRMED/\*SWORN by the above named \_\_\_\_\_ )  
\_\_\_\_\_, at \_\_\_\_\_, )  
Hong Kong, this \_\_\_\_\_ day of \_\_\_\_\_ )  
the same (including the Additional Schedule) )  
having been duly interpreted to the )  
affirmant/\*deponent in \_\_\_\_\_ dialect )  
of the Chinese language by \_\_\_\_\_ )

Before me,

Solicitor, HKSAR/\*A Commissioner for Oaths  
(firm name)



I, [name of interpreter], of [address], [description], make oath/\*solemnly and sincerely affirm that I well understand the English and the Chinese languages and that I have truly, distinctly and audibly interpreted the contents of the above Affidavit/\*Affirmation and the Additional Schedule to the deponent [insert name], and that I will truly and faithfully interpret the oath/\*affirmation about to be administered to him.

SWORN/\*AFFIRM by the )  
abovenamed , at )  
\_\_\_\_\_, Hong Kong, )  
this day of )

Before me,

Solicitor, HKSAR/\*A Commissioner for Oaths  
(firm name)

\*Delete as appropriate

Note: This form should be adapted suitably for a second or further revision of the original Schedule or a previous Additional Schedule of Assets and Liabilities.

**CORRECTIVE AFFIDAVIT/\*AFFIRMATION made after Grant**  
**verifying the ADDITIONAL SCHEDULE OF ASSETS AND LIABILITIES**

I [name] of [address] [description] make oath/\*do solemnly and sincerely affirm and say as follows:

1. On the \_\_\_\_\_ day of \_\_\_\_\_ Grant of Probate/\*Letters of Administration (under Grant No. \_\_\_\_\_ of \_\_\_\_\_) was/were issued to me with the Schedule of Assets and Liabilities of the deceased as at the date of his/\*her death ("the Schedule") annexed.
2. Since the issue of the Grant, it has come to my knowledge that the Schedule is inaccurate.
3. I have accordingly prepared/\*caused to be prepared an Additional Schedule of Assets and Liabilities, which is exhibited hereto marked " -2" ("the Additional Schedule"), to correct the inaccuracy in the Schedule.
4. To the best of my knowledge, information and belief as at the date hereof, the Schedule as corrected by the Additional Schedule contains true and correct information of the assets and liabilities of the deceased in Hong Kong as at the date of death.

AFFIRMED/\*SWORN by the above named \_\_\_\_\_ )  
\_\_\_\_\_, at \_\_\_\_\_, )  
Hong Kong, this \_\_\_\_\_ day of \_\_\_\_\_ )  
the same (including the Additional Schedule) )  
having been duly interpreted )  
to the affirmant/\*deponent in \_\_\_\_\_ )  
dialect of the Chinese language by \_\_\_\_\_ )

Before me,

Solicitor, HKSAR/\*A Commissioner for Oaths  
(firm name)

I, [name of interpreter], of [address], [description], make oath/\*solemnly and sincerely affirm that I well understand the English and the Chinese languages and that I have truly, distinctly and audibly interpreted the contents of the above Affidavit/\*Affirmation and the Additional Schedule to the deponent [insert name], and that I will truly and faithfully interpret the oath/\*affirmation about to be administered to him.

SWORN/\*AFFIRM by the )  
abovenamed , at )  
\_\_\_\_\_, Hong Kong, )  
this day of )

Before me,

Solicitor, HKSAR/\*A Commissioner for Oaths  
(firm name)

\*Delete as appropriate

Note: This form should be suitably adapted for a second or further revision of the original Schedule or a previous Additional Schedule of Assets and Liabilities.