

**HANDOUT FOR TEA GATHERING**  
**RECENT AND COMING CHANGES TO PROBATE AND**  
**ADMINISTRATION APPLICATION**  
**16 DECEMBER 2005**

**New Document: Affidavit concerning Assets and Liabilities of the Estate**

1. Commencing from 11 February 2006, after the abolition of the estate duty and coming into operation of the Revenue (Abolition of Estate Duty) Ordinance 2005 (“the new legislation”), as far as the practitioners in probate practice are concerned, the major change is that, for a person who died on or after that date, there will be no longer any documents required under EDO, commonly known as “ED papers” to be lodged with the Probate Registry when the grant is applied for. Instead, an Affidavit sworn by the applicant accompanied by a duplicate of Schedule setting out the Assets and Liabilities of the Deceased in Hong Kong as at the date of his death is required. Section 24A(2) PAO states that:

- “(2) An application for a grant in respect of the estate of a person who dies on or after the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005) shall be –
- (a) supported by an affidavit sworn by the applicant and filed by him with the Registry; and
  - (b) accompanied by a duplicate of the schedule exhibited by such affidavit under subsection (3).”

2. If it is later discovered that the Schedule is inaccurate, no matter before or after the Grant has been issued a Corrective Affidavit and an Additional Schedule must be filed to put right the matter. Sections 24A(4) and (8) set out:

“(4) If, before the court makes a grant under section 3, any inaccuracy in a schedule exhibited under subsection (3) or an additional schedule exhibited under subsection (5) comes to the knowledge of the applicant concerned, he shall file –

- (a) a corrective affidavit; and
  - (b) a duplicate of the additional schedule exhibited by such affidavit under subsection (5),
- with the Registry.”

“(8) If, after the court makes a grant under section 3, any inaccuracy in a schedule or additional schedule annexed to the grant comes to the knowledge of the executor or administrator, he shall –

- (a) file –
  - (i) a corrective affidavit; and
  - (ii) a duplicate of the additional schedule exhibited by such affidavit under subsection (9),with the Registry; and
- (b) deliver the grant to the Registry together with such affidavit.”

3. Existing practice (For death before 11 February 2006) -

Attachment 1.1 Certificate of Receipt of Estate Duty enclosing  
Schedule of Property.

1.2 Certificate of Exemption from Estate Duty  
enclosing Schedule of Property.

1.3 Certificate of Exemption from Estate Duty  
enclosing Statement in lieu of Affidavit.

1.4 Application for Amendment of Grant (Appendix  
D in PD 20.1)

4. New Practice (For death on or after 11 February 2006) -

Attachment 2.1 Affidavit verifying the Schedule relating to  
Application for Grant (Form N2.1).

2.2 Corrective Affidavit made before Grant (Form  
N2.2).

2.3 Corrective Affidavit made after Grant (Form  
N2.3).

2.4 Schedule of Assets and Liabilities of the Deceased  
in Hong Kong at the Date of Death (Form N4.1).

2.5 Additional Schedule of Assets and Liabilities  
(Form N4.2).

5. The major difference between the “ED papers” and the “Affidavit verifying the Schedule of Assets and Liabilities” is that the value of assets other than cash does not have to be stated in the later documents (s24A(13) PAO). However, it should be noted that the Registrar has been empowered to require the production of any information relating to the Estate, including the value thereof, in the form of an affidavit, if necessary (s8A PAO).

“(13) For the avoidance of doubt, the value of assets other than cash does not have to be stated in a schedule or an additional schedule exhibited under this section.”

**“8A. Registrar may require information**

The Registrar may –

- (a) require any applicant for a grant to provide any information relating to the estate concerned, including but not limited to the value of the estate, which appears to the Registrar to be necessary for the purposes of the exercise of the jurisdiction under section 3; and
- (b) require provision of such information in the form of an affidavit.”

6. Another major difference between the existing practice and the new practice is that, whereas the ED papers (i.e. Attachments 1.1, 1.2 and 1.3) are prepared and issued by the Inland Revenue Department, the documents required under the new practice will have to be prepared by the applicants themselves. Specifically, Attachments 2.4 and 2.5 will be verified by Affidavit/Affirmation by the executor/administrator pursuant to Section 15A/24A/49AA of the Probate and Administration Ordinance (Cap. 10) as appropriate. The accuracy or truthfulness of the information disclosed therein will not be verified by the Probate Registry or the High Court, which is not required by law to do so.

7. The practitioners may also wish to note the following “money” matters.

Scenario	Date of Death of the Deceased	Sums Payable
1	Before 15 July 2005	Usual Estate Duty and Court Fee payable
2	15 July 2005 – 10 February 2006	\$100 Estate Duty where the principal value of the estate exceeds \$7,500,000 (Part 25 of Schedule 1 EDO) and Usual Court Fee payable
3	On or after 11 February 2006	No Estate Duty and no Court Fee linked to the net value of the estate (\$265 fee for filing application, \$72 fee for engrossment of Grant and other charges are still payable) (s30 of the new legislation repeals item 2 of the Second Schedule to the High Court Fees Rules)

“

#### PART 25

(Persons dying on or after 15 July 2005 and before the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005))

Where the principal value of the estate exceeds \$7,500,000, the amount of estate duty payable shall be \$100.”

“  
..... PART 6  
CONSEQUENTIAL AMENDMENTS

High Court Fees Rules

**30. Probate Jurisdiction**

The Second Schedule to the High Court Fees Rules (Cap. 4 sub. leg. D) is amended by repealing item 2.”

“ PART 7  
SAVING PROVISION

**40. Saving provision for item 2 of the Second  
Schedule to the High Court Fees Rules**

The second Schedule to the High Court Fees Rules (Cap.4 sub. leg. D) as in force immediately before the commencement of this Ordinance shall continue to apply in relation to the estate of any person who dies before such commencement as if section 30 had not been enacted.”

“ SECOND SCHEDULE

PROBATE JURISDICTION

	Fee
1. Filing application (except an amended application) for probate or letters of administration or application for resealing of the same .....	\$ 265.00
2. Grants of probate or letters of administration or resealing of the same:	
If the estate is sworn under the net value of—	
\$ 10,000 .....	\$ 160.00
\$ 20,000 .....	\$ 320.00
\$ 50,000 .....	\$ 640.00
\$ 100,000 .....	\$ 800.00
\$ 200,000 .....	\$ 1,200.00
\$ 300,000 .....	\$ 1,600.00
\$ 400,000 .....	\$ 2,400.00
\$ 600,000 .....	\$ 3,200.00
\$ 800,000 .....	\$ 4,000.00
\$ 1,000,000 .....	\$ 4,800.00
and \$400.00 for every additional \$100,000 or part thereof.	
3. ....	
4. ....	
5. ....	
6. Engrossing wills and other documents, per page .....	\$ 72.00
7. ....	”

### **New Specified Forms**

8. The Probate Registry has been working with the Probate Committee of the Law Society for almost 2 years to revise the existing Specified Forms. At the outset of the exercise, it was agreed that the aim of the review exercise is to ensure the forms will be user-friendly and easily comprehensible to practitioners. We hoped to achieve it by:

- (a) redrafting the forms in simple and modern language,
- (b) removing or consolidating paragraphs requiring redundant or repetitive information,
- (c) providing more optional clauses with standard wordings to cater for different situations,
- (d) including sufficient guidance notes for completion of the forms, and
- (e) ensuring consistency of description of terms within the contents of each form and also among various forms.

9. The Specified Forms will be gazetted soon and is expected to be put into use from 11 February 2006, together with the new legislation.

10. A Guideline to the New Specified Forms will be issued. Please see Attachment 3 for the Index to the new forms.

11. The Specified Forms are important because they shall be adhered to with such variations or additions as circumstances may require (r2A(2) NCPR), and “substantial compliance” is required (see Judgment of *In the Estate of YIP HO* dated 9 November 2005 under CACV 227/2004)

“11. Both Mr. Chua and Mr. Chow agreed that the proper approach to the interpretation of statutory provision is the modern approach. In other words, the court should not decide whether the statutory requirements were intended to be “imperative/mandatory” or merely “directory”. It was also agreed that the statutory requirement could be considered as fulfilled if there has been substantial compliance.

...

16. We believe that in deciding whether the statutory requirements have been substantially complied with, one is not simply concerned with whether enough of the required information has been supplied, but also the manner of compliance. Thus, if an applicant has supplied all the information required but have re-arranged the paragraphs of the specified form at random, it cannot be said that because all the information have been supplied there has been substantial compliance.”

### **New Practice: Non- Contentious Probate List**

12. To enter the new era for the Probate Registry, we will try to modify



our system to cope with the new change as well as to improve our efficiency to cater for the increasing workload.

13. Further, since November 2003, on top of the then practice of making appointment to meet the Probate Master upon request, it was resolved to reserve the first Saturday morning of each month to hear representations from practitioners regarding requisitions:

(a) which have been left outstanding for more than four months  
and

(b) (i) the applicants have special difficulties in complying with,  
or

(ii) the solicitors consider that they could or sought to be  
resolved expeditiously.

14. The above practice has been welcomed. We have decided that commencing from December 2005, 2 mornings in every week in the diary of the Probate Master will be docketed to create a Non-Contentious Probate List. Practitioners are invited to make appointment directly with the Listing Clerk of the High Court Registry. The letter issued by Mr. Registrar C. Chan on 16 November 2005 is enclosed herewith as Attachment 4.

15. The solicitors have started to make use of the new procedure. The written decisions of the first two applications are also exhibited as a reference. Please see Attachment 5.



J. Wong  
Probate Master



INLAND REVENUE DEPARTMENT  
ESTATE DUTY OFFICE

Attachment 1.1

5/F., REVENUE TOWER, 5 GLOUCESTER ROAD,  
WAN CHAI, HONG KONG.

TELEPHONE NO.: 2594 3240

REF. NO.: E.D. /2003 (Pt.1)

ESTATE DUTY ORDINANCE (Cap. 111)  
CERTIFICATE OF RECEIPT OF ESTATE DUTY

In the estate of .....

..... deceased.

I certify that I have received the sum of \$ 482,708.60 for duty and interest in respect of the above estate. Duty was charged at the rate of 5% on a value of \$ 7,894,019.10 with an addition of \$75,080.90 under Section 32 of Estate Duty Ordinance, Cap.111.

In view of the foregoing I offer no objection to the issue of the Grant and I annex a Schedule showing details of the estate for attachment thereto.

The total aggregated value of property passing in connection with the deceased's death on which Estate duty is leviable \$ 9,085,600.00

.....  
Assistant Commissioner of Estate Duty

Dated 9 September 2005

/hk



關於死者

SCHEDULE of the property disclosed on the death of

死後查明經已呈報在案的財產明細表，所列財產已繳納／獲豁免遺產稅。

deceased in respect of which death, estate duty exemption has been granted has been paid.

1. Account No. : with Bank of China (Hong Kong) Limited .....	\$ 1,056.00
2. <u>Accounts with The Hongkong and Shanghai Banking Corporation Limited</u>	
(a) Account No. :	
(i) Savings Account .....	1,004,571.96
(ii) Current Account .....	1,789,825.64
(iii) USD Savings (USD12.88) .....	100.05
(iv) GBP Savings (GBP8,596.97) .....	111,916.22
(b) Joint Account No. (Deposit No.0002) (NZD1,007,031.68) .....	4,610,694.55
3. Mandatory Provident Fund payable by HSBC Life (International) Limited under Scheme ID (\$210,494.83) (Exempted under Section 10(i) of Estate Duty Ordinance, Cap.111) .....	NIL
4. Pension payable by .....	207,491.00
5. <u>Land and Buildings</u>	
18/349,375th parts or shares of and in The Remaining Portion of Section A of New Lot No. (Car Park Space No. Kowloon.) .....	300,000.00
Principal value of estate	\$8,025,655.42
Less: Deductions	56,564.00
Net principal value of estate	<u>\$7,969,091.42</u>

Assistant Commissioner of Estate Duty  
9 September 2005

Assistant Commissioner of Estate Duty  
10 NOV 2005

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附註：遺產稅署署長特別警告可能收受本表的銀行、公司、店舖及一切人等，對未列入本表內的死者財產不得擅行處理。

NOTE: The Commissioner expressly warns all companies, banks, firms, shops and other persons to whom this Schedule may be presented against dealing with any property of the deceased not set out therein.



INLAND REVENUE DEPARTMENT  
ESTATE DUTY OFFICE

5/F, REVENUE TOWER,  
5 GLOUCESTER ROAD,  
WAN CHAI, HONG KONG.

Web site: [www.ird.gov.hk](http://www.ird.gov.hk)  
E-mail: [taxedo@ird.gov.hk](mailto:taxedo@ird.gov.hk)

Attachment 1.2

ED ...../2005/.....

Telephone No.: 2594 3240

CERTIFICATE OF EXEMPTION FROM ESTATE DUTY

ESTATE DUTY ORDINANCE, CAP. 111

In the estate of .....

.....

.....

..... deceased.

I certify that no duty or interest is payable in respect of the above estate because (i) it is under the value of S 7,500,000.00, ~~(ii) duty has been paid on a prior affidavit~~

In view of the foregoing I offer no objection to the issue of the Grant and I annex a Schedule showing details of the estate for attachment thereto.

.....  
Assistant Commissioner of Estate Duty

/ji

19 August 2005

Dated .....

關於死者

SCHEDULE of the property disclosed on the death of

死後查明經已呈報在案的財產明細表，所列財產已繳納／獲豁免遺產稅。

deceased in respect of which death, estate duty exemption has been granted ~~has been paid~~.

1. Accounts with Bank of China (Hong Kong) Limited

a) Account No. ....	\$ 5,020.53
b) Account No. ....	588.00

2. Land and Buildings

a) Subsection 1 of Section A of Subsection 2 of Section A of Lot No. in District No. New Territories, Hong Kong .....	450,000.00*
b) The Remaining Portion of Subsection 2 of Section A of Lot No. in District No. New Territories, Hong Kong .....	510,000.00*
c) The Remaining Portion of Section A of Subsection 2 of Section A of Lot No. in District No. New Territories, Hong Kong ....	<u>240,000.00*</u>
Principal value of estate	\$1,205,608.53
Less deductions	<u>50,000.00</u>
Net principal value of estate	<u>\$1,155,608.53</u>

(L. S.)

Assistant Commissioner of Estate Duty  
19 August 2005

\* Value per Affidavit; for estate duty purposes only.

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附註：遺產稅署署長特別警告可能收受本表的銀行、公司、店舖及一切人等，對未列入本表內的死者財產不得擅行處理。

NOTE: The Commissioner expressly warns all companies, banks, firms, shops and other persons to whom this Schedule may be presented against dealing with any property of the deceased not set out therein.



INLAND REVENUE DEPARTMENT  
ESTATE DUTY OFFICE

5/F REVENUE TOWER, 5 GLOUCESTER ROAD,  
WAN CHAI, HONG KONG.

Website: <http://www.info.gov.hk/ird>

E-mail Address: [taxedo@ird.gov.hk](mailto:taxedo@ird.gov.hk)

Attachment 1.3

Ref. No.: E.D.T 1 .. /2004

Telephone No: 2594 3240

ESTATE DUTY ORDINANCE (Cap. 111)

CERTIFICATE OF EXEMPTION

In the estate of .....  
..... deceased.

I hereby certify that, in the exercise of the powers conferred on me by Section 14A(1) of the Estate Duty Ordinance, I have exempted the executor of the estate of the above-named deceased from Section 14(6) of the Ordinance subject to the condition that any additional asset and/or gift inter vivos discovered shall be reported forthwith to the Estate Duty Office.

(L.S.)

.....  
*Assistant Commissioner of Estate Duty*

/lw

Dated 31 May 2004

Notes:—

1. This certificate is evidence that the above-mentioned executor has, subject to any conditions specified, been exempted from complying with the formalities prescribed in Section 14(6) of the Ordinance.
2. This certificate is evidence, for the purposes of Section 15 of the Ordinance, that no estate duty is payable by the executor on the deceased person's estate.
3. This certificate shall, under Section 23(3) of the Ordinance, be annexed to any probate or letters of administration granted in respect of the deceased person's estate.
4. Section 23(1) and Section 24(1), (2) and (3) of the Ordinance shall not apply while this certificate remains valid.
5. THIS CERTIFICATE IS ISSUED FOR ESTATE DUTY PURPOSES ONLY AND DOES NOT AUTHORIZE THE ADMINISTRATION OF ANY PART OF THE DECEASED PERSON'S ESTATE BY ANY PERSON NOT ENTITLED TO DO SO BY LAW.



遺產簡易呈報表  
STATEMENT IN LIEU OF AFFIDAVIT

遺產稅條例 (第 111 章) (第 14A 條)  
(Estate Duty Ordinance, Cap. 111, Section 14A)

稅務局遺產稅署  
INLAND REVENUE DEPARTMENT,  
ESTATE DUTY OFFICE.

香港灣仔告士打道 5 號

稅務大樓 5 樓

5/F REVENUE TOWER,

5 GLOUCESTER ROAD,

WAN CHAI, HONG KONG.

網址 Web Site: <http://www.info.gov.hk/ird>

電郵 E-mail: [taxedo@ird.gov.hk](mailto:taxedo@ird.gov.hk)

電話 Tel. No.: 2594 3240

E.D. T1 /2004

**注意** (1) 如死者生前有物業，或經營生意 (全東或合夥) 或擁有並非在香港聯合交易所報價的股票，又或 '死者' 的財產的總值超過 \$400,000 請勿用此表格，應用 I.R.E.D. 表格第 1 號填報。

(2) 請附上死者死亡證及香港身分證副本。

**NOTE:**

(1) If the deceased owned landed property, a business or share of a business, or shares in a company not quoted on The Stock Exchange of Hong Kong Ltd., or the total value of all the deceased's assets exceeds \$400,000 this form should not be used. Instead, Form I.R.E.D. 1 should be completed.

(2) Please supply copy of the deceased's death certificate and Hong Kong Identity Card.

1. 關於死者 ..... 的遺產事  
Estate of ..... deceased,  
(死者英文姓名 Name of deceased in English)

中文姓名 ..... 別名 .....  
Name in Chinese ..... alias

身分證號碼 ..... 生前住址 .....  
I/C No. ..... late of

逝世日期 ..... 職業 .....  
Date of Death: ..... Occupation:

享年 ..... 歲 每月平均收入 ..... 元  
Age: ..... Average Monthly Income: \$.....

2. 申請人詳情  
Particulars of Applicant:

姓名 (\* 先生/太太/女士) ..... 中文姓名 .....  
Name: (\*Mr./Mrs./Miss) ..... Name in Chinese

地址 .....  
Address:

身分證號碼 ..... 電話號碼 .....  
I/C No. ..... Telephone No.

與死者關係 : .....  
Relationship to Deceased:

3. 律師姓名 (如有律師代表辦理) .....  
Name of Solicitors (if any) who will act:

\* 請將不適用的刪去。  
\* Delete whichever is inapplicable.



請將死者在死前3年內出售、轉讓或贈與別人的資產詳情填報：  
Details of assets disposed of by deceased within 3 years of death:

Nil.

5. 共同擁有資產

如死者與其他人士共同擁有資產，請將有關詳情填報，並敘明該資產列歸共有人名下的日期，及由何人出資購入。

Jointly owned assets:

Full details should be entered of any assets owned jointly by the deceased and another person(s), and stating the date put into the joint names, and by whom the purchase money was provided.

Nil.

6. 遺產的資產詳情

Details of assets of the estate:

項目 Item	說明 Description	逝世時之價值 Value at the time of death
1)	Account No. with The Hongkong and Shanghai Banking Corporation Limited	\$ 5,685.56
2)	Account No. with Hang Seng Bank Limited	10,910.06
3)	Accounts with The Bank of East Asia Limited	
	a) Account No.	3,392.70
	b) Account No.	64,485.70
	c) Account No.	43,722.90
	Total :	\$128,196.92
	Less : Funeral Expenses	50,000.00
	Net Total :	<u>\$78,196.92</u>

本人現證實以上各項詳情就本人所知所信，均屬確實無訛。本人明白所提供的資料，將由稅務局用作執行各稅項的有關事宜。

I confirm that the above particulars are true and correct to the best of my knowledge, information and belief. I understand that the information provided will be used for purposes relating to the administration of taxes by the Inland Revenue Department.

申請人簽署  
Signature of Applicant

5.5.2004

日期  
Date

見證人簽署：(接見員、  
信託公司代表或律師)

Signature of Interviewing Officer,  
Trust Officer, or Solicitor

**Application for amendment of grant**  
**IN THE HIGH COURT OF THE**  
**HONG KONG SPECIAL ADMINISTRATIVE REGION**  
**COURT OF FIRST INSTANCE**

[GRANT NO.            ]

In the Estate of .....

.....

..... deceased.

I, A.B. (description) of ..... Hong Kong, \*do hereby solemnly, sincerely and truly affirm and say/make oath and say as follows : -

1. The abovenamed and described deceased late of the above address died at (place) on (date of death).

2. I am the \*(sole executor named in the Will/administrator of the estate of the deceased).

3. On the ..... day of ..... 19....., \*(Grant of Probate/Letters of Administration/Letters of Administration with Will annexed), under Grant No. .... of 19..... of the \*Will/estate of the deceased \*was/were issued to me by the Court of First Instance of the Hong Kong Special Administrative Region.

\*4. Estate Duty on the estate of the said deceased has \*(now been fully paid).

\*5. In view that the value of properties of the deceased has been varied as shown in the amended [Provisional] Schedule of the Property annexed to the Grant, I crave leave of this Honourable Court that the said Grant be amended in the following manner:-

(i) Reference to "Provisional" in the said Grant be deleted,

(ii) The figure of "Sworn under \$ ....." be deleted from (\*the first sheet of) the said Grant and substituted therefor the word "Re-sworn under \$ ....."

(iii) The figure "\$ ....." be deleted and substituted therefor the figure "\$ ....." for Estate Duty and interest; and

(iv) The last paragraph of the said Grant be amended to cope with the present situation.

\*AFFIRMED/SWORN in the High Court, Hong )  
 Kong, this.....day )  
 of.....20....., \*[through the )

20.1 Non-Contentious Probate Practice

interpretation of .....(name).....of..... )  
(address).....,the said interpreter having been )  
also first \*affirmed/sworn that \*he/she had )  
truly, distinctly and audibly interpreted the )  
contents of this document to the )  
\*affirmant/deponent, and that \*he/she would  
truly and faithfully interpret the  
\*affirmation/oath about to be administered to  
\*him/her.]

Before me,

Commissioners for Oaths

I,.....(name of interpreter).....of.....(address).....,\*do solemnly, sincerely and truly  
affirm and say/make oath and say that I well understand the ..... dialect of the .....  
language and the English language and that I have truly, distinctly and audibly interpreted the  
contents of this document to the \*affirmant/deponent ....., and that I will truly and  
faithfully interpret the \*affirmation/oath about to be administered to \*him/her.

\*AFFIRMED/SWORN in the High Court, )  
Hong Kong, this ..... day )  
of .....20....., )

Before me,

Commissioner for Oaths

\*To be deleted or substituted as appropriate.

Affirmation or Affidavit verifying the  
Schedule of Assets and Liabilities  
(For Grant)

**DRAFT**

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE

IN THE ESTATE of (name) late of (address),  
(marital status), deceased ("the Deceased").

I, A.B., (occupation), of (address), do hereby \*[solemnly and sincerely affirm] [make oath] and say as follows:

1. I refer to my application for a grant in respect of the estate of the Deceased.
2. There is now produced and shown to me marked "S-1" the schedule of assets and liabilities of the Deceased ("the Schedule").
3. The Schedule sets out the assets and liabilities of the Deceased as at the date of \*his/her death (including any assets and liabilities of the Deceased in the capacity of a trustee or the manager of a Tso or Tong) known to me as at the date hereof. By "assets", I mean any assets in the form of real property or personal property situated in Hong Kong. By "liabilities", I mean any liabilities contracted by the Deceased in Hong Kong to persons ordinarily resident in Hong Kong; or any other liabilities contracted by the Deceased and charged on any property of the Deceased situated in Hong Kong. \*[As I have intended to apply for limited grant, the Schedule will cover only those assets and liabilities, in respect of which the grant is applied for.] By this \*affirmation/affidavit, I verify to be true and correct the contents of the Schedule to the best of my knowledge, information and belief.

AFFIRMED/SWORN, etc. (see Form No. N1.1)

**Note:**

- (1) \*Delete or adapt as appropriate.

Corrective Affirmation or Affidavit  
verifying the Additional Schedule of Assets and Liabilities  
(Before Grant)

**DRAFT**

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE

IN THE ESTATE of (name) late of (address),  
(marital status), deceased ("the Deceased").

I, A.B., (occupation), of (address), do hereby \*[solemnly and sincerely affirm] [make oath]  
and say as follows:

1. I refer to the schedule of assets and liabilities exhibited to my previous \*affirmation/affidavit filed herein on [date] marked "S-1" ("the Schedule").
2. Since the filing of that \*affirmation/affidavit, it has come to my knowledge that the Schedule is inaccurate.
3. There is now produced and shown to me marked "S-2" the additional schedule of assets and liabilities of the Deceased ("the Additional Schedule"), to correct the inaccuracy in the Schedule.
4. The Additional Schedule sets out \*[the correction in replacement of the inaccuracy in the Schedule] [and] [the assets and liabilities of the Deceased as at the date of \*his/her death known to me that should have been set out in the Schedule but are not so set out]. By this corrective \*affirmation/affidavit, I verify to be true and correct the contents of the Additional Schedule to the best of my knowledge, information and belief.

AFFIRMED/SWORN, etc. (see Form No. N1.2)

Notes:

- (1) \*Delete or adapt as appropriate.
- (2) 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.

**DRAFT**

FORM No. N2.3

## Corrective Affirmation or Affidavit

**DRAFT**

verifying the Additional Schedule of Assets and Liabilities  
(After Grant)

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE

IN THE ESTATE of (name) late of (address),  
(marital status), deceased ("the Deceased").

I, A.B., (occupation), of (address), do hereby \*[solemnly and sincerely affirm] [make oath]  
and say as follows:

1. On the \_\_\_\_\_ day of \_\_\_\_\_ a \*grant of probate /grant of letters of administration (under Grant No. \_\_\_\_\_ of \_\_\_\_\_) was issued to me with the schedule of assets and liabilities of the Deceased ("the Schedule") annexed.
2. Since the issue of the grant, it has come to my knowledge that the Schedule is inaccurate.
3. There is now produced and shown to me marked "S-3" the additional schedule of assets and liabilities of the Deceased ("the Additional Schedule"), to correct the inaccuracy in the Schedule.
4. The Additional Schedule sets out \*[the correction in replacement of the inaccuracy in the Schedule] [and] [the assets and liabilities of the Deceased as at the date of \*his/her death known to me that should have been set out in the Schedule but are not so set out]. By this corrective \*affirmation/affidavit, I verify to be true and correct the contents of the Additional Schedule to the best of my knowledge, information and belief.

AFFIRMED/SWORN, etc. (see Form No. N1.2)



**Notes:**

**DRAFT**

- (1) \*Delete or adapt as appropriate.
- (2) 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.

**DRAFT**

This is the exhibit marked "S-1" referred to in the  
\*affirmation/affidavit of  
\*affirmed/sworn on (date).

\*Solicitor/Commissioner for Oaths  
(Firm name)

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

Name of the Deceased: \_\_\_\_\_ ("the Deceased")

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

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

**A. ASSETS**

1. CASH (Please specify amount) HKS \_\_\_\_\_

**2. CASH AT BANK**

Bank

Account No.

Balance as at date of death

3. **SAFE DEPOSIT BOX**

<u>Bank</u>	<u>Box No.</u>	<u>Branch</u>	<u>Contents</u> (as shown in the inventory list annexed)
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4. **STOCKS, SHARES, WARRANTS AND UNIT TRUSTS**

<u>Number of Shares/Units</u>	<u>Companies/Trusts</u>	<u>Securities Account number with Bank/Broker (if applicable)</u>
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5. **BUSINESS**

<u>Name</u>	<u>Business Registration Number</u>	<u>Percentage</u>
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6. **HOUSEHOLD GOODS**  
(Including picture, jewels, furniture and so on)

7. **MOTOR VEHICLES AND SHIPS**  
(For motor vehicles, please specify class, registration mark and year of manufacture)  
(For ships, please specify class of vessel, licence number and length of vessel)

**8. LAND AND BUILDINGS**

(Please copy the exact description of the property in the relevant agreement, assignment, or the Government Grant, as the case may be)

**9. INSURANCE POLICIES AND MPF ACCOUNTS**

(Please specify name of insurance company or fund, policy and account number)

**10. CHOSE IN ACTION**

(Including debts due to the Deceased, accrued rentals, compensation, utility deposits, interest in other estates, claims and so on)

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

(Please copy the exact description of the property in the relevant agreement, assignment, or the Government Grant, as the case may be)

**12. OTHER ASSETS**

(i.e. properties not covered by the above heads)

B. LIABILITIES

Name of Creditors

Description of debt or liability

NOTE

This schedule is verified by affirmation/affidavit by the applicant/executor/administrator pursuant to section 15A/24A/49AA 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 60J of the Probate and Administration Ordinance (Cap. 10), all companies, banks, firms and shops and other persons to whom a copy of this schedule may be presented should not deal with any property of the Deceased not set out therein. A person who fails to comply with section 60J commits a criminal offence and is liable to a fine and an additional penalty.

Dated the                      day of                      20                      .

---

Signature of \*affirmant/deponent

DRAFT

This is the exhibit marked "S-2" referred to in the  
\*affirmation/affidavit of  
\*affirmed/sworn on (date).

\*Solicitor/Commissioner for Oaths  
(Firm name)

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

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

Name of the Deceased: \_\_\_\_\_ ("the Deceased")

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

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

Particulars of Additional Assets/Liabilities (where appropriate)

Item	Description

**Amendment to the particulars of the \*Schedule of Assets and Liabilities/Additional Schedule of Assets and Liabilities previously filed (where appropriate)**

Previous item	Correct description (in replacement of the previous description)

**NOTE**

This additional schedule is verified by affirmation/affidavit by the applicant/executor/administrator pursuant to section 15A/24A/49AA 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 60J 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. A person who fails to comply with section 60J commits a criminal offence and is liable to a fine and an additional penalty.

Dated the                      day of                      20                      .

---

Signature of \*affirmant/deponent

**Index to**  
**Forms Specified by the Registrar**  
**Pursuant to Rule 2A of the**  
**Non-Contentious Probate Rules, Cap 10A**

*Explanatory Notes:*

The alphabets in the form numbers have the following meaning:

D	Forms relating to Possible <u>D</u> isputes
F	Forms relating to Application whereby the Deceased Domiciled in <u>F</u> oreign Country
L	Forms relating to Application without Will (Intestate: <u>L</u> etters of Administration)
M	Forms relating to <u>M</u> iscellaneous Matters
N	<u>N</u> ew forms made pursuant to the Revenue (Abolition of Estate Duty) Ordinance 2005
S	Forms relating to Application made under <u>S</u> pecial Circumstances
W	Forms relating to Application with <u>W</u> ill (Testate)
Suffix "a"	Forms used <u>a</u> fter the Abolition of Estate Duty
Suffix "b"	Forms used <u>b</u> efore the Abolition of Estate Duty

**Possible Disputes**

*Caveat*

D1.1	Caveat
D1.2	Withdrawal of Caveat
D1.3	Warning to Caveator
D1.4	Appearance to Warning

*Citation*

D2.1	Citation to Accept or Refuse Administration
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D2.2 Citation to Accept or Refuse Probate

D2.3 Appearance to Citation

### **Deceased Domiciled in Foreign Country**

#### *Sealing of Foreign Grant*

F1.1 Application for Sealing of Foreign Grant

F1.2 Affirmation or Affidavit of Justification for Sureties (for Sealing of Foreign Grant)

F1.3 Surety's Guarantee (on Application for Sealing of Foreign Grant)

#### *Application for Grant*

F2.1 Ex-parte Application under Rule 29(a)

F3.1 Ex-parte Application under Rule 29(b)

F4.1 Ex-parte Application under Rule 29(c)

### **Application for Letters of Administration (Intestate)**

#### *Types of Application*

L 1.1a Affirmation or Affidavit by Administrator (Husband's Application)

L 1.1b Affirmation or Affidavit by Administrator (Husband's Application)

L 1.2a Affirmation or Affidavit by Administratrix (Wife's Application)

L 1.2b Affirmation or Affidavit by Administratrix (Wife's Application)

L 1.3a Affirmation or Affidavit by Administrator (Child's Application)

- L 1.3b Affirmation or Affidavit by Administrator (Child's Application)
- L1.4a Affirmation or Affidavit by Administrator (Parent's Application)
- L1.4b Affirmation or Affidavit by Administrator (Parent's Application)
- L1.5a Affirmation or Affidavit by Administrator (Sibling's Application)
- L1.5b Affirmation or Affidavit by Administrator (Sibling's Application)
- L1.6a Affirmation or Affidavit by Administrator (Other Applications)
- L1.6b Affirmation or Affidavit by Administrator (Other Applications)

*Renunciation*

- L2.1 Renunciation of Administration

*Appointing another Person*

- L3.1 Power of Attorney to take Administration given by the Person entitled to the Estate
- L3.2 Nomination of a Co-administrator
- L3.3 Election of Guardian for the purpose of Nominating a Co-administrator
- L3.4 Election of Guardian to take Grant

*Trust Corporation Documents*

- L4.1 Letter of Authorization by a Person entitled to share in the Estate to Trust Corporation

03/77

L4.2 Letter of Consent by another Person entitled to share in the Estate

### **Miscellaneous**

#### *Evidence*

M1.1 Affirmation or Affidavit of Death

M2.1 Affirmation or Affidavit of Identity

#### *Surety*

M3.1 Affirmation or Affidavit of Justification for Sureties

M3.2 Surety's Guarantee

#### *Amendment*

M4.1 Application for Amendment of Grant (Correction of Name and other matters)

M4.2 Application for Amendment of Grant (Change in Estate Value)

#### *Time for Claim*

M5.1 Application for an Order under Rule 60A

M5.2 Rule 60A Order

### **New Forms arising from Abolition of Estate Duty**

#### *Summary Administration*

N1.1 Affirmation or Affidavit verifying the Schedule of Assets and Liabilities (Summary Administration)

N1.2 Corrective Affirmation or Affidavit verifying the Additional Schedule of Assets and Liabilities (Before Summary Administration)

N1.3 Corrective Affirmation or Affidavit verifying the Additional Schedule of Assets and Liabilities (After Summary Administration)

*Grant*

N2.1 Affirmation or Affidavit verifying the Schedule of Assets and Liabilities (For Grant)

N2.2 Corrective Affirmation or Affidavit verifying the Additional Schedule of Assets and Liabilities (Before Grant)

N2.3 Corrective Affirmation or Affidavit verifying the Additional Schedule of Assets and Liabilities (After Grant)

*Sealing of Foreign Grant*

N3.1 Affirmation or Affidavit verifying the Schedule of Assets and Liabilities (Sealing of Foreign Grant)

N3.2 Corrective Affirmation or Affidavit verifying the Additional Schedule of Assets and Liabilities (Before Sealing of Foreign Grant)

N3.3 Corrective Affirmation or Affidavit verifying the Additional Schedule of Assets and Liabilities (After Sealing of Foreign Grant)

*Schedule*

N4.1 Schedule of Assets and Liabilities of the Deceased in Hong Kong as at the Date of Death

- N4.2 Additional Schedule of Assets and Liabilities of the Deceased in Hong Kong as at the Date of Death

### Application for Special Grant

#### *Grant Pending Suit*

- S1.1a Affirmation or Affidavit by Administrator (For Grant Pending Suit (Testate))
- S1.1b Affirmation or Affidavit by Administrator (For Grant Pending Suit (Testate))
- S1.2a Affirmation or Affidavit by Administrator (For Grant Pending Suit (Intestate))
- S1.2b Affirmation or Affidavit by Administrator (For Grant Pending Suit (Intestate))

#### *Preservation of the Estate*

- S2.1a Ex-parte Application under Rule 51(b)
- S2.1b Ex-parte Application under Rule 51(b)
- S2.2a Affirmation or Affidavit by Administrator (For Grant Ad Colligenda Bona)
- S2.2b Affirmation or Affidavit by Administrator (For Grant Ad Colligenda Bona)

#### *Chain of Administration*

- S3.1a Affirmation or Affidavit by Administrator (For Grant De Bonis Non)

- S3.1b Affirmation or Affidavit by Administrator (For Grant De Bonis Non)
- S3.2a Affirmation or Affidavit by Administrator with Will (For Grant De Bonis Non)
- S3.2b Affirmation or Affidavit by Administrator with Will (For Grant De Bonis Non)

### **Application with Will (Testate)**

#### *Application for Probate*

- W1.1a Affirmation or Affidavit by Executor (Executor's Application)
- W1.1b Affirmation or Affidavit by Executor (Executor's Application)

#### *Applications for Grant with Will annexed*

- W1.2a Affirmation or Affidavit by Administrator with Will (Application by Attorney of Sole Executor)
- W1.2b Affirmation or Affidavit by Administrator with Will (Application by Attorney of Sole Executor)
- W1.2 Power of Attorney to take Administration (with Will) given by Sole Executor
- W1.3a Affirmation or Affidavit by Administrator with Will (Where Sole Executor has Died or Renounced)
- W1.3b Affirmation or Affidavit by Administrator with Will (Where Sole Executor has Died or Renounced)
- W1.4a Affirmation or Affidavit by Administrator with Will (Where no Executor Appointed)

- W1.4b Affirmation or Affidavit by Administrator with Will (Where no Executor Appointed)

*Renunciation*

- W2.1 Renunciation of Probate
- W2.2 Renunciation of Administration (with Will Annexed)

*Affirmation concerning the Will*

- W3.1 Affirmation or Affidavit of Due Execution of the Will
- W3.2 Affirmation or Affidavit of Handwriting and Signature
- W3.3 Affirmation or Affidavit of Plight and Condition of Will
- W3.4 Affirmation or Affidavit as to Alterations in Will

*Trust Corporation Documents*

- W4.1 Letter of Authorization by Sole Executor to Trust Corporation
- W4.2 Letter of Consent by Sole Residuary Legatee and Devisee to the Appointment of Trust Corporation
- W4.3 Letter of Authorization by Residuary Legatee and Devisee to Trust Corporation
- W4.4 Letter of Consent by Residuary Legatee and Devisee to the Appointment of Trust Corporation by another Residuary Legatee and Devisee



Our Ref.: SC 101/25/1 PT 3

Tel. No.: 2825 4600

Fax No.: 2524 4860

16 November 2005

The President  
The Law Society of Hong Kong  
3/F Wing On House  
71 Des Voeux Road Central  
Hong Kong

Dear *President,*

Re: Appointment in hearing of Non-Contentious Probate Matter  
("Non-Contentious Probate List")

I write to inform you that at the direction of the Chief Justice the practice of making appointments with the Probate Master to deal with the requisitions in non-contentious probate matter will be changed.

2. Since November 2003 we have set aside the first Saturday morning of each month to hear representation from practitioners on certain type of requisitions raised. Such arrangement has been well received.

3. It is now decided to extend such arrangement to cover any requisition raised. The requisitions need not be outstanding for four (4) months as required in 2003 arrangement. If an applicant does not agree with the requisition or has difficulties in answering it, he may apply for an appointment to see the Probate Master or any other Master designated by the Registrar.

4. Application should be made by completing and lodging the specified form (a copy annexed) with the High Court Registry together with the following documents, if appropriate:

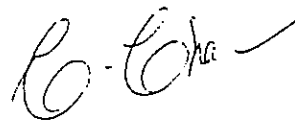
- (a) A short written skeleton submission setting out the requisitions and the proposed solutions or reasons for waiver;
- (b) Relevant Family Tree/Dramatis Personae; and
- (c) Chronology of important events.

Christopher C. Chan 陳 爵  
High Court, 38 Queensway, Hong Kong  
香港金鐘道38號高等法院



5. As from 2 December 2005, the Court will designate every Tuesday and Friday morning to hear representations from applicants on requisitions raised. Appointments shall be made with the Listing Officer at the High Court Registry (not the Probate Registry) at Room 108A on LG1 Floor of the High Court Building. Unless otherwise directed, the length of each appointment will be thirty (30) minutes.
6. The hearing will be held before a Master in Chambers open to the public. The applicants, solicitors or counsel may appear and address the court. It will be helpful if the applicants are also present even though they are represented. They may help to clarify and answer questions raised by the Master at the hearing to avoid delay. It will also assist them to understand the procedure and the proceeding to remove any misunderstanding. Practitioners are requested to consider this.
7. If two morning sessions of each week are not sufficient to hear all cases in the Non-Contentious Probate List, we are prepared to set aside more sessions for the purpose. We wish to see applications be dealt with swiftly without delay.
8. I shall be grateful if you will bring it to the immediate attention of all concerned.

Yours faithfully,



(Christopher C. Chan)  
Registrar

Encl.

b.c.c. All Masters  
Ms. Judy Fung, CJC/High Court Registry  
Ms. Helen Lung, Listing Officer/High Court Registry  
Mr. Hui Hiu Fung, Chief Probate Officer

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
PROBATE JURISDICTION

\_\_\_\_\_  
In the matter of Non-Contentious Probate  
Application

and

In the matter of Estate of [name of the  
deceased] deceased

\_\_\_\_\_  
NOTICE OF APPOINTMENT

TAKE NOTICE that the above application will be heard before  
\_\_\_\_\_ in Chambers, open to the public, at the High Court  
of the Hong Kong Special Administrative Region sitting at Court No. \_\_\_\_\_ on  
\_\_\_\_\_ Floor, High Court Building, No. 38 Queensway, Hong Kong on \_\_\_\_\_ day,  
the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_ at \_\_\_\_\_ o'clock in the fore /  
afternoon in respect of the following requisitions: [State the Number].

-----  
Annexed herewith is a copy of the requisition letter dated  
\_\_\_\_\_ from the Probate Registry.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2005.

Solicitors for the Applicant

HCAG 3695/2004

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
APPLICATION FOR GRANT NO. 3695 OF 2004

IN THE ESTATE of CHAN CHO  
CHAK (陳祖澤) late of Unit B, 9th  
Floor, Hang Lung Bank Eastern  
Branch Building, 391 King's Road,  
Hong Kong, retired merchant,  
deceased ("the Deceased").

Coram : Master J. Wong in Chambers  
Date of Hearing : 2 December 2005  
Date of Decision : 14 December 2005

DECISION

*Application*

1. This is the first application on the newly established Non-Contentious Probate List. In my view, it perfectly demonstrates how an application for grant can be processed expeditiously.

A *Background*

B 2. The Deceased died intestate in Hong Kong on 20 September  
C 2002. His lawful kit-fat wife passed away before him in 1995 and his  
D "concubine", after him in 2003. There were 11 children borne by the parties.  
E The applicant is the eldest son begotten by the Deceased and the concubine.

F 3. On 30 April 2004, the application for grant was filed. The  
G matter was processed in its usual way. Sometime in July 2005, requisition  
H no. 6 was raised to pursue the proof of the concubinage.

I "6. Neither (6) nor (7) can be accepted as evidence to prove the  
J union of concubinage of the deceased with Fung Shok Ying  
K since both the witnesses were not present and had no  
personal knowledge of the ceremony of concubinage. Please  
file fresh affidavit evidence from the siblings or relatives of  
the deceased, of his kit fat wife or Fung Shok Ying to comply  
with req. no. 5."

L 4. To comply with the requisition, on 1 November 2005, an  
M affirmation from the niece of the Deceased was filed to confirm that the  
N Deceased did take the concubine and the parties' relationship was accepted  
and recognized by the wife and the family generally.

O 5. On 17 November 2005, Mr. Registrar Chan issued a letter  
P informing the profession of the establishment of the Non-Contentious  
Q Probate List and invited them to make use of it. Messrs. John Ho & Tsui,  
R solicitors acting for the applicant, filed a notice of appointment accordingly  
S with the High Court Registry. On 2 December 2005, Mr. T. Chan appeared  
T before me. He kindly prepared a succinct skeleton to assist me. He also  
U diligently conducted research on the law relating to concubinage. He finally  
V invited the applicant to attend the appointment as well.

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V*The Law*

6. I have no hesitation to accept the research done by Mr. Chan.  
To summarize:

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(a) A ceremony, though usual, is not essential to establish concubinage. In *Cheang Thye Phin v. Tan Ah Loy* [1920] AC 369, the Privy Council said at pages 374 and 375 that:

"It is clear that a ceremony of marriage is necessary to constitute the relation of principal wife or 't'sai,' and the ceremony is one in which both the bridegroom and the bride must take part. By Chinese law a man may have secondary wives or 't'sips,' as they are sometimes called. The position of a secondary wife is superior to that of a mere concubine, though this term is sometimes applied to a 't'sip.' It is usual that there should be some sort of ceremony when a 't'sip' is taken, but it is not a ceremony of marriage; indeed, the man is not usually present when it does take place. The 'ceremony' varies in its details, but the principal features of it are the doing of obeisance to the 't'sai' by the prospective secondary wife, and the offering of tea by the latter to the 't'sai' and the relations."

(b) A common intention among the parties to form the concubinage is necessary. Huggins J. commented in *Wong Kam Ying v Man Chi Tai* [1967] HKLR 201 that:

"The taking of a concubine is not really a marriage at all: it is, to use the words of Lord Phillimore in *Khoo Hooi-leong v. Khoo Hean-kwee* [(1926) A.C. 529, 543] "a special kind of union". Dr. Chiu in his *"Marriage Law and Customs of China"* at p. 23 states that "Concubinage resulted from 'pen' or running away from the Six Rites". He makes it clear that a woman may become a concubine to a man who has no previous connubial union with a woman at all and that the man may subsequently take a t'sai: op.cit.p.24. It is unnecessary to consider all the circumstances in which a woman becomes a t'sip, but it may be noted that there is no particular form of ceremony required: *Cheang Thye-phin v. Tan Ah-loy* [ibid]. The absence of any ceremony may be indicative of the absence of the relationship (as in *Ng Ying-ho v.*

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A Tam Suen-yu [(1963) HKLR 923, 925] but the real question is A  
 whether there was a common intention to form a permanent union  
 B as husband and concubine: Re Lee Gee-chong, deceased [(1965) 1 B  
 MLJ 102]. In the present case I have not the slightest doubt that  
 C there was such an intention. Not only did the deceased himself for  
 many years treat her as a concubine but she was accepted as such  
 by Wong Kam-ying: she had “*passed the deceased’s door*”.” C

D 7. Acceptance of the concubine by the wife and recognition of the D  
 E relationship by the family generally are required. Section 13 of the  
 F Intestates’ Estates Ordinance (Cap. 73) (“IEO”) also provides a reference  
 that: F

G “(2) ....., ‘union of concubinage’ (夫妻關係) means a union of G  
 H concubinage, entered into by a male partner and a female partner  
 before 7 October 1971, under which union the female partner has, H  
 during the lifetime of the male partner, been accepted by his wife  
 as his concubine and recognized as such by his family generally.” I

J 8. Further, I also referred Mr. Chan to the authority of *Suen Toi* J  
 K *Lee v Yau Yee Ping* (FACV No. 22 of 2000) whereby it was held that the  
 L question of domicile was essential to determine the parties’ legal right to  
 form concubinage. In that case, no concubinage was formed because: L

M “41. .... None of them were ever domiciled in Hong Kong. And M  
 N it is only if they had been domiciled in Hong Kong at the time  
 when they sought to enter into unions of concubinage that Hong N  
 Kong law would have operated to give them capacity to do so  
 O under Chinese law and custom. Throughout they were domiciled  
 in the Mainland where concubinage had been abolished by the  
 P time they purported to enter into unions of concubinage. So under  
 their domiciliary law none of them had capacity to enter into a  
 Q union of concubinage. In the eyes of Hong Kong law therefore  
 neither Madam Sung nor Madam Chu ever became of Mr. Sung’s  
 concubines under Chinese law and custom.” Q

R  
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A *The Evidence* A

B  
C 9. To apply the above principles to the facts of the present case, I  
D am satisfied that the Deceased did intend to take the concubine. It was  
E accepted by the wife. It was also generally recognized by the family.  
F Though the deponents could not say anything on the ceremony (probably  
because they were not attending it personally), it is not a necessary  
ingredient and as such, need not be pursued further.

G *Assistance from the applicant* G

H  
I 10. It appears that so far so good. However, what about the  
J question of domicile? It has not been dealt with. When I discussed it with  
K Mr. Chan, he asked me to stand down the matter for him to take instructions.  
L Eventually, with the kind permission from Mr. Chan, I talked directly to the  
M applicant who sincerely told me that his father was born in China in about  
1898. The Deceased came to Hong Kong in 1917 due to personal reasons  
and thereafter established his family and business here.

N  
O 11. The applicant went on to spell out quite some further details. I  
P then asked him to concentrate on the court's concern, i.e. when the Deceased  
Q took the concubine in about June 1936, were they domiciled in Hong Kong?  
R The answer was affirmative. I pursued the matter by asking if he could  
produce some documents of proof to assist me further. He replied that he  
probably could find some old documents showing the establishment of the  
Deceased's residence and business in Hong Kong in or about 1936.

S  
T 12. By now, I must agree that requisition no. 6 has been cleared and  
U requisition "no. 7" to be raised has also been dealt with in some depth.  
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Instead of waiting to be communicated through letters, by phones and/or meetings, which may take months, the applicant has been made known what exactly this court is asking for.

*Decision and direction*

13. In the circumstances, I hereby do tick off requisition no. 6 and direct the applicant to file a supplemental affirmation dealing with the question of domicile as aforesaid, within say 28 days from today.

14. I have nothing further to add apart from expressing my gratitude towards Mr. Chan for his assistance in the matter.

  
(Jack Wong)

Probate Master

Mr. T. Chan of Messrs. John Ho & Tsui for the Applicant

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HCAG 6613/2005

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
APPLICATION FOR GRANT NO. 6613 OF 2005

IN THE ESTATE OF KOO  
PAULINE VERONICA (古米浦蓮)  
also known as PAULINE  
VERONICA KOO (古米浦蓮) late  
of Flat A, 17/F Hsia Kung Mansion,  
Kam Din Terrace, Taikoo Shing,  
Hong Kong, Married Woman,  
deceased ("the Deceased").

Coram : Master J. Wong in Chambers

Date of Hearing : 2 December 2005

Date of Decision : 14 December 2005

DECISION

*Application*

1. This is the second application on the new Non-Contentious Probate List. Mr. L. Lok, solicitor acting for the applicant, does not agree with requisition no. 7 and asks me to tick it off.

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*Background*

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2. The Deceased died testate on 1 May 2003. By paragraph 2 of her Will dated 9 July 1996, she appointed two executors and trustees.

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"I APPOINT my God-daughter SHUM TAI KAWN, CHRISTINE (沈大群) and my son PATRICK KOO (古萬祥) to be the joint EXECUTORS And TRUSTEES of this my Will (and they and the executor or executors or trustee or trustees for the time being hereof are hereinafter called "my Trustees")."

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3. The executors filed their affidavit ("the Affidavit") with the Registry on 13 July 2005. There had been some requisitions raised on the Affidavit and it was amended and re-filed on both 19 August 2005 and 9 November 2005.

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4. Now, after the amendments, paragraph 1 of the Affidavit reads as follows:

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"1. The above-named and described deceased ..... having made and executed her last Will and Testament dated 9 July 1996 whereof she appointed us, SHUM TAI KAWN, CHRISTINE (沈大群) and KOO MAN CHEONG, PATRICK LOUIS (古萬祥) also known as PATRICK KOO (古萬祥) (in the Will called PATRICK KOO (古萬祥)) and SHUM TAI KAWN, CHRISTINE (沈大群), as the joint executors thereof ....."

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5. No doubt, one will immediately note that the name of “SHUM TAI KAWN, CHRISTINE (沈大群)” appears twice and the latter should be deleted. Mr. Lok conceded on this.

*The Requisition*

6. Nonetheless, the officer asked for more. Requisition no. 7 required that the other executor Mr. Koo should be described exactly as appearing on the Will, i.e. “PATRICK KOO (古萬祥)” only.

7. It is said that paragraph 1 of the Specified Form asks for a “cut and paste” exercise only. Mr. Lok should have simply recited the appointment as per the Will. The description of Mr. Koo in the form of “... (in the Will called ...)” is only to be stated in the originating paragraph of the Affidavit.

*The Ruling*

8. Having carefully considered the matter, I have come to the conclusion that requisition 7 is to be ticked off. My reasons appear below.

9. The Specified Forms shall be substantially complied with (*In the estate of Yip Ho*, Judgment dated 9 November 2005 in CACV 227/2004). Has Mr. Lok done so?

10. In my view, the court’s concern really boils down to the fact that the description of the executor in the grant shall correspond with that in his identification document. The grant is to be issued accordingly or that, the

executor will face difficulties when he will administer the estate because people might have doubt as to his identity. If the testator misspelt or otherwise incorrectly described the executor in the Will, it shall be made known to the court by affidavit, and thereafter, correctly stated in the grant.

11. Tristram and Coote's Probate Practice, 29th Edition, at page 130 provides us with the following useful guidance:

*"Name of deponent*

4.91 Care should be taken to ascertain, and include in the oath, the true full name of the deponent, whether or not this is correctly stated in the will.

4.92 If the name of an executor or executrix is misspelt or imperfectly or incompletely stated in the will, the words 'in the will called ... (*as in will*)' should be added to his or her correct name.

4.93 Where the discrepancy is very slight to further evidence is usually required—e.g. when the two names are identical in sound, as 'Bailey' and 'Bayley'; or, if 'George Smithson' is appointed and his full name is 'George William Smithson'. In such a case it must be sworn in the oath 'George William Smithson, in the will called George Smithson'."

12. By reading the description of Mr. Koo under the existing paragraph 1, I do not consider that it will lead to any misunderstanding. It is Mr. Koo being one of the executors, in the Will called PATRICK KOO (古萬祥) but in his ID Card, KOO MAN CHEONG, PATRICK LOUIS (古萬祥) and commonly known as PATRICK KOO. So be it.

13. I agree that a simple recap of the description as per the Will in paragraph 1 suffices. However, I am not going to insist that it is the only

way. In my eyes, the approach adopted by Mr. Lok is substantially the same.  
In the end, Mr. Koo will be correctly described in the grant to be issued.

  
(Jack Wong)

Probate Master

Mr. L Lok of Messrs. Leo K. W. Lok & Co for the Applicant

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