



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

Common Requisitions – Probate Registry

To assist the practitioners in making their applications for Grant and to facilitate their understanding of the practice, I am pleased to formally release the enclosed document “Common Requisitions – Probate Registry” prepared by the Probate Master J. Wong after consultation with the Probate Officers of the Probate Registry and the Probate Committee of the Law Society.

The document will be reviewed from time to time and we welcome suggestions or comments.

Registrar, High Court
December 2003

COMMON REQUISITIONS – PROBATE REGISTRY

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1. Title

- 1.1 The name(s) of the deceased in the title of all the affirmations and the E.D. papers are not the same. Please amend the name(s) in all the affirmations or in the E.D. papers where appropriate. (E.D. papers may be released in the usual manner, if required.)
- 1.2 Please amend to show the marital status of the deceased. (spinster/married woman/single woman/widow/concubine/bachelor?)
- 1.3 Please amend to show the last occupation of the deceased. (If he was a clerk before retirement, please describe him as "retired clerk".)
- 1.4 Please amend to show the correct late address of the deceased.
- 1.5 Please amend to show the correct (proper writing of the) Chinese name of the deceased.

2. Originating Paragraph

- 2.1 Please amend to show the occupation of the applicant (for male).
- 2.2 Please amend to show the marital status of the applicant (for female).
- 2.3 Please amend to show the correct address of the applicant.
- 2.4 Please amend to show the temporary address of the applicant.
- 2.5 Please amend to show the Chinese name, if any, of the applicant.

3. Paragraph 1/Next-of-kin

- 3.1 Please amend to show the correct date of death of the deceased.
- 3.2 Please amend to show the correct place of death of the deceased.
- 3.3 Please amend to show whether (a) the deceased died on an unknown date; (b) the date he was last known/seen to be alive; and (c) the date and place where his/her dead body was found in accordance with page 136 (para 1.149) of Tristram and Coote's Probate Practice, 29th edition.
- 3.4 Since the deceased died leaving his/her parent surviving, please provide authority that the deceased's sibling is entitled to the estate (s.4(4), Cap.73 refers); otherwise please delete the sibling from para 1.
- 3.5 Please amend to show whether the predeceased _____ had any children or issue either surviving or predeceasing him/her and to include the said issue in para _____ under the per stirpe rule, since they, if any, are entitled to share in the estate.
- 3.6 Please amend to include the lawful husband/lawful (kit fat) widow and relict/son/daughter of the deceased who has since deceased.
- 3.7 Please amend to show whether the predeceased _____ had any lawful children or issue either surviving or predeceasing him/her other than those shown in para _____.
- 3.8 (i) Please amend to include the particulars of the natural and lawful parent(s) of the deceased since the deceased died without issue and the value of the estate exceeds \$1,000,000.00. (Your attention is drawn to S.4(4) of Cap.73).
- (ii) Subject to (i) above, please also amend para _____ to show the correct entitlement of the applicant to the estate.
- 3.9 It is observed from _____ that _____ is described as the son/daughter of the deceased, but he/she has not been included in para 1 of (1). Please clarify and amend (1) appropriately.
- 3.10 Please amend to show whether the deceased had any siblings either surviving or predeceasing him/her other than those shown in para _____.

- 3.11 It appears from the age(s) of _____ that he/she/they was/were born before the deceased's marriage, please amend para 1 to show his/her/their correct description. (Your attention is drawn to para 6.218 at page 241 of Tristram & Coote's Probate Practice, 29th edition.)
- 3.12 Please amend to show the particulars of the co-habitation of the applicant and the deceased prior to their marriage. (The particulars should include the place and date of commencement of the cohabitation and whether any children was born during their cohabitation.)
- 3.13 Please amend to show by whom were the issue begotten to the deceased.
- 3.14 Please amend to show whether the deceased had any lawful children or issue either surviving or predeceasing him/her other than those shown in para _____ above.

4. Will

- 4.1 Please amend to show the names and ages of the beneficiaries named in the Will.
- 4.2 Please amend to show whether there is any residuary legatee and devisee holding in trust for any person named in the Will.
- 4.3 Please amend to show whether there is any residuary legatee or devisee for life named in the Will.
- 4.4 Please amend to show whether there is any residuary legatee or devisee named in the Will.
- 4.5 Please file an affidavit by one of the two attesting witnesses to prove due execution of the Will. (Will may be released in the usual manner to be marked as an exhibit.)
- 4.6 Please file an affidavit to prove the handwriting and signature of the Will of the deceased. (Will may be released in the usual manner to be marked as an exhibit.)

- 4.7 Please file a verifying affidavit as to the other Wills of the deceased. (See para 3.189 of Tristram and Coote's Probate Practice, 29th edition.) (Will may be released in the usual manner to be marked as an exhibit.)
- 4.8 Please provide authority that the applicant can be regarded as the executor of the Will of the deceased. (Please consider whether the applicant is the executor according to the tenor of the Will of the deceased.)
- 4.9 Please confirm by letter whether the Will of the deceased only consists of the very sheets of paper as it is not wax bound.
- 4.10 Please amend to show the correct description of the applicant with reference to rule 19 of Non-Contentious Probate Rules, Cap.10 in applying for the grant.

5. Marriage

- 5.1 Please amend to show whether the deceased was the lawful kit-fat wife of the applicant or otherwise, please file photocopy of her marriage certificate.
- 5.2 Please amend to show whether the applicant has any lawful wife or concubine other than the deceased.
- 5.3 Please provide authority that the deceased's customary marriage contracted in China was valid. It seems that the deceased's customary marriage was not valid since it was contracted in China after 1.5.1950 (please note that the marriage law of China was operative on 1.5.1950). Please provide authority that the applicant may apply in his/her capacity as the lawful husband/lawful kit-fat widow and relict of the deceased.
- 5.4 Please file an affidavit to prove the concubinage of the deceased and _____.
- 5.5 Please amend to show whether the deceased was accepted by the lawful kit-fat wife as the deceased's concubine.

- 5.6 Please amend to show the date, place and mode of the concubinage and whether the deceased was accepted by the lawful wife and family members generally as the concubine of deceased.
- 5.7 Please amend to show whether the deceased had any lawful wife/concubine other than _____.
- 5.8 Please file an affidavit to prove the co-habitation of the deceased by the co-habitant/competent independent witness.
- 5.9 Please amend to show whether the deceased was ever married to any person other than the applicant.
- 5.10 Please amend to show the place, date and mode of the deceased's marriage.
- 5.11 Please amend to show whether the deceased had any concubine.
- 5.12 Please amend to show whether the applicant has any concubine.

6. Capacity

- 6.1 Please amend to show the correct description and entitlement of the applicant to the estate in applying for the grant. (Your attention is drawn to para 6.361 at page 264 of Tristram and Coote's Probate Practice, 29th edition.)
- 6.2 Please amend to show the entitlement of the applicant to the estate in applying for the grant. (Your attention is drawn to para 6.361 at page 264 of Tristram and Coote's Probate Practice, 29th edition.)
- 6.3 Since the deceased was survived by his/her spouse who has since deceased and the value of the estate is under \$500,000.00, it appears that the applicant is not in the position to apply for the grant without obtaining a leading grant to the estate of the spouse. Please consider.
- 6.4 It appears that the applicant is not in the position to apply for the grant to the estate as one of the persons entitled to share in the estate notwithstanding the renunciation of the spouse of the deceased as the estate is under \$500,000.00. Please advise and

confirm the correct capacity of the applicant in applying for the grant with reference to r.21(4) of Non-Contentious Probate Rules.

- 6.5 Please amend to show the correct description and entitlement of the applicant to the estate in applying for the grant. (Please note that the deceased died after 3.11.1995 and the gross value of the estate is under \$500,000.00 – your attention is drawn to para 6.361 at page 264 of Tristram & Coote's Probate Practice, 29th edition.)
- 6.6 It appears that the applicant, being the sibling of the deceased, is not in the position to apply for the grant notwithstanding the renunciation of the parents of the deceased (See Section 4(6) of Cap.73).
- 6.7 Please amend to show the complete and full description of the applicant in applying for the grant under the per stirpe rule.
- 6.8 Please file expert opinion to show that the applicant is in the position to apply for the grant as far as Tsing Law is concerned.
- 6.9 Please amend to show whether the 1st applicant consents to the grant being limited for the use and benefit of the infant(s).
- 6.10 Please amend to show the usual limitation for the use and benefit of the infants.
- 6.11 Please amend to show the usual limitation for the use and benefit of the donor.
- 6.12 It appears that the applicant, being the lawful parent of the deceased, is not in the position to apply for a grant to the estate of the deceased as the said parent is not related to the deceased by blood – see para 1395 Halsbury's Laws 4th Ed., Vol. 17. Please consider.

7. Domicile

- 7.1 Please amend to show the place of domicile of the deceased.
- 7.2 The deceased died outside Hong Kong, please adduce evidence to show that he was domiciled in Hong Kong.

[e.g. (1) If the deceased was domiciled in Hong Kong, the affidavit evidence should show:

- whether the deceased was ordinarily resident in Hong Kong,
- the date on which he last left Hong Kong for _____,
- the purpose of his last trip to _____,
- whether he intended to return to and reside in Hong Kong permanently if not but for his death.

(2) To file a copy of the deceased's Hong Kong Identity Card and copy of his full set of travel documents.]

- 7.3 The deceased was of _____ nationality, please adduce evidence to show that he was domiciled in Hong Kong.
- 7.4 Please amend to show the place of domicile of the lawful husband of the deceased who has since deceased as the place of domicile of a married woman follows that of her husband.
- 7.5 Since the deceased died an infant, please show the place of domicile of his/her natural and lawful father. (The place of domicile of an infant follows that of the father.)
- 7.6 Please advise by letter the name and place of domicile of the husband of the deceased at the date of the death of the deceased. (Please note the place of domicile of a married woman follows that of her lawful husband.)
- 7.7 Please amend to show in which Province of Canada the deceased died domiciled.
- 7.8 Please amend to show in which State of the United States of America the deceased died domiciled.
- 7.9 Please amend to show in which State of Australia the deceased died domiciled.
- 7.10 Since the deceased died domiciled outside Hong Kong, please file an ex-parte application by affidavit for Registrar's Order under Rule 29 of Non-Contentious Probate Rules, Cap.10 together with Affidavit of law in support (pp. 399-402 of Tristram and Coote's Probate Practice, 26th edition refers.)

- 7.11 Since minority/life interest arises under the intestacy, the ex-parte application for an order under rule 29 of the Non-Contentious Probate Rules should be made by two applicants. Please seek leave from Registrar by letter to withdraw this ex-parte application and file a fresh ex-parte application by two applicants.

8. Documents

- 8.1 Please file the death certificate of _____.
- 8.2 Please file an authenticated death certificate of _____ together with a certified true English translation thereof prepared by a competent person acceptable to this court.
- 8.3 Please file a full set of the photocopy Will for annexure to the grant to be issued. (Page(s) _____ of the photocopy filed herein is/are missing.) (The original Will may be released in the usual manner if necessary.)
- 8.4 Please file a copy of the Will without any markings for fiat of the Registrar.
- 8.5 Please file a photocopy of the fiat copy Will (together with a certified true English translation thereof).
- 8.6 Please file a fresh photocopy Will without any markings on the back sheet for annexation to the grant to be issued. (Original Will may be released in the usual manner.)
- 8.7 Please file a better photocopy of the Will of the deceased for annexation to the grant to be issued. (Please note that part of the contents of the photocopy Will filed herein was impeded by the ribbon.) (The original Will may be released in the usual manner if necessary.)
- 8.8 Please file a photocopy of the marriage certificate of the deceased.
- 8.9 Please file a photocopy of the marriage certificate of the deceased which bears the translator's cross reference to the certified English translation together with the certified English translation thereof.

- 8.10 Please file a certified true copy of the marriage certificate of the deceased issued by the Registrar of Marriages or an affidavit of identity.
- 8.11 Please file a court certified or sealed copy of the decree nisi absolute (Divorce) to prove the dissolution of the marriage of the deceased.
- 8.12 Please file a certified and sealed copy of the birth certificate/the original birth certificate of the applicant issued by the Registrar of the Births and Deaths Registry or an affidavit of identity.
- 8.13 Please file a photocopy of the Hong Kong identity card and a full set of the travel document of the deceased.

9. Estate Duty Papers/Estate Value

- 9.1 Please file the duplicate carbon copy of the schedule of property.
- 9.2 Please file the duplicate carbon copy of the Certificate of Exemption.
- 9.3 Please file one more certified true copy of the schedule of property issued by the E.D. Office.
- 9.4 Please file a copy of the other parts of the E.D. papers, the present E.D. papers filed do not show the other properties composing the aggregate total value of the estate, which is \$ _____.
- 9.5 Please explain by letter why certified true copies instead of the original E.D. papers issued by the E.D. Office were filed.
- 9.6 Please amend to show the correct gross value of the estate (value of S. 10A property be included).
- 9.7 Please file a photocopy of the correspondence from the relevant Government department to show the amount of money payable by the Government to the estate. (Consideration will be given to para _____ of (1) and court fees payable after this requisition has been complied with.)

- 9.8 Please advise by letter whether there is any other money payable by the Government to the estate apart from the death gratuity.
- 9.9 Please amend to show the value of the estate disposed of by the Will.
- 9.10 Please amend to show the reason for a nil grant to be applied for.

10. Rule 7 & 8

- 10.1 Please comply with rule 7 of the Non-Contentious Probate Rules, Cap. 10. (If no property was held under the name of XXX, please amend (1) to show why it is necessary to include such name in the grant to be issued.)
- 10.2 Please amend to show whether the deceased held any asset in his/her alias.
- 10.3 Please comply with rule 8 of the Non-Contentious Probate Rules, Cap.10. (Will may be released in the usual manner.)

(Please note that the applicant shall mark the Will with an endorsement stating: "This is the original Will of, deceased marked 'A' by me referred to in my Affirmation/Oath for Probate/Administration (with Will annexed) dated" The solicitor or the Commissioner for oaths before whom (x) was affirmed shall also mark the Will with an endorsement stating: "This is the exhibit marked 'A' as referred to in the Affirmation/Affidavit of made on before me,"")

11. Minority/Life Interest

- 11.1 Please amend to show whether any minority or life interest arises under the Will.
- 11.2 Please amend to show whether any minority or life interest arises under partial intestacy.

- 11.3 Since the deceased was survived by issue under the age of 18 years, and the value of the estate exceeds \$500,000.00, it seems that minority interest arises under the intestacy. Please clarify or provide authority that no minority interest arises under the intestacy.
- 11.4 Since the deceased was survived by his widow+concubine+issue and the value of the estate exceeds \$500,000.00, it seems that life interest arises under the intestacy. Please clarify or provide authority that no life interest arises under the intestacy.
- 11.5 Subject to Requisition No.1 above, please consider seek leave from the Registrar by letter to withdraw this application and file a fresh application by 2 applicants. (Your attention is drawn to s.25 of Cap.10.)
- 11.6 Since the value of the estate is under \$500,000.00, it seems that no minority interest arises under the intestacy. Please clarify or provide authority that minority interest arises under the intestacy.

12. Form

- 12.1 Jurat starting on a fresh separate sheet not immediately following the text is not acceptable. Please rectify.
- 12.2 Please amend paragraph _____ in accordance with para 8 of Specified Form No. 1.
- 12.3 Please amend paragraph _____ in accordance with paras 8 and 9 of Specified Form No. 1A.

13. Nomination

- 13.1 Please amend to include paras 2-4 of the nomination at () by omitting the words "AND WHEREAS".
- 13.2 Please amend to show the date and the particulars of the nomination

at ().

- 13.3 Since the deceased who died intestate was survived by his/her spouse together with issue of which _____ is now of age and is entitled to share in the estate and may apply for a grant as such, it appears that he/she needs not to be nominated and appointed as the co-administrator by the spouse before he/she can apply. Please consider and seek the Registrar's leave by letter to withdraw the nomination at ().
- 13.4 Please amend para _____ to show the correct description/entitlement of the 2nd named applicant.

14. Renunciation

- 14.1 Please amend to show the particulars of the renunciation at ().
- 14.2 A renunciation executed before a person other than a solicitor or person before whom an oath may be sworn is not acceptable (s.29(2), Cap.10 refers). Please file a fresh renunciation properly executed by the renunciant.

15. Power of Attorney

- 15.1 Please amend to show the particulars of the power of attorney at () and whether the donor is residing outside Hong Kong.
- 15.2 Please amend to show the usual limitation for the use and benefit of the donor.

16. Identity

- 16.1 Please file an affidavit of identity.

- 16.2 Please amend the affidavit of identity in accordance with Specified Form No. 4.
- 16.3 Please identify the applicant in terms of para _____ of (1).
- 16.4 A witness of identity should know the applicant for at least 5 years. The affidavit of identity filed herein is not acceptable.

17. Proposed Amendment/Future Reference

- 17.1 Please amend para _____ as proposed in pencil as if those be the cases.
- 17.2 Without creating a precedent, please note for future reference the proposed amendments in pencil to _____ if that be the case.
- 17.3 Without creating a precedent, please confirm by letter the proposed amendments in pencil to _____.

18. Caveat

- 18.1 A caveat (No. _____ of _____) has been entered against the sealing of grant of representation of the estate of the deceased. Please cause a search to be made of the relevant caveat file in the usual manner and deal with the caveat. Before that no consideration is given to this application.

19. Resealing

- 19.1 Each and every page of the Will annexed to the foreign grant should bear the seal or be certified by the court. Please comply with. (The foreign grant may be released in the usual manner.)
- 19.2 Each and every page of the foreign grant should bear the seal or be

certified by the court. Please comply with. (The foreign grant may be released in the usual manner.)

- 19.3 Each and every page of the photocopy foreign grant for the file record should be duly attested by a solicitor or two clerks of solicitors' firm in Hong Kong. Please comply with. (The photocopy foreign grant may be released in the usual manner.)
- 19.4 Please file a photocopy of the foreign grant which should be duly attested by a solicitor or two clerks of solicitors' firm for record of the court. (The foreign grant may be released in the usual manner.)
- 19.5 Please file a certificate/letter from the issuing court to the effect that the grant of representation sought to be resealed here is still valid and has not been revoked.
- 19.6 Please amend para 2 to show the description (occupation for male and marital status for female) and capacity of the grantee.
- 19.7 Please amend para 3 to show the description (occupation for male and marital status for female) and capacity of the applicant.
- 19.8 The name of the deceased in an application for resealing should be identical to that in the foreign grant to be re-sealed. Please therefore either cause the E.D. papers or the foreign grant to be amended appropriately. (Foreign grant or E.D. papers may be released in the usual manner whichever is required.)

20. Surety

- 20.1 Sureties' guarantee (Rule 38 (1) () of Non-Contentious Probate Rules refers).
- 20.2 Sureties' guarantee (trust property).
- 20.3 For the purpose of fixing the penal sum of sureties' guarantee, please file an up-to-date valuation report of the property as shown in the schedule of property.
- 20.4 Please advise by letter the likely award in the event the claims are

successful for the purpose of fixing the penal sum of sureties' guarantee.

- 20.5 It appears that the applicant is not ordinarily resident in Hong Kong. Please advise by letter if this is so.

21. Grant Amendment

- 21.1 Please file an application for amendment by way of affidavit, by the grantee(s). (Your attention is drawn to Practice Direction 20.1 which takes effect on 19.3.2001.)
- 21.2 Please pay further court fees of \$_____.
- 21.3 Please pay \$10.00 on praecipe being fees for endorsing amendment on copy schedule of property.
- 21.4 Please file a further surety's guarantee for a guarantee penalty of \$_____.
- 21.5 Please file an ex-parte application by way of affidavit by the grantee(s) for Registrar's Order to amend the name of the deceased. (In the affidavit, please confirm the true name of the deceased and comply with Rule 7 of Non-Contentious Probate Rules, Cap.10.)
- 21.6 Please pay \$_____ on praecipe being fees for making alteration in grant pursuant to Order.
- 21.7 Since the estate is now over \$500,000.00, minority interest arises under the intestacy. Please apply by way of ex-parte application for Registrar's order to add a second administrator to the grant. (Rule 24 of Non-Contentious Probate Rules refers.)
- 21.8 Please file a consent of the proposed second administrator.
- 21.9 Please file an affidavit of identity of the proposed second administrator. (The witness should know the deceased and the proposed second administrator for at least 5 years.)
- 21.10 Please note for future reference the amendment in pencil made in paragraph _____ of _____.

22. Others

- 22.1 Please explain by letter the delay in making the application – the deceased having died in _____.
- 22.2 Please advise by letter whether the applicant is legally aided. If so, please file the relevant legal aid certificate.
- 22.3 Please adduce evidence to show what attempts and efforts have been made to obtain the _____ certificate of _____. Kindly also advise the best available evidence in hands before consideration is given to the request for waiver of the usual requirement.
- 22.4 Please amend to show whether the lawful widow/husband of the deceased has taken upon herself/himself a grant of representation to the estate of the deceased.

Note:

The requisitions herein are not exhaustive and shall not affect limit or prevent the exercise of any jurisdiction or discretion of the Registrar of the High Court in raising and dealing with requisitions in the process of application of any grant.

All rights reserved. No part of the requisitions herein may be reproduced in any form without the written permission of the Registrar of the High Court.