

**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**

Introduction

The Revenue (Abolition of Estate Duty) Ordinance 2005 (“the new Ordinance”) was enacted on 2 November 2005. The new Ordinance will come into operation 3 months after its publication in the Gazette. As the new Ordinance was gazetted on 11 November 2005, it will become effective on **11 February 2006**. This paper sets out –

- (a) the changes in the application procedures for summary administration, grant of representation and sealing of foreign grants; and
- (b) the new procedures for small estates

following the commencement of the new Ordinance.

Application procedures in respect of estates of persons who passed away BEFORE 11 February 2006

2. The application procedures in relation to the administration of estates of persons who passed away before 11 February 2006 remain unchanged. Flowchart A at **Appendix I** illustrates the application procedures for summary administration and grant of representation in respect of the estates of such persons. The application procedures for grant of representation and sealing of foreign grants are similar, except in the case of the latter, the application should be supported by a foreign grant.

Procedures applicable at the Estate Duty Office

3. In respect of the estate of a deceased person who passed away before 11 February 2006, the personal representative (“PR”) (either the executor named in the will or the person entitled in priority to administer 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 documents 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 and 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 but 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 set out clearly 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 will (a) verify the assets and liabilities with third parties (if necessary), (b) value the business interests (sole trader and partnership) and shares (quoted and unquoted), (c) refer 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 (d) conduct 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 finalization of the assessment and the receipt of the estate duty, IRD will issue to the PR a Certificate of Exemption or a Certificate of Receipt of Estate Duty with the Schedule of Property or SILA as appropriate.

Procedures applicable 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 apply directly to the Official Administrator for summary administration under section 15 of the Probate and Administration Ordinance (Cap. 10) (“PAO”). In respect of other cases, after obtaining estate duty clearance according to the procedures set out in paragraphs 3 to 5 above, the PR may apply to the court for –

- (a) grant of probate or letters of administration under section 24 of the PAO; or
- (b) 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 –

- (i) before 11 February 2006; and
- (ii) on or after 11 February 2006.

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 or she 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 or she 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 11 February 2006

9. Flowchart B at **Appendix I** illustrates the application procedures for summary administration and grant of representation in respect of estates of persons who passed away on or after 11 February 2006. It also illustrates a possible path that a PR may take if all properties beneficially owned by the deceased as at the date of his or her death are wholly of money and not exceeding \$50,000 in aggregate, and the deceased did not hold any property as trustee for another person before his or her death. Further details of this are set out in paragraph 14 below.

Procedures applicable at the Probate Registry

10. In respect of the estate of a deceased person who passed away on or after 11 February 2006, 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 is required under the new law to

file with the Probate Registry a verifying affidavit exhibiting a Schedule of Assets and Liabilities (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 Assets and Liabilities should be filed in duplicate (sections 24A(2)(b) and 49AA(2)(b) of the PAO). If the application is for summary administration, a duplicate of the Schedule of Assets and Liabilities is not required (section 15A of the PAO). The Schedule of Assets and Liabilities should cover the assets and liabilities of the deceased in Hong Kong (including 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 at the date of his or 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 cash (sections 24A(13) and 49AA(13) of the PAO). 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. **Appendix II** lists out the documents required to be presented to the Probate Registry for making an application in respect of the estate of a person who passed away on or after 11 February 2006.

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 or she should file with the Probate Registry a Corrective Affidavit and an Additional Schedule of Assets and Liabilities in duplicate, together with the grant in case one has already been issued by the court (where applicable) (sections 15A(4), 24A(4), (8) and 49AA(4) and (8) of the PAO). 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. The forms of the above-mentioned affidavits and schedules applicable under the new procedures are to be specified by the Registrar of the High Court by general notice published in the Gazette.

Exemption for small estates (Section 60K of the PAO)

14. Where all properties beneficially owned by the deceased as at the date of his or her 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 as at the date of his or her death, the PR may file with the Secretary for Home Affairs (“SHA”)¹ an affidavit accompanied by a schedule in duplicate, declaring that all properties beneficially owned by the deceased as at the date of his or her 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 as at the date of his or her 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 section 60K(2) of the PAO, and that accordingly the PR and any third parties dealing with the estate of the deceased as set out in the schedule annexed thereto shall be exempted from the intermeddling provisions under section 60J(3), (6) and (7) of the PAO². A duplicate of the schedule filed in respect of the application will be attached to the confirmation notice.

¹ SHA will delegate his new powers under the PAO, including issuance of a confirmation notice in relation to small estates, administratively to the Commissioner of Inland Revenue for a period, expected to be one year, following the commencement of the new Ordinance. Members of the public may submit applications to the Estate Duty Office of the IRD during this period.

² Where a confirmation notice has been issued by SHA, the exemption from the intermeddling provisions and the relevant criminal liability in respect of the property set out in the schedule annexed thereto does not, strictly speaking, affect the PR’s need to apply for summary administration before anyone can, as a matter of civil law, administer the estate. In practice, if the banks are prepared to release money deposited with them to the PR upon production of the confirmation notice issued by SHA, the PR may not find it necessary to apply for summary administration.

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 as at the date of his or her death which has not been disclosed in the affidavit concerned;
- (b) aware that the deceased held any property as trustee for another person as at the date of his or her death; or
- (c) aware of any inaccuracy in the schedule attached to the confirmation notice,

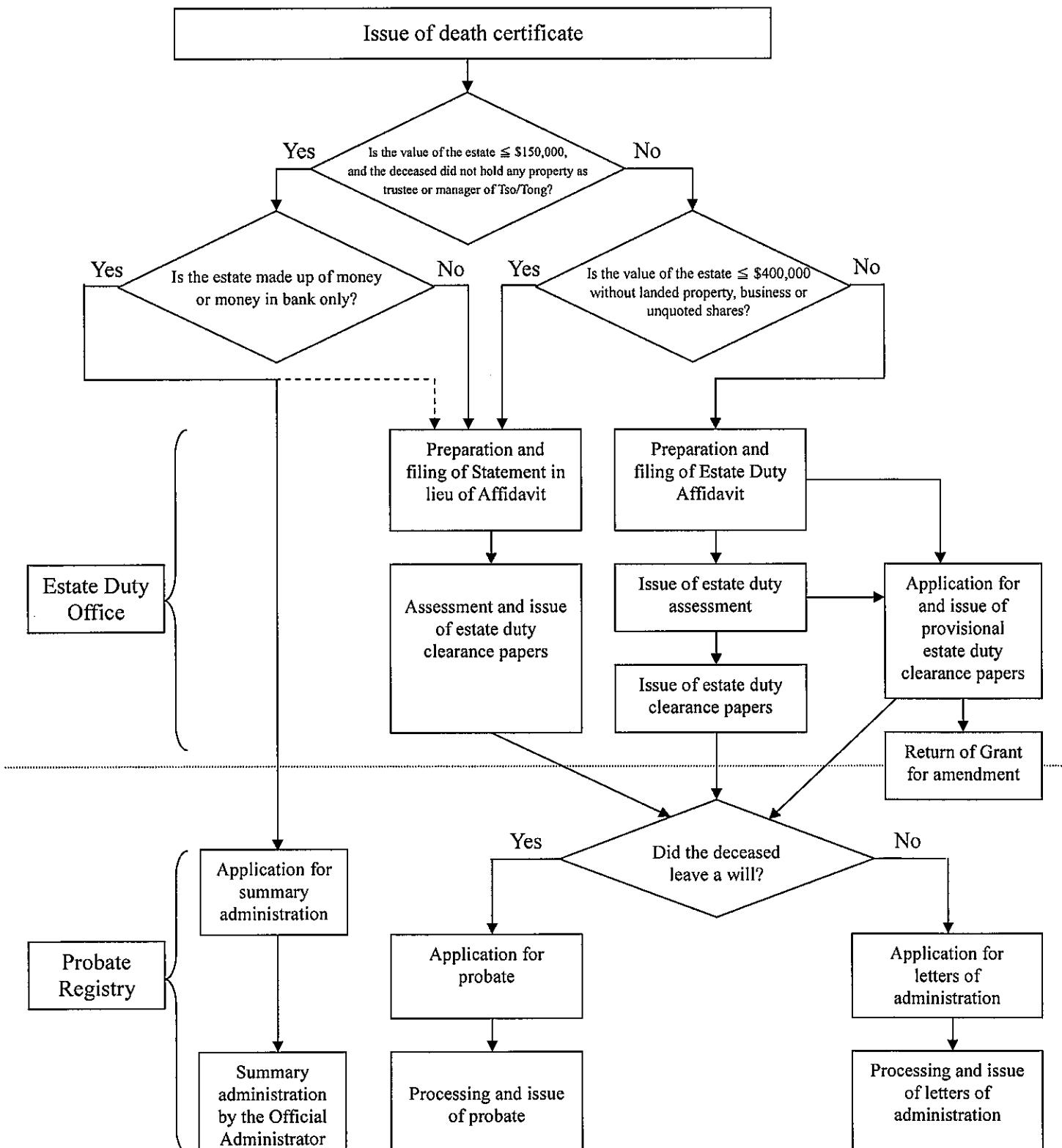
the PR should, as soon as practicable, give written notice of the fact to SHA (section 60K(5) of the PAO). SHA may subsequently cancel the original confirmation notice if he is satisfied on reasonable grounds that –

- (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 as at the date of his or her death; or
- (iii) there is any inaccuracy in the affidavit or schedule,

by notifying the holder of the confirmation notice in writing (section 60K(6) of the PAO). The holder of the confirmation notice should return it to SHA for cancellation. On cancellation of the confirmation notice, a new one may be applied for if all properties beneficially owned by the deceased as at the date of his or her death are indeed money not exceeding \$50,000 in aggregate and the deceased did not hold any property as trustee for another person as at the date of his or her death.

Flowchart A

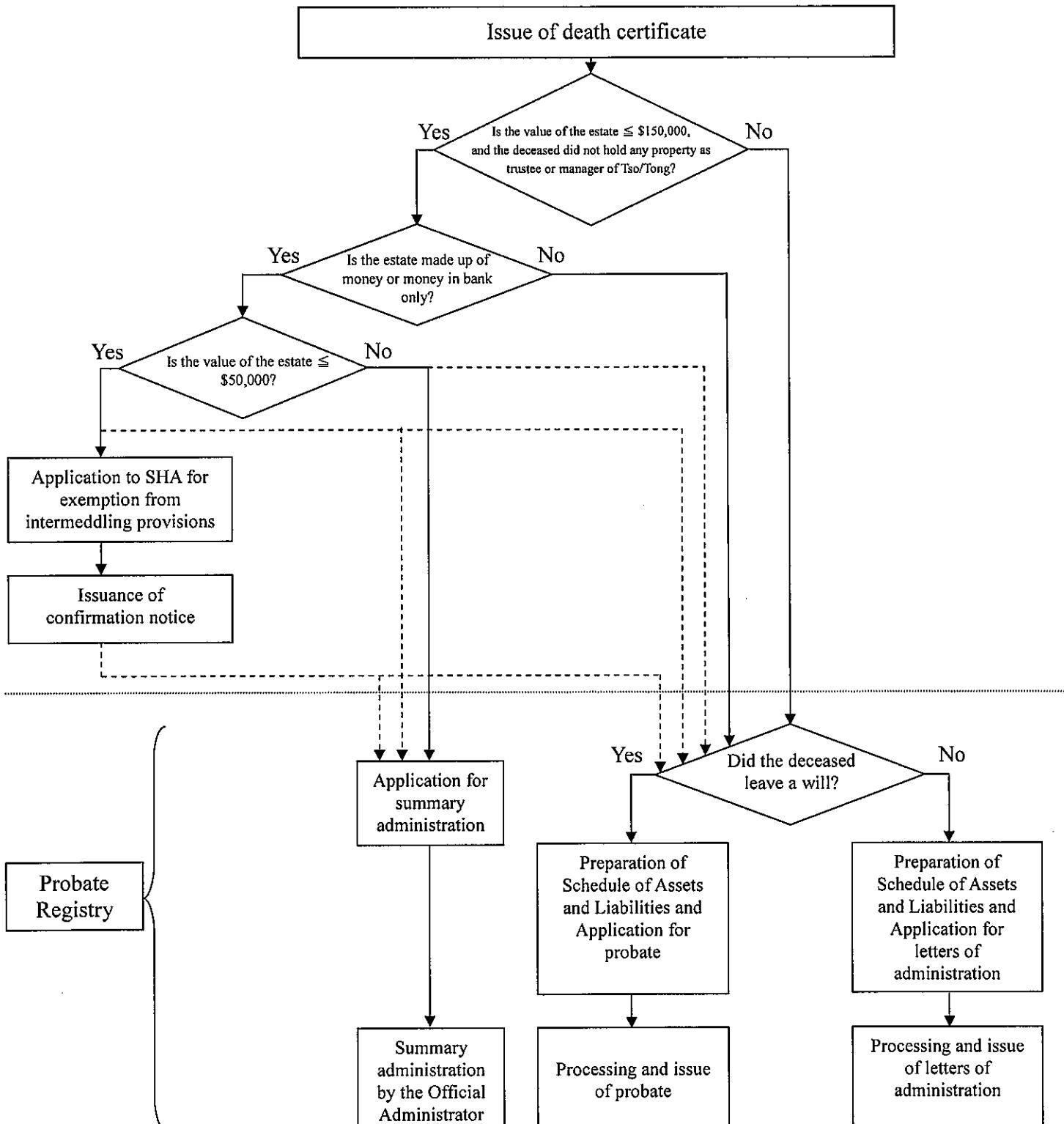
**Procedure for Application for Summary Administration or
Grant of Representation where the deceased passed away
BEFORE 11 February 2006**



* Note: The dotted line (----) represents a possible alternative 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 11 February 2006**



* Note: The dotted lines (----) represent possible alternatives 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 11 February 2006	on or after 11 February 2006
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 stated in the application and 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 11 February 2006	on or after 11 February 2006
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 a copy of it 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 the Statement in lieu of Affidavit ("SIIA") issued by the Inland Revenue Department ("IRD")

Type of application	Where the deceased passed away	
	before 11 February 2006	on or after 11 February 2006
Sealing of foreign grant	<p>1. An application for sealing the foreign grant</p> <p>2. The foreign grant and an attested copy of it</p>	<p>3. A Certificate of Receipt of Estate Duty</p> <p>Certificate of Exemption with the Schedule of Property in duplicate or a Certificate of Exemption in duplicate with an authenticated copy of SIIA issued by IRD</p>