

## **Revenue (Abolition of Estate Duty) Bill 2005**

### **Inspection of Safe Deposit Box and Removal of Items therefrom**

#### **Purpose**

This paper sets out the detailed arrangements proposed by the Administration for inspection of a safe deposit box rented by a person who passed away on or after the commencement of the Revenue (Abolition of Estate Duty) Ordinance (the new 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.

#### **First Inspection and Inventory-taking**

2. Regardless of whether the safe deposit box is leased by a sole renter or joint renters, the following procedures are to apply to the first inspection and inventory-taking of a safe deposit box rented solely or jointly by a deceased person who passed away on or after the commencement of the new Ordinance –

- (a) If the executor or intending administrator would like to inspect the contents of the safe deposit box, he/she may apply to the Secretary for Home Affairs (SHA) for a Certificate of Necessity for Inspection of Bank Deposit Box (certificate for inspection).
- (b) On issue of a certificate for inspection, the applicant should make an appointment with SHA for the first 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. In case of a safe deposit box with joint renters, the surviving renter should also be present.
- (d) If a will or similar instrument is found in the box and the holder of the certificate for inspection is the executor named in the will or

similar instrument, he should make a copy of it and place the copy in the box. The holder of the certificate for inspection may then remove the will.

- (e) Other than the will or similar instrument, no document or article should be removed from the box at the first inspection.
- (f) The holder of the certificate, being the executor named in the will or similar instrument or the intending administrator, or the surviving renter, should also prepare an inventory of the contents in the box under the proposed section 60C(2A). The public officers present at the inspection may offer assistance if necessary.
- (g) The public officers, the holder of the certificate and the surviving renter (where applicable), should verify the truthfulness and correctness of the inventory by signing thereon. The original of the inventory is to be kept by the holder of the certificate, and all other parties should be furnished with a copy of the inventory.
- (h) The box should be closed or sealed after the will has been removed and an inventory has been taken.

3. If a will or similar instrument is found in the safe deposit box and the holder of the certificate is not the executor named therein, no further action should be taken and the box should be closed or sealed. Where the deceased person died testate, it is for the executor to apply for a certificate for inspection and prepare the inventory of the contents in the safe deposit box. Where prima facie the deceased person died intestate, preparation of the inventory for the safe deposit box falls on the intending administrator.

### **Removal of Items**

4. After an inventory has been prepared, the personal representative or the surviving renter may apply to SHA for removal of documents or articles in accordance with the procedures and criteria set out in –

- (a) paragraph 5 below for a safe deposit box rented solely by the deceased person; and

- (b) paragraphs 6 – 12 below for a safe deposit box rented jointly by the deceased person and other person(s).

### ***Solely-rented safe deposit box***

5. Subsequent to the first inspection of a safe deposit box rented solely by the deceased person, the executor or intending administrator may apply to SHA for removal of documents from the box. SHA should not specify a document in a certificate for inspection unless –

- (a) the document is necessary for or relevant to an application for grant of representation; or
- (b) (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.

### ***Jointly-rented safe deposit box***

6. In case of a safe deposit box rented jointly by the deceased and other person(s), the criteria and procedures for removal of items therefrom depend on whether the agreement of lease with the bank contains a “survivorship clause”, i.e. whether the relevant agreement of lease has specifically stated that the bank shall recognize surviving renter(s) as the only person(s) as having any right or interest under the agreement of lease relating to the box in the event of the death of one of the joint renters.

*(I) Jointly-rented safe deposit box without survivorship clause*

7. Where the agreement of lease of the safe deposit box rented jointly by the deceased and other person(s) does not contain a survivorship clause, the arrangements would be the same as those applicable to a safe deposit box rented solely by the deceased (as described in paragraph 5 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 valuable consideration that belong to the surviving renter. Any request for the removal of documents from the box need not be supported by the written consent of the counterpart – the personal representative or the surviving renter – so long as such request meets the prescribed conditions in paragraph 5.

*(II) Jointly-rented safe deposit box with survivorship clause*

8. In the light of the Administration's policy not to prejudice the legitimate interest of any person in the estate of the deceased renter and to address the problem of uncooperative personal representatives, we propose that where –

- (a) the lease agreement of the jointly-rented safe deposit box contains a survivorship clause;
- (b) an inventory of the contents of the jointly-rented safe deposit box has been duly prepared under the proposed section 60C(2A); and
- (c) (i) the personal representative is the surviving renter and has shown the bank concerned a certificate for inspection issued by SHA (**Scenario A**); or
- (ii) the surviving renter has obtained written consent from the personal representative to remove the documents and/or articles that belong to the surviving renter in the safe deposit box, has shown the bank concerned a certificate for inspection issued by SHA, and both the personal representative and the surviving renter are present at the

ensuing inspection (**Scenario B**); or

- (iii) on the expiry of a period of 12 months from the date of death of the deceased renter, the surviving renter shows sufficient proof to the bank concerned that the deceased had passed away for over 12 months (**Scenario C**),

the bank may follow the said condition in the agreement and shall not be liable for intermeddling under the proposed section 60H. The above proposal aims to safeguard the interests of the beneficiaries to a certain extent while not unduly prejudicing the legitimate interests of the surviving renter.

9. In other words, where the personal representative is the surviving renter (**Scenario A**), he/she would have to prepare an inventory of the contents in the safe deposit box, then apply for a certificate for inspection from SHA before removal of items from the safe deposit box. SHA would only specify items belonging to the surviving renter (and documents that do not belong to the deceased – see paragraph 5 above), as sworn by the surviving renter in the application by affidavit, on the certificate for inspection. If the surviving renter, not being the personal representative of the deceased renter, wishes to remove items from the jointly-rented safe deposit box within the 12-month period following the death of the deceased (**Scenario B**), he/she would have to obtain written consent from the personal representative, obtain a certificate for inspection from SHA, and secure the presence of the personal representative at the subsequent inspection of the box. In any event, on the expiry of the 12-month period (**Scenario C**), the surviving renter is allowed to access the box without the presence of the personal representative and without obtaining any certificate for inspection. However, he/she should produce sufficient proof to the bank that the deceased had passed away for over 12 months.

10. In applying for a certificate for inspection from SHA under Scenarios A and B, the surviving renter would have to satisfy SHA by filing an affidavit that the items to be removed belong to himself/herself and the removal of such items would not prejudice the legitimate interest of any person in the estate of the deceased renter. If it were subsequently discovered that some of the items listed in the affidavit filed

by the applicant for the above purpose actually belonged to the deceased renter (i.e. the applicant has made a false declaration), or if the applicant removed any items that belonged to the deceased renter in the process, the applicant could be penalized under criminal sanctions such as false declaration, theft and deceit.

11. The proposed one-year period (Scenario C) helps prevent a possible scenario of “freezing” the safe deposit box for an unlimited period of time, which may cause hardship to the surviving renter, in cases 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.

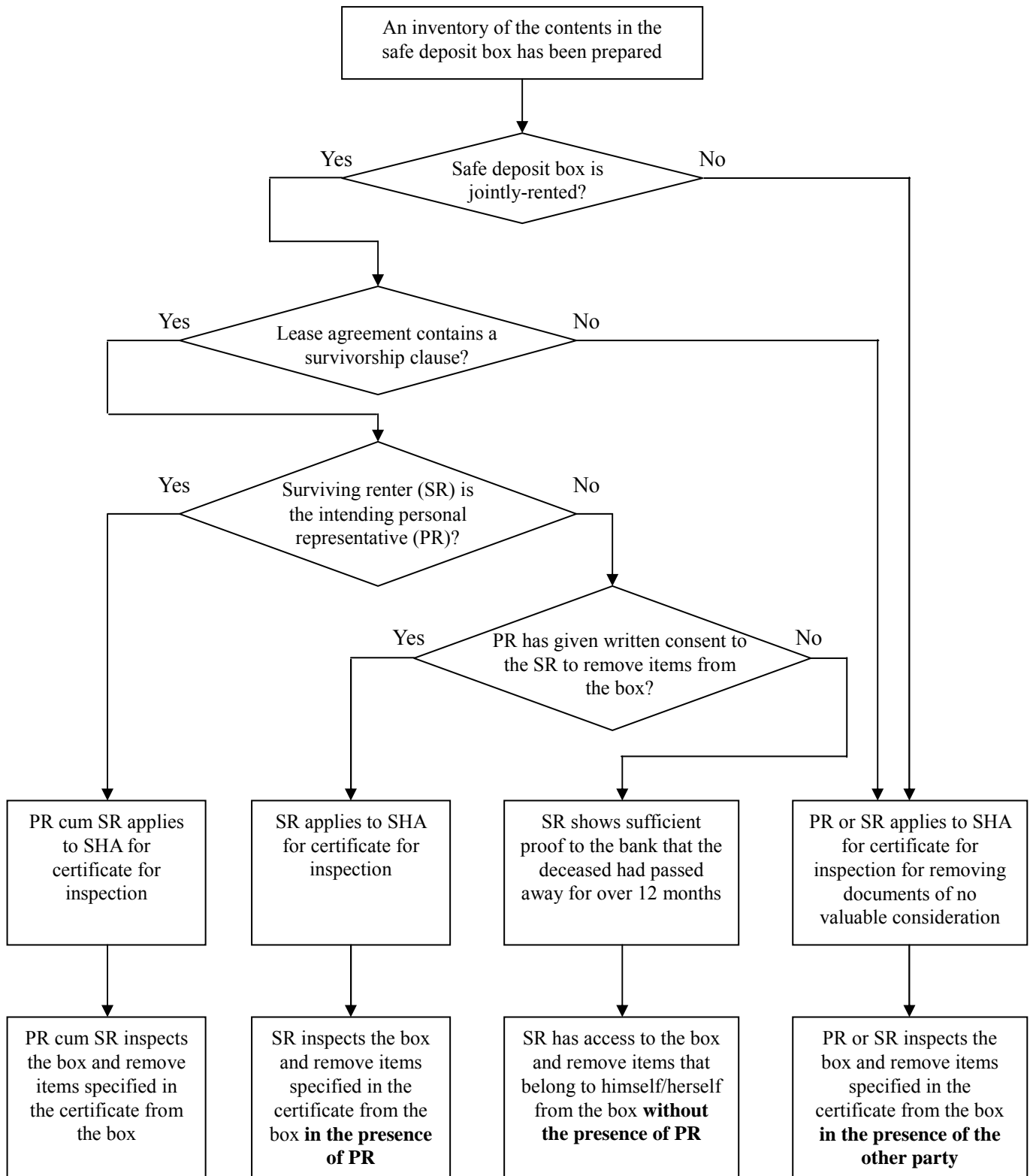
12. In all three scenarios, the bank concerned and its staff would be exempted from criminal liability for intermeddling so long as they have acted in good faith and have exercised due care in accordance with the certificate for inspection.

13. The flowchart at the **Annex** illustrates the proposed arrangements for inspection of and removal of items from solely and jointly-rented safe deposit boxes.

### **Further Consultation with relevant parties**

14. We would further consult the Hong Kong Association of Banks and the Law Society of Hong Kong on the revised proposal in respect of jointly-rented safe deposit box with survivorship clause, and would report to the Bills Committee as soon as possible.

## Arrangements for Removal of Items from Solely and Jointly-rented Safe Deposit Boxes



**Scenario A**

**Scenario B**

**Scenario C**