

Revenue (Abolition of Estate Duty) Bill 2005

Matters Arising from the Bills Committee Meeting Held on 3 October 2005

Purpose

This paper sets out the Administration's response to Members' comments at the Bills Committee meeting held on 3 October 2005.

Changes in Application Procedures

2. **Annex A** is a paper on the changes in the application procedures for summary administration, grant of representation, sealing of foreign grants as well as the new procedures for small estates following the commencement of the Revenue (Abolition of Estate Duty) Ordinance 2005 for Members' reference.

Removal of the Will from a Safe Deposit Box in Special Circumstances

3. At the Bills Committee meeting of 3 October, Members requested the Administration to consider amending the proposed sections 60CA and 60CB to the effect that where no executor is named in the will found in the safe deposit box, the executor named in the will found had not survived the deceased person concerned or the executor refuses to act or is incapable of acting as the executor, the person who intends to apply for grant of letters of administration with the will should be allowed to prepare an inventory of the contents in the safe deposit box and remove the will therefrom.

4. We consider that where a will of the deceased is found in the safe deposit box, and –

- (a) where an executor is named in the will and the holder of a certificate for inspection is neither the surviving renter nor the executor named therein; or
- (b) where no executor is named in the will,

he/she should not be allowed to remove the will or prepare an inventory of the contents in the first instance. Pursuant to the proposed section 60CA(4), the safe deposit box should be closed or sealed immediately by the bank employee.

5. In the event that a will is found in the box but the executor named therein refuses to act, is unable to act or is incapable of acting, or no executor is named therein, we agree that flexibility should be given to facilitate the person who intends to apply for grant of letters of administration (with will) to prepare an inventory of the contents in the box and remove the will therefrom. We therefore propose that if the person who intends to apply for a grant of representation, being the person entitled in priority to administer the estate in the absence of an executor, could prove to the satisfaction of the Secretary for Home Affairs (“SHA”) that –

- (a) the executor had not survived the deceased concerned, refuses to act, is unable to act or is incapable of acting; or
- (b) no executor is named in the will,

and support his or her application with an affidavit, SHA may issue a certificate for inspection to the applicant. The holder of this certificate should then be allowed to prepare an inventory of the contents in the box, but should not be allowed to remove the will on the same occasion. The consideration here is that the holder of the certificate for inspection may not have priority for grant as set out in Rule 19 of the Non-Contentious Probate Rules (Cap. 10A). A copy of Rule 19 of Cap. 10A is at **Annex B**.

6. After an inventory has been prepared by the holder of the certificate, the one who is eligible to administer the estate may apply for an authorization for removal to remove the will from the box for making an application under sections 15, 24 or 49 of the Probate and Administration Ordinance (Cap. 10) (“PAO”).

7. To facilitate SHA’s consideration of the eligibility of an applicant for removing the will from the safe deposit box as described in paragraph 5 above, we propose that where a will is found but the executor named therein is not the holder of the certificate or no executor is named in therein, a copy of the will should be made and kept by SHA for a period of 6 years and either in paper or digital format.

Eligibility of Persons Applying for Exemption for Small Estates

8. At the Bills Committee meeting of 3 October, the Administration was asked to consider whether the proposed section 60I of the PAO, which provides for exemption for small estates, should be amended to cater for its possible interface with section 4(9) of the Intestates’ Estates Ordinance (Cap. 73) (“IEO”). A copy of section 4 of the IEO is at **Annex C**.

9. Section 4(9) of the IEO provides that –

“In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall, subject to the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481), belong to the Government as bona vacantia and the Government may (without prejudice to any other powers), out of the whole or any part of the property devolving on it, provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.”

We have consulted the Department of Justice (“DoJ”) specifically on its role in the exercise of the discretionary power by the Government under section 4(9) of the IEO. DoJ’s role in this regard is to advise the

Government on whether provision should be made in the circumstances to the claimant from the general revenue (which has arisen by virtue of residuary estate (unclaimed property) of the deceased falling into bona vacantia). The exercise of the discretion and the resultant provision made do not relate directly to the administration of the estate of the deceased.

10. If the power under section 4(9) is exercised, either –
 - (a) payment will be made out of the general revenue direct to the claimant (in case the residuary estate has already been transferred to the Government (under section 15 of the PAO or otherwise); or
 - (b) consent will be given for the personal representative (in most cases the Official Administrator) to transfer the bona vacantia property (or part thereof) direct to the claimant instead of to the Government (in case the residuary estate has not yet been transferred to the Government).

In respect of (a) above, the payment is made direct to the claimant, and does not involve the administration of the estate of the deceased. As regards (b) above, the personal representative concerned (in most cases the Official Administrator) would be the one effecting the transfer of the bona vacantia property, and there is no need for the claimant to lodge a separate application for exemption for small estates. It is therefore not necessary to extend the eligibility of persons applying for confirmation notice under the proposed section 60I.

Home Affairs Bureau
6 October 2005

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

This paper sets out the changes in the application procedures for summary administration, grant of representation, sealing of foreign grants as well as the new procedures for small estates following the commencement of the Revenue (Abolition of Estate Duty) Ordinance 2005 (the new Ordinance). The paper is an update of Annex B to an earlier paper dated 20 July 2005, LC Paper No. CB(2)2355/04-05(01), entitled “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”.

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 summary administration and grant of representation in respect of estates of persons who passed away before the commencement of the new Ordinance. The application procedures for grant of representation and sealing of foreign grants are similar except that in the latter case, the application should be supported by a foreign grant.

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
Not exceeding \$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 not exceeding \$7,500,000 or not exceeding \$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) summary administration by the Official Administrator under section 15 of the PAO;
- (b) grant of probate or letters of administration under section 24 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 return it to the PR. 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 summary administration and grant of representation in respect of estates of persons who passed away on or after the commencement of the new Ordinance. It also illustrates a possible path that a PR may take if all properties beneficially owned by the deceased immediately before his death are wholly of money not exceeding \$50,000 in aggregate and the deceased did not hold any property as trustee for another person before his death¹.

Procedures at the Probate Registry

10. Following the commencement of the new Ordinance, the PR may apply to the Probate Registry direct for summary administration, grant of representation 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 exhibiting a Schedule of Assets and Liabilities (proposed sections 15A, 24A and 49AA of the PAO). In the case of an application for grant of representation or sealing of a foreign grant, the Schedule of

¹ Strictly speaking, the exemption from the intermeddling provisions and the relevant criminal liability 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 the Secretary for Home Affairs, the PR may not find it necessary to apply for summary administration.

Assets and Liabilities should be filed in duplicate (proposed sections 24A(1)(b) and 49AA(1)(b)). 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. Where the application is made in respect of grant of representation or sealing of a foreign grant, the PR is not required to put a value on the assets stated in the Schedule except in respect of the amount of cash (proposed sections 24A(9) and 49AA(9)). A duplicate of the Schedule of Assets and Liabilities would be annexed to the grant or the instrument effecting the sealing of the foreign grant.

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 (where applicable), together with the grant in case one has already been issued by the court (proposed sections 15A(3), 24A(3), (5) and 49AA(3), (5)). The Probate Registry may then amend the grant (if one has been issued) and annex a duplicate of the Additional Schedule of Assets and Liabilities to the grant upon issuance or the amended grant, in addition to the duplicate 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.

Exemption for small estates (Proposed section 60I of the PAO)

14. Where all properties beneficially owned by the deceased immediately before his death are money, e.g. bank deposits, not exceeding \$50,000 in aggregate and the deceased did not hold any property as trustee for another person immediately before his death, the PR may file an affidavit accompanied by a schedule in duplicate with the Secretary for Home Affairs (“SHA”)², declaring that all properties beneficially owned by the deceased immediately before his death are money, e.g. bank deposits, not exceeding \$50,000 in aggregate and the deceased did not hold any property as trustee for another person immediately before his death (with the details of the bank accounts). If the affidavit and the schedule are in order, SHA would issue a notice confirming receipt of the affidavit that was filed pursuant to the proposed section 60I(1), 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(3), (4) and (5). A duplicate of the schedule filed in respect of the application would be attached to the confirmation notice.

Cancellation of a confirmation notice

15. If, after SHA has issued a confirmation notice, the PR is –
- (a) aware of any property beneficially owned by the deceased immediately before his death which has not been disclosed in the affidavit concerned;
 - (b) aware that the deceased held any property as trustee for another person immediately before his death; or
 - (c) aware of any inaccuracy in the schedule attached to the confirmation notice,

² SHA will delegate his new powers under the PAO administratively to the Commissioner of Inland Revenue for a period, expected to be one year, following the commencement of the new Ordinance.

the PR should, as soon as practicable, notify SHA in writing (proposed section 60I(2B)). SHA may subsequently cancel the original confirmation notice if she is satisfied on reasonable grounds that –

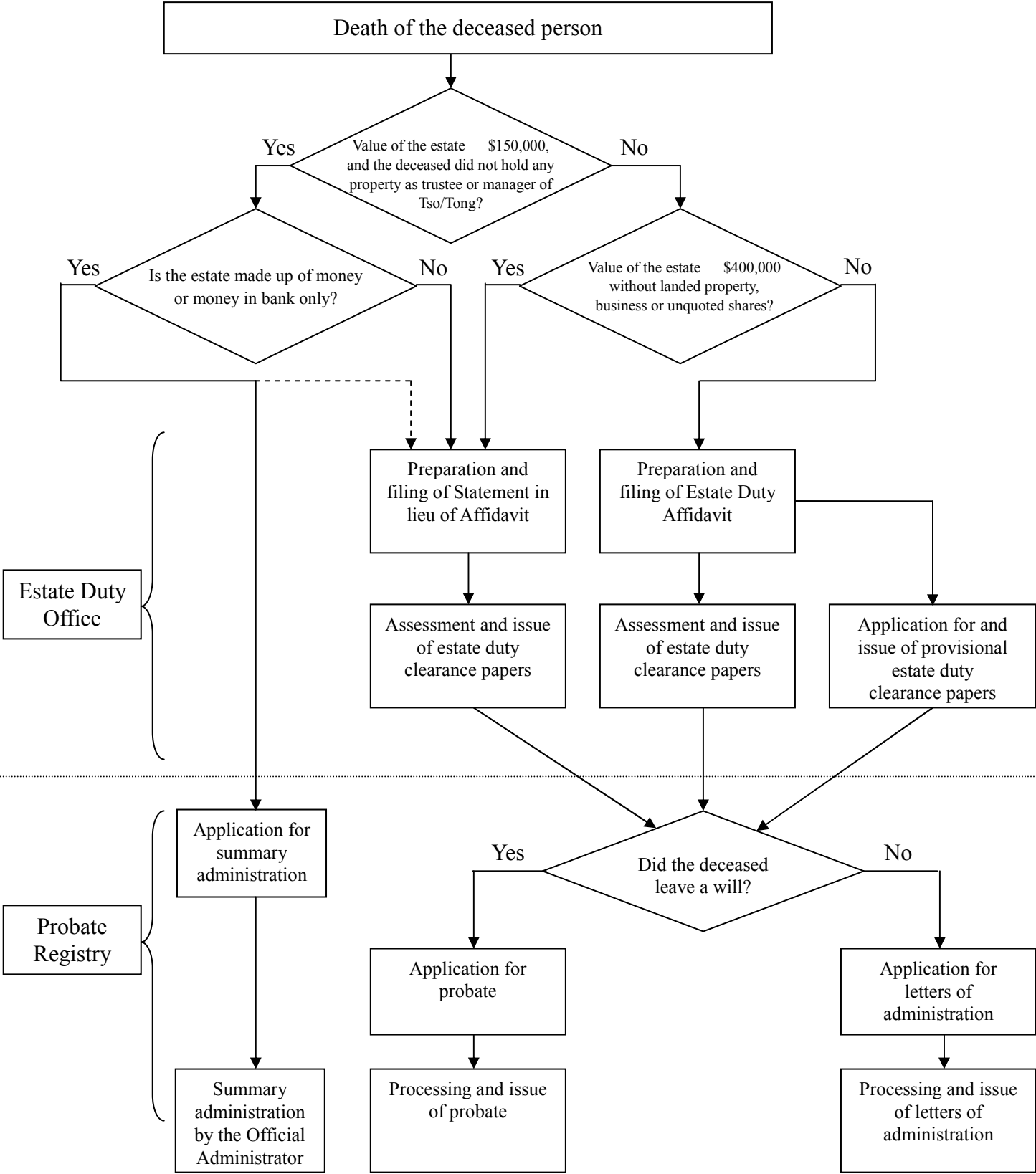
- (i) the estate of the deceased concerned either –
 - exceeds \$50,000; or
 - though not exceeding \$50,000, is not wholly made up of money; or
- (ii) the deceased held any property as trustee for another person immediately before his death; or
- (iii) there is any inaccuracy in the affidavit or schedule,

and on receipt of the confirmation notice concerned (proposed section 60I(3)). The PR may apply for a new confirmation notice after one has been cancelled by SHA if all properties beneficially owned by the deceased immediately before his death are indeed money not exceeding \$50,000 in aggregate and the deceased did not hold any property as trustee for another person immediately before his death.

Home Affairs Bureau
6 October 2005

Flowchart A

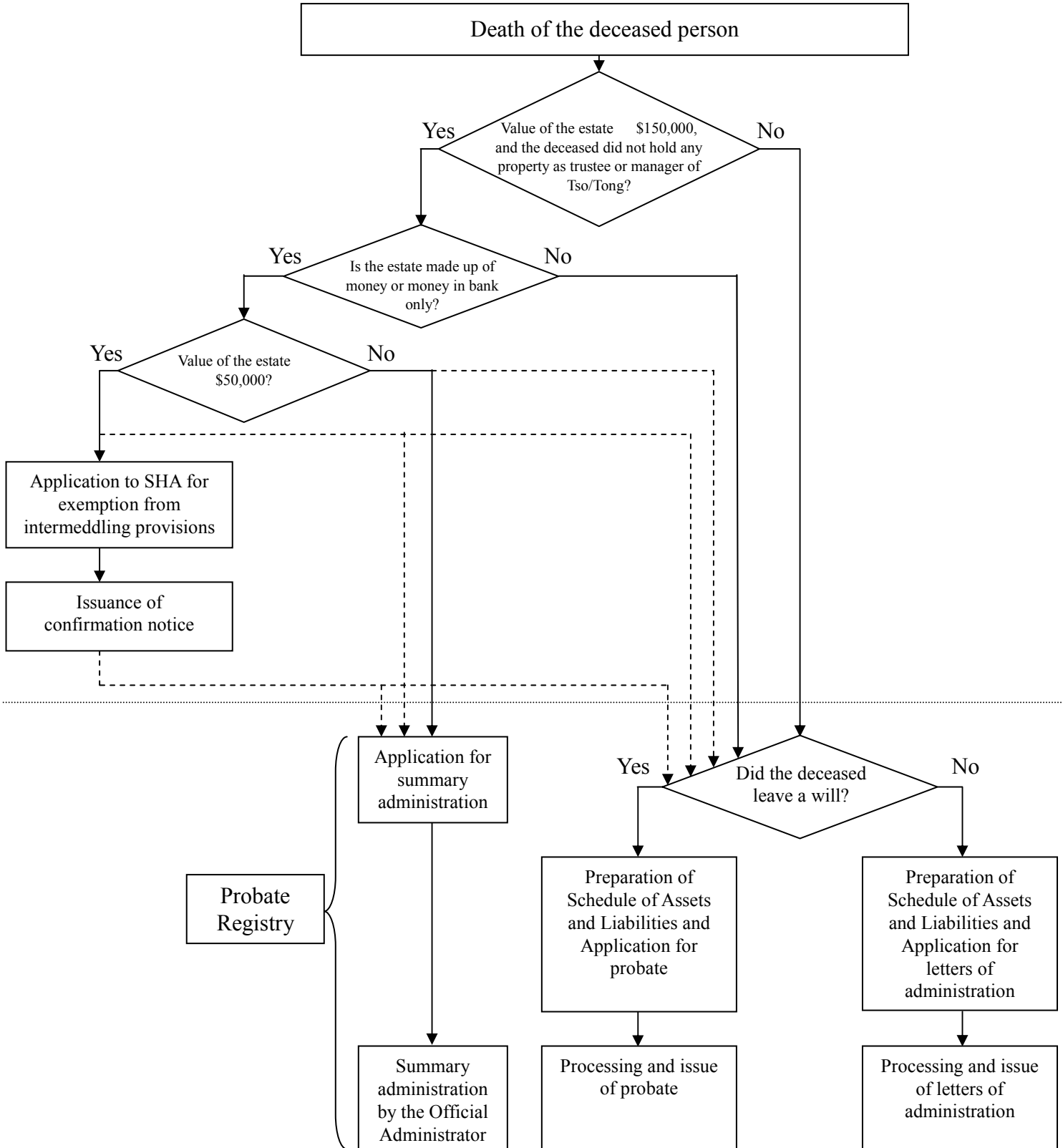
Procedure for Application for Summary Administration or Grant of Representation where the deceased passed away BEFORE the commencement date of the new Ordinance



* Note: The dotted line represents a possible avenue which the personal representative of a small estate may take other than applying for summary administration.

Flowchart B

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



* Note: The dotted lines represent the possible avenues which the personal representative of a small estate may take to apply for administration of the estate with or without applying for exemption from the intermeddling provisions.

**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
Summary administration (where the value of the estate does not exceed \$150,000, the estate is made up of money/money in bank only, and the deceased did not hold any property as trustee or manager of Tso or Tong)	<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

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 or Certificate of Exemption 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
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 Certificate of Exemption 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

Chapter:	10A	Title:	NON-CONTENTIOUS PROBATE RULES	Gazette Number:
Rule:	19	Heading:	Order of priority for grant where deceased left a will	Version Date: 30/06/1997

The person or persons entitled to a grant of probate or administration with the will annexed shall be determined in accordance with the following order of priority, namely-

- (i) the executor;
- (ii) any residuary legatee or devisee holding in trust for any other person;
- (iii) any residuary legatee or devisee for life;
- (iv) the ultimate residuary legatee or devisee or, where the residue is not wholly disposed of by the will, any person entitled to share in the residue not so disposed of (including the Official Administrator) or, subject to rule 25(3), the personal representative of any such person:

Provided that where the residue is not in terms wholly disposed of, the Registrar may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject however to rule 37) to any legatee or devisee entitled to, or to a share in, the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the will;

- (v) any specific legatee or devisee or any creditor or, subject to rule 25(3), the personal representative of any such person or, where the estate is not wholly disposed of by the will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion thereto;
- (vi) any legatee or devisee, whether residuary or specific, entitled on the happening of any contingency, or any person having no interest under the will of the deceased who would

have been entitled to a grant if the deceased had died wholly
intestate.

Chapter:	73	Title:	INTESTATES' ESTATES ORDINANCE	Gazette Number:	25 of 1998 s. 2; 29 of 1998 s. 105
Section:	4	Heading:	Succession to estate on intestacy	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2; 29 of 1998 s. 105

(1) The residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section.

(2) If the intestate leaves a husband or wife and leaves-

(a) no issue; and

(b) no parent, or brother or sister of the whole blood, or issue of a brother or sister of the whole blood, (Amended 57 of 1995 s.

3)

the residuary estate shall be held in trust for the surviving husband or wife absolutely.

(3) If the intestate leaves a husband or wife and issue, whether or not persons mentioned in subsection (2)(b) also survive, the surviving husband or wife shall take the personal chattels absolutely and, in addition, the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a net sum of \$500000, free of death duties and costs, to the surviving husband or wife with interest on that sum from the date of the death at the rate determined from time to time by the Chief Justice for the purpose of section 49(1)(b) of the High Court Ordinance (Cap 4) until paid or appropriated and, subject to providing for that sum and interest, the residuary estate (other than the personal chattels) shall be held- (Amended 25 of 1998 s. 2)

(a) as to one half, in trust for the surviving husband or wife absolutely; and

(b) as to the other half, on the statutory trusts for the issue of the intestate. (Replaced 57 of 1995 s. 3)

(4) If the intestate leaves no issue but does leave a husband or wife and one or more of the following, namely a parent, a brother or sister of the whole blood, or issue of a brother or sister of the whole blood, the surviving husband or wife shall take the personal chattels absolutely and, in addition, the residuary estate of the intestate shall stand charged with the payment of a net sum of \$1000000, free of death duties and costs, to the surviving husband or wife with interest on that sum from the date of death at the rate determined from time to time by the Chief Justice for the purpose of

section 49(1)(b) of the High Court Ordinance (Cap 4) until paid or appropriated and, subject to providing for that sum and interest, the residuary estate shall be held- (Amended 25 of 1998 s. 2)

(a) as to one half, in trust for the surviving husband or wife absolutely; and

(b) as to the other half-

(i) where the intestate leaves one parent or both parents (whether or not brothers or sisters of the intestate or their issue also survive), in trust for the parent absolutely or, as the case may be, for the 2 parents in equal shares absolutely; or

(ii) where the intestate leaves no parent, on the statutory trusts for the brothers and sisters of the whole blood of the intestate. (Replaced 57 of 1995 s. 3)

(5) If the intestate leaves issue but no husband or wife the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate.

(6) If the intestate leaves no husband or wife and no issue but both parents, then the residuary estate of the intestate shall be held in trust for the father and mother in equal shares absolutely.

(7) If the intestate leaves no husband or wife and no issue but one parent, then the residuary estate of the intestate shall be held in trust for the surviving father or mother absolutely.

(8) If the intestate leaves no husband or wife and no issue and no parent, then the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely-

firstly, on the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

secondly, on the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

thirdly, for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

fourthly, on the statutory trusts for the uncles and aunts of the intestate who are brothers or sisters of the whole blood of a parent of the intestate; but if no person takes an absolutely vested interest under such trusts; then

fifthly, on the statutory trusts for the uncles and aunts of the intestate who are

brothers or sisters of the half blood of a parent of the intestate. (Replaced 57 of 1995 s. 3)

(9) In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall, subject to the Inheritance (Provision for Family and Dependants) Ordinance (Cap 481), belong to the Government as bona vacantia and the Government may (without prejudice to any other powers), out of the whole or any part of the property devolving on it, provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision. (Amended 57 of 1995 s. 3; 29 of 1998 s. 105)

(10) A husband and wife shall for all purposes of distribution or division under the foregoing provisions of this section be treated as 2 persons.

(11) Where the intestate and the intestate's husband or wife have died in circumstances rendering it uncertain that one of them, or which of them, survived the other this section shall have effect as respects the intestate as if the husband or wife had not survived the intestate. (Amended 62 of 1984 s. 11)

(12) The interest payable on the net sum payable under subsection (3) or (4) to the surviving husband or wife shall be primarily payable out of income. (Replaced 57 of 1995 s. 3)

(13) The Legislative Council may, from time to time, by resolution vary either or both of the net sums charged by subsections (3) and (4), and any reference in this Ordinance, or in any other Ordinance, to either of such net sums shall have effect as a reference to the corresponding net sum as varied under this subsection.

(14) Any resolution under subsection (13) varying the amount of either of such net sums shall have effect in relation to the estate of any person dying after the coming into force of the resolution. (Amended L.N. 419 of 1987)

[cf. 1925 c. 23 s. 46 U.K.]
