

Revenue (Abolition of Estate Duty) Bill 2005

Matters Arising from the Bills Committee Meeting on 21 July 2005

Purpose

This paper sets out the Administration's response to Members' comments at the Bills Committee meeting held on 21 July 2005 and reports the outcome of our discussions with the Law Society of Hong Kong (Law Society) and the Hong Kong Association of Banks (HKAB) on the arrangements for clearing away the contents of jointly-rented safe deposit boxes after the abolition of estate duty.

Safe deposit box with joint renters

2. At the meeting of the Administration with representatives of the HKAB and the Law Society on 3 August 2005, a suggestion was raised that if a bank abides by the survivorship clause in the relevant agreement with the renters and allow the surviving renter to access the box and clear away its contents, the bank concerned should not be liable for intermeddling. Nonetheless, as the contents in the box do not necessarily belong to the surviving renter, the surviving renter should be liable for intermeddling if he/she deals with or takes possession of those contents that belong to the deceased renter. The Administration agreed to consider the suggestion further.

3. We appreciate that the suggestion of the Law Society (which was supported by HKAB) is meant to maintain the status quo. However, following the abolition of estate duty, a fundamental change to the intermeddling provisions would occur. This is evident from the fact that the new intermeddling provisions are to be accommodated in the Probate and Administration Ordinance (Cap. 10) (PAO) instead of the Estate Duty Ordinance (Cap. 111). Revenue protection is no longer a purpose. The new provisions are to safeguard the legitimate interests of any person in the estate of the deceased, and consequently the resultant arrangements

should reflect this aim.

4. A paper on the detailed arrangements proposed by the Administration for the inspection of a safe deposit box rented solely or jointly by a person who passed away on or after the commencement of the Revenue (Abolition of Estate Duty) Ordinance and for the removal of items therefrom, including the Administration's latest proposal on arrangements for a safe deposit box with a survivorship clause, has also been prepared for discussion.

5. We are consulting HKAB and the Law Society on the revised proposal. Relevant Committee Stage Amendments would be drawn up when there is agreement on the way forward.

Release of warrants from safe deposit boxes

6. At its meeting on 21 July 2005, the Bills Committee requested the Administration to consider whether warrant certificates would be specified as one of the items to be removed from a safe deposit box in the certificate for inspection to be issued by the Secretary for Home Affairs (SHA).

7. Under the proposed section 60C(3C) of the PAO, SHA should not specify a document in a certificate for inspection –

- (a) unless the document is necessary for or relevant to an application for grant of representation; or
- (b) unless –
 - (i) the document belongs prima facie to a person other than the deceased renter; and
 - (ii) SHA is satisfied that –
 - (A) the document is urgently needed by the person; and
 - (B) the removal of the document would not prejudice the legitimate interest of any person in the estate of the deceased renter.

Generally speaking, SHA would not authorize the removal of any documents of valuable consideration as well as any articles in order to safeguard the interests of the beneficiaries in the estate. Warrant certificates are documents of valuable consideration.

8. A warrant is an instrument which gives investors the right to buy or sell the underlying asset, such as a stock, at a pre-set price on or before a specified date. The contract of a warrant gives a right to the holder of the instrument to exercise the right in accordance with the terms of the contract before a specified date. The value of the right depends on a number of factors, including –

- (a) the intrinsic value of the warrant (i.e. the difference between the market value of the underlying asset and the exercise or strike price specified in the contract); and
- (b) the expiry date.

If the intrinsic value is positive on or before the expiry date, there is an incentive for the holder of the warrant to exercise the right and capture the gain. Generally speaking, the value of the right fluctuates over time, depending on the market value of the underlying asset at the time of exercise.

9. We understand Members' concern that a warrant certificate may become valueless on its expiry. However, as the value of the right fluctuates over time, depending on the market value of the underlying asset at the time of exercise, there is no guarantee whether the release of a warrant certificate from the safe deposit box would make a positive or negative impact on the value of the whole estate of the deceased, and consequently the interest of beneficiaries in the estate.

10. Transfers of warrant certificates, as in other valuable assets, require due process. A transferor needs to go through various processes as required by the relevant legislation and/or the internal procedure of the stock broker or registrar of stock before exercising or transferring the warrant. In particular, he needs to prove title to the warrant. That being the case, even if a warrant certificate were removed from the box prior to the issue of a grant of representation, the holder of the warrant certificate might not be able to sell or exercise such warrant since his title

to such warrant has yet to be proved or confirmed. In the circumstances, we do not see a strong case why warrants should be accorded differential treatment from other documents of valuable consideration.

11. We would consider making it clear through public education that members of the public should give careful consideration before placing warrant certificates in a safe deposit box.

Home Affairs Bureau
1 September 2005