

**Procedures for Inspection of Safe Deposit Box and
Removal of Items therefrom
Following the Commencement of the
Revenue (Abolition of Estate Duty) Ordinance 2005**

Purpose

The Revenue (Abolition of Estate Duty) Ordinance 2005 (“the new Ordinance”) was enacted on 2 November 2005. The new Ordinance comes into operation 3 months after its publication in the Gazette on 11 November 2005 (i.e., 11 February 2006). This paper sets out in detail the relevant arrangements for inspection of a safe deposit box rented by a person who passed away **on or after 11 February 2006** and the procedures for removal of items therefrom.

Inspection and Inventory-taking

2. The following procedures are to apply to the inspection and inventory-taking of a safe deposit box rented solely or jointly with another person or other persons by the deceased –

- (a) If the executor or intending administrator wish to inspect the contents of the safe deposit box, he/she may apply to the Secretary for Home Affairs (“SHA”)¹ for a Certificate for Necessity of Inspection of Bank Deposit Box (“certificate for inspection”) under section 60C(1) of the Probate and Administration Ordinance (Cap. 10) (“PAO”).

¹ IMPORTANT NOTE

SHA will delegate his new powers, including the issue of a Certificate for Necessity of Release of Money; a Certificate for Necessity of Inspection of Bank Deposit Box; an Authorization of Removal from Bank Deposit Box; and a Confirmation Notice in respect of estate wholly made up of money not exceeding HK\$50,000 in value, under the Probate and Administration Ordinance 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 relevant applications to the Estate Duty Office of the Inland Revenue Department during this period.

- (b) On issue of a certificate for inspection, the applicant should make an appointment with SHA (in practice, public officers authorized by SHA) for the inspection of the box.
- (c) The inspection should take place in the presence of the holder of the certificate, a bank staff and any public officers authorized by SHA (section 60D(1) of the PAO). In the case of a safe deposit box rented jointly with other renter(s), the surviving renter(s) should also be present.
- (d) Where –
- (i) no will or similar instrument is found in the safe deposit box;
 - (ii) a will or similar instrument is found in the safe deposit box and the holder of the certificate for inspection is the executor named in the will or similar instrument; or
 - (iii) the holder of the certificate for inspection is the surviving renter of the jointly rented safe deposit box,
- the holder of the certificate should prepare an inventory of the contents in the box in the presence of the public officers and the bank staff (section 60D(3) of the PAO). The public officers present may assist in the preparation process if necessary. (Other circumstances under which the holder of the certificate should be allowed to prepare an inventory are set out in paragraphs 3 and 4 below.)
- (e) Where a will or similar instrument is found in the box and the holder of the certificate is the executor named in the will or similar instrument, the bank should allow the holder to remove the will after placing a copy of it in the box (section 60D(6) of the PAO).
- (f) The public officers and the holder of the certificate should verify the truthfulness and correctness of the inventory by signing thereon (section 60D(7) of the PAO). The original of the inventory is to be kept by the holder of the certificate, and all other parties present should be provided with a copy of the inventory. The copy should be kept by the bank concerned and

SHA for a period of six years after the preparation of the inventory (section 60D(9) of the PAO).

(g) The box should be closed or sealed after the will has been removed and an inventory has been taken. No document or article, other than the will or similar instrument under the specific circumstances as set out in (e) above, should be removed from the box at the inspection.

3. If a will or similar instrument is found in the safe deposit box during an inspection, and –

- (a) the holder of the certificate for inspection is not the surviving renter; and
- (b) the holder of the certificate for inspection is not the executor named in the will or instrument or no executor is named in the will or instrument,

the bank staff present should immediately make a copy of the will or instrument, put the will or instrument back into the safe deposit box, close or seal the box, and hand the copy of the will or instrument to the public officers present (section 60D(4) of the PAO).

4. However, if the certificate for inspection contains a statement by SHA that he has been satisfied by the holder that a will or similar instrument has been found in the box and that –

- (a) the will or instrument is not valid; or
- (b) no executor is named in the will or instrument; or
- (c) the executor named in the will or instrument –
 - (i) cannot be located;
 - (ii) refuses to act as executor;
 - (iii) has died; or
 - (iv) is otherwise not capable of acting as executor,

the holder of the certificate should prepare an inventory of the contents in the box in the presence of the public officers and the bank staff (section

60D(3) of the PAO), and follow the steps described in paragraph 2(f) and (g) above. The inclusion of such a statement by SHA in the certificate for inspection does not by itself authorize the holder to remove the will or instrument concerned. An eligible person who intends to remove the relevant will or instrument should make a separate application for an authorization for removal under section 60E(1) of the PAO (see paragraph 5 below).

Removal of Items

5. After an inventory has been prepared under section 60D(3) of the PAO (see paragraphs 2(d), (f) and 4 above), the personal representative or the surviving renter may apply to SHA for an Authorization for Removal from Bank Deposit Box (“authorization for removal”) of documents or articles in accordance with the procedures and criteria set out in –

- (a) paragraph 6 below in respect of a safe deposit box rented solely by the deceased; and
- (b) paragraphs 7 – 14 below in respect of a safe deposit box rented jointly by the deceased and other person(s).

Solely rented safe deposit box

6. Subsequent to the inspection of a safe deposit box rented solely by the deceased, the executor or intending administrator may apply to SHA for an authorization for removal of documents (including a will or similar instrument) in the inventory prepared under section 60D(3) of the PAO from the box (section 60E(1) of the PAO). The law provides that SHA may specify a document in an authorization for removal if he is satisfied that –

- (a) the document is necessary for or relevant to an application for a grant of representation, summary administration or sealing of a foreign grant; or
- (b) (i) the document belongs *prima facie* to a person other than the deceased;

- (ii) the document is urgently needed by the person; and
- (iii) the removal of the document would not prejudice the legitimate interest of any person in the estate of the deceased.

Generally speaking, SHA will not authorize the removal of any documents of monetary value as well as any articles in order to safeguard the interests of the beneficiaries in the estate.

Jointly rented safe deposit box

7. In the case of a safe deposit box rented jointly by the deceased and another person or other persons, the criteria and procedures for removal of items therefrom depend on whether the box is a jointly rented safe deposit box with a survivorship clause or arrangement, i.e. a jointly rented safe deposit box kept pursuant to an agreement under the terms of which the access to the contents of the box of any of the renters of the box is not affected by the death of any other renter of the box, e.g. the agreement specifically states that the bank shall recognize the surviving renter(s) as the only person(s) as having any right or interest under the agreement in the event of the death of one of the joint renters.

(I) Jointly rented safe deposit box without survivorship arrangement

8. Where the lease agreement of the safe deposit box rented jointly by the deceased and another person or other persons does not include a survivorship arrangement, the arrangements for removal of documents will be same as those applicable to a safe deposit box rented solely by the deceased (as set out in paragraph 6 above). However, apart from the executor or intending administrator, the surviving renter may also apply to SHA for removal from the safe deposit box of documents of no monetary value that belong to the surviving renter. Generally speaking, an application for removal of documents from the box should be supported by the written consent of the other party – the personal representative or the surviving renter.

(II) Jointly rented safe deposit box with survivorship arrangement

9. As regards jointly rented safe deposit box with a survivorship arrangement, where –

- (a) an inventory of the contents of the box has been duly prepared under section 60D(3) of the PAO; and
- (b) (i) the surviving renter is the personal representative of the deceased and has shown the bank concerned an authorization for removal issued by SHA (section 60E(2) of the PAO) (**Scenario A**); or
- (ii) the surviving renter is not the personal representative of the deceased, but he has obtained the written consent from the personal representative to remove document(s) or article(s) in the safe deposit box that belong to the surviving renter, and has shown the bank concerned an authorization for removal issued by SHA (section 60E(2) of the PAO) (**Scenario B**),

subject to the condition(s) specified by SHA on the authorization for removal, the bank may allow the holder of the authorization to remove the document(s) or article(s) specified therein.

10. On the expiry of a period of 12 months from the date of death of the deceased renter, where –

- (a) an inventory of the contents of the box has been duly prepared under section 60D(3) of the PAO; and
- (b) the surviving renter shows sufficient proof to the bank concerned that the deceased had passed away for over 12 months (section 60I of the PAO) (**Scenario C**),

the bank may follow the survivorship arrangement in the agreement, i.e. allowing the surviving renter to exercise his right of access to the contents of the box, and shall not be liable for intermeddling under section 60J of the PAO. This aims to safeguard the interests of the beneficiaries to a

certain extent while not unduly prejudicing the legitimate interests of the surviving renter.

11. In other words, where the personal representative is also the surviving renter (**Scenario A**), if he/she wants to remove item(s) from the safe deposit box, he/she would have to prepare an inventory of the contents in the safe deposit box in the first instance. Then he/she may proceed to apply for an authorization for removal from SHA. SHA will only specify items belonging to the surviving renter and documents that either are necessary to support an application for grant or do not belong to the deceased – see paragraph 6 above – on the authorization for removal. The surviving renter in question needs to declare such facts in the relevant application by affidavit. If the surviving renter, not being the personal representative of the deceased renter, wishes to remove items from the box within the 12-month period following the death of the deceased (**Scenario B**), he/she would have to obtain the written consent of the personal representative and obtain an authorization for removal from SHA. In respect of cases under this scenario, SHA will normally specify that the personal representative be present at the removal of items from the safe deposit box.

12. In respect of cases under **Scenarios A and B**, the surviving renter, in applying for an authorization for removal from SHA, will have to satisfy SHA by filing an affidavit declaring that the items to be removed belong to himself/herself. If it is subsequently discovered that some of the items listed in the relevant affidavit filed by the applicant actually belonged to the deceased, or if the applicant in the process removed any items that belonged to the deceased, the applicant will be liable to criminal sanctions such as false declaration, theft and deceit.

13. In any event, on the expiry of the 12-month period (**Scenario C**), the surviving renter is allowed access to the box without obtaining any authorization for removal from SHA. However, he/she should produce sufficient proof to the bank that the deceased has passed away for 12 months or more and that an inventory of the contents in the box has been duly prepared under section 60D(3) of the PAO. The prescribed one-year period for such cases is to prevent a possible “freezing” of the safe deposit box for an unlimited period of time, which may cause undue

hardship to the surviving renter. This may happen where –

- (a) there is no personal representative;
- (b) the personal representative refuses or does not care to give written consent or be present at the inspection; or
- (c) the personal representative refuses or does not care to file an application for grant or summary administration.

14. In all cases, the bank concerned and its staff will be exempted from criminal liability for intermeddling so long as they have acted in good faith and have exercised due care in accordance with the certificate for inspection and the authorization for removal (sections 60J(4) and (5) of the PAO).

15. The flowchart at the **Annex** illustrates the arrangements for inspection of and removal of items from the safe deposit box rented solely or jointly with other(s) by a deceased person who passed away on or after 11 February 2006.

*Home Affairs Bureau
November 2005*

**Arrangements for Removal of Items from
Solely and Jointly Rented Safe Deposit Boxes of Deceased Persons
who Passed Away on or after 11 February 2006**



