

REVENUE (ABOLITION OF ESTATE DUTY) ORDINANCE 2005

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 21 OF 2005

L.S.

Donald TSANG
Chief Executive
10 November 2005

An Ordinance to amend the Estate Duty Ordinance to give effect to the proposal to abolish estate duty in the Budget introduced by the Government for the 2005–2006 financial year and to—

- (a) make related amendments to the Inland Revenue Ordinance and Probate and Administration Ordinance;
- (b) establish a system that allows the Secretary for Home Affairs to facilitate release of money from bank accounts of deceased people and inspection of bank deposit boxes upon the lapse of similar powers under the Estate Duty Ordinance on the abolition of estate duty;
- (c) make consequential amendments to several other pieces of legislation; and
- (d) make saving provision.

[11 February 2006]

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Revenue (Abolition of Estate Duty) Ordinance 2005.

2. Commencement

This Ordinance shall come into operation on the expiry of the period of 3 months commencing on the day on which this Ordinance is published in the Gazette.

PART 2

ABOLITION OF ESTATE DUTY AND TRANSITIONAL REDUCTION OF ESTATE DUTY

Amendments to the Estate Duty Ordinance

3. Application

Section 2 of the Estate Duty Ordinance (Cap. 111) is amended—

- (a) by repealing “dying or who shall have died on or after 1 January 1916” and substituting “who dies on or after 1 January 1916 and before the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005)”;
- (b) by repealing “who shall have died before that date” and substituting “who died before 1 January 1916”.

4. Interpretation

Section 3(1) is amended, in the definition of “applicable Part of Schedule 1”—

- (a) in paragraph (b), by repealing “column 3; and” and substituting “column 3—”;
- (b) by repealing paragraph (c);
- (c) in column 2 of the Table, by adding “15 July 2005” opposite to “1 April 1998” in column 1 of the Table;
- (d) in column 3 of the Table, by repealing “Part 24;” and substituting “Part 24”;
- (e) by adding at the end of the Table—

“15 July 2005	the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005)	Part 25;”.
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5. Estate duty

Section 5 is amended by repealing “graduated rates” and substituting “amount or graduated rates, as may be applicable,”.

6. Exceptions for transactions for money consideration, property situate outside Hong Kong, shares on local registers and certain land in the New Territories

Section 10(*d*) is amended by adding “an amount or” before “a rate” where it twice appears.

7. Value of property; allowance for debts and funeral expenses

Section 13(6)(*a*) and (*b*) is amended by adding “amount or” before “rate of”.

8. Recovery of estate duty, etc.

Section 14(17)(*b*) is amended by adding “amount or” before “rate”.

9. Increase of estate duty when delay in lodging affidavit

Section 16(1) is amended by adding “or amount” after “the rates”.

10. Duty of executor as to unregistered shares

Section 17(3) is amended by adding “amount or” before “rate”.

11. Section added

The following is added—

**“20A. Provision concerning refund in respect
of persons who die between 15 July 2005
and commencement date of Revenue
(Abolition of Estate Duty)
Ordinance 2005**

(1) This section applies to the estate of any person who dies on or after 15 July 2005 and before the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005).

(2) Where the amount of estate duty paid before the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005) in respect of the estate of a deceased person exceeds the amount set out in Part 25 of Schedule 1, the Commissioner shall, as soon as practicable, cause to be refunded the excess amount.

(3) Where the amount of a penalty paid under section 14(17) or 42(2) before the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005) in respect of the estate of a deceased person exceeds the amount of penalty calculated on the basis of Part 25 of Schedule 1, the Commissioner shall, as soon as practicable, cause to be refunded the excess amount.

(4) Where an amount of interest paid under section 12(6) before the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005) in respect of the estate of a deceased person exceeds the amount of interest calculated on the basis of Part 25 of Schedule 1, the Commissioner shall, as soon as practicable, cause to be refunded the excess amount.

(5) For the avoidance of doubt, an excess amount refunded under subsection (2), (3) or (4) does not carry interest.

(6) A liability that arose before the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005) to pay, in respect of the estate of a deceased person, any amount of estate duty that exceeds the amount set out in Part 25 of Schedule 1 shall, as from that date, be deemed to be a liability to pay the amount set out in that Part.

(7) A liability that arose before the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005) to pay, in respect of the estate of a deceased person, any penalty under section 14(17) or 42(2) or interest under section 12(6) calculated on the basis of any amount that exceeds the amount set out in Part 25 of Schedule 1 shall, as from that date, be deemed to be a liability to pay a penalty or interest calculated on the basis of the amount set out in that Part.”.

12. Appeal to Court of First Instance

Section 22(1)(c) is amended by adding “amount or” before “rate”.

13. Schedule of property to be annexed to probate

Section 23 is amended by adding—

“(1A) The reference in subsection (1) to the rate set out in the applicable Part of Schedule 1 shall, in relation to the estate of a person who dies on or after 15 July 2005 and before the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005), be construed as a reference to the rate set out in Part 24 of Schedule 1.”.

14. Penalties for intermeddling

Section 24 is amended by adding—

“(3B) A reference in subsection (1), (2) or (3) to the rate set out in the applicable Part of Schedule 1 shall, in relation to the estate of a person who dies on or after 15 July 2005 and before the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005), be construed as a reference to the rate set out in Part 24 of Schedule 1.”.

15. Power to reduce penalty and duty

Section 27 is amended by repealing “rate” and substituting “amount or rate, as may be applicable,”.

16. Duty to give information on death

Section 42(2) is amended by adding “amount or” before “rate”.

17. Schedule 1 amended

Schedule 1 is amended—

- (a) within the square brackets, by adding “20A,” after “17,”;
- (b) in the heading of Part 24, by adding “and before 15 July 2005” after “1 April 1998”;
- (c) by adding—

“PART 25

(Persons dying on or after 15 July 2005 and
before the commencement date of the
Revenue (Abolition of Estate Duty)
Ordinance 2005 (21 of 2005))

Where the principal value of the estate exceeds \$7,500,000,
the amount of estate duty payable shall be \$100.”.

Amendments to the Prescription of Forms under Section 28

18. Form amended

The Prescription of Forms under Section 28 (Cap. 111 sub. leg. B) is amended, in form I.R. Form E.D. 3, in the top right corner, by repealing the address below “INLAND REVENUE DEPARTMENT, ESTATE DUTY OFFICE,” and substituting “HONG KONG.”.

Related Amendments to the Inland Revenue Ordinance

19. Liability of executor of deceased taxpayer

Section 54 of the Inland Revenue Ordinance (Cap. 112) is amended, in the proviso—

(a) in paragraph (b)—

- (i) by adding “where the person dies before the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005),” before “no assessment or”;
- (ii) by repealing “such person’s” and substituting “the person’s”;
- (iii) by repealing everything after “shall be made” and substituting—
 - “after—
 - (i) the expiry of 1 year from such date of death; or
 - (ii) the expiry of 1 year from the date of filing any affidavit required under the Estate Duty Ordinance (Cap. 111),
 - whichever is the later; and”;

(b) by adding—

- “(c) where the person dies at any time on or after the commencement date of the Revenue (Abolition of

Estate Duty) Ordinance 2005 (21 of 2005) in any year of assessment, no assessment or additional assessment (other than an assessment to additional tax under section 82A) in respect of a period prior to his death shall be made after the expiry of 3 years immediately after that year of assessment.”.

Related Amendments to the Probate and Administration Ordinance

20. Section added

The Probate and Administration Ordinance (Cap. 10) is amended by adding—

**“24B. Registrar to provide the Commissioner of
Inland Revenue with information in
application for grant**

Within 1 month of the receipt of an application made under section 24 in respect of the estate of a person who dies on or after the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005), the Registrar shall provide the Commissioner of Inland Revenue with such information supplied by the applicant for the purposes of the application as the Commissioner may require for the purposes of the Inland Revenue Ordinance (Cap. 112).”.

21. Section added

The following is added after section 49—

**“49AB. Registrar to provide the Commissioner
of Inland Revenue with information
in application for sealing of
non-local grants**

Within 1 month of the receipt of an application for sealing a grant under section 49 in respect of the estate of a person who dies on or after the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005), the Registrar shall provide the Commissioner of Inland Revenue with such information supplied by the applicant for the purposes of the application as the Commissioner may require for the purposes of the Inland Revenue Ordinance (Cap. 112).”.

PART 3

POWERS OF THE SECRETARY FOR HOME AFFAIRS

Amendments to the Probate and Administration Ordinance

22. Interpretation

Section 2 of the Probate and Administration Ordinance (Cap. 10) is amended by adding—

““Secretary” (局長) means the Secretary for Home Affairs;”.

23. Part VA added

The following is added—

“PART VA

BANK ACCOUNTS AND BANK DEPOSIT BOXES KEPT BY DECEASED

60A. Interpretation of Part VA

In this Part—

“authorization for removal” (取去物品授權書) means an Authorization for Removal from Bank Deposit Box issued under section 60E(1) or (2);

“bank” (銀行) has the same meaning as in the Banking Ordinance (Cap. 155);

“certificate for inspection” (檢視證明書) means a Certificate for Necessity of Inspection of Bank Deposit Box issued under section 60C(1);

“certificate for release of money” (支用款項證明書) means a Certificate for Necessity of Release of Money issued under section 60B(1);

“jointly rented safe deposit box” (聯名租用保管箱) means a safe deposit box jointly kept at a bank in the names of 2 or more persons;

“jointly rented safe deposit box with survivorship arrangement” (有尚存安排聯名租用保管箱) means 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;

“solely rented safe deposit box” (單人租用保管箱) means a safe deposit box kept at a bank in the sole name of a person;

“surviving renter” (尚存租用人), in relation to a jointly rented safe deposit box, means, where any renter in whose name the box is kept dies, any surviving renter in whose name the box is kept.

60B. Certificate for releasing money from bank account of deceased

- (1) The Secretary may—
 - (a) upon an application made—
 - (i) in respect of the estate of a deceased person who dies on or after the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005); and
 - (ii) in a manner specified by the Secretary;
 - (b) upon being satisfied by the applicant that the deceased person maintained an account in his sole name with a bank immediately before his death; and
 - (c) upon such proof as he considers sufficient,issue to the applicant a Certificate for Necessity of Release of Money in respect of the estate.
- (2) An application made under subsection (1)(a) in respect of the estate of a deceased person—
 - (a) subject to paragraph (b), shall be made by a person who intends to apply for a grant in respect of the estate; and
 - (b) may, where it is made only for the purpose described in subsection (3)(a), be made by any person who appears to the Secretary to be a fit and proper person to be the holder of the certificate applied for.
- (3) A certificate for release of money issued in respect of the estate of a deceased person shall certify that the Secretary is satisfied that the amount of money specified in the certificate is needed for any or both of the following purposes—
 - (a) meeting the funeral expenses of the deceased person;
 - (b) maintenance of any person who—
 - (i) was dependent on the deceased immediately before his death; and
 - (ii) appears to the Secretary to have an interest in the estate of the deceased.
- (4) If—
 - (a) the Secretary issues a certificate for release of money relating to a bank account in respect of the estate of the deceased person; and

(b) the holder of the certificate—
 (i) presents the certificate to the bank concerned; and
 (ii) produces sufficient proof of his identity to the bank,
the presentation of the certificate shall be regarded as a request for withdrawal of the amount of money specified in it from the account duly made by the deceased person as if he were alive and the bank shall, subject to the condition attached to the certificate under section 60G(1) (if any), make payment to the holder of the certificate accordingly.

60C. Certificate for inspection of safe deposit box kept by deceased

- (1) The Secretary may—
 (a) upon an application made in a manner specified by him;
 (b) upon being satisfied by the applicant that a deceased person who dies on or after the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005) kept—
 (i) a solely rented safe deposit box; or
 (ii) a jointly rented safe deposit box,
 at a bank immediately before his death; and
 (c) upon such proof as he considers sufficient,
issue to the applicant a Certificate for Necessity of Inspection of Bank Deposit Box in respect of the estate of the deceased.
- (2) An application under subsection (1) may be made—
 (a) by the executor or any one of the executors of the deceased concerned;
 (b) by a person who intends to apply for a grant in respect of the estate of the deceased concerned; or
 (c) where the safe deposit box concerned is a jointly rented safe deposit box, by any surviving renter.

60D. Inspection of safe deposit box and inventory of contents

- (1) If—
 (a) the Secretary issues a certificate for inspection relating to a safe deposit box in respect of the estate of the deceased; and
 (b) the holder of the certificate—
 (i) presents the certificate to the bank concerned; and
 (ii) produces sufficient proof of his identity to the bank,
the bank shall allow the holder of the certificate to inspect, subject to the condition attached to the certificate under section 60G(1) (if any) and in

the presence of such public officers as the Secretary may authorize and an employee of the bank, all items contained in the box only for any or both of the purposes prescribed in subsection (2).

(2) The prescribed purposes referred to in subsection (1) are—

- (a) ascertaining whether there is any will of the deceased or similar instrument in the safe deposit box;
- (b) preparing an inventory under subsection (3).

(3) After a safe deposit box has been inspected pursuant to subsection (1) by the holder of a certificate for inspection, the holder shall, where—

- (a) the safe deposit box is a jointly rented safe deposit box of which he is a surviving renter;
- (b) no will of the deceased concerned or similar instrument is found in the safe deposit box;
- (c) a will of the deceased or similar instrument naming him as the executor or one of the executors of the deceased concerned is found in the safe deposit box; or
- (d) the Secretary includes in the certificate a statement that he has been satisfied by the holder that a will of the deceased or similar instrument has been found in the safe deposit box and that—
 - (i) the will or instrument is not valid; or
 - (ii) no executor is named in the will or instrument or that the executor or all executors named in the will or instrument—
 - (A) cannot be located;
 - (B) refuse to act as executor;
 - (C) have died; or
 - (D) are otherwise not capable of acting as executor,

prepare, in the presence of the public officers and the employee of the bank, an inventory of the articles and documents contained in the safe deposit box.

(4) If—

- (a) a will of the deceased concerned or similar instrument is found in a safe deposit box upon an inspection made pursuant to a certificate for inspection;
- (b) (i) the holder of the certificate is not a surviving renter of the safe deposit box; and
 - (ii) (A) the holder of the certificate is not the person or one of the persons named in the will or instrument as the executor or executors of the deceased concerned; or

- (B) no executor is named in the will or instrument;
and
- (c) the certificate does not contain a statement of the Secretary referred to in subsection (3)(d),
the employee of the bank shall immediately—
 - (d) make a copy of the will or instrument;
 - (e) put the will or instrument back into the safe deposit box;
 - (f) close or seal the box; and
 - (g) hand over the copy of the will or instrument to the public officers present.
- (5) A copy of a will or similar instrument made under subsection (4)(d) shall be kept—
 - (a) by the Secretary for a period of 6 years after it is made; and
 - (b) either—
 - (i) in a legible form; or
 - (ii) in a non-legible form capable of being reproduced in a legible form.
- (6) Where—
 - (a) a will of the deceased concerned or similar instrument is found in a safe deposit box inspected pursuant to subsection (1); and
 - (b) the holder of the relevant certificate for inspection is named in the will or instrument as the executor or one of the executors of the deceased concerned,the bank shall allow the holder of the certificate to, subject to the condition attached to the certificate under section 60G(1) (if any), take possession of the will or instrument after placing a copy of it in the safe deposit box.
- (7) The truthfulness and correctness of an inventory prepared under subsection (3) shall be verified by—
 - (a) the public officers present at the inspection; and
 - (b) the holder of the certificate for inspection who prepared the inventory,by signing on the inventory.
- (8) A copy of an inventory prepared under subsection (3) shall be kept by the bank. Another copy shall be kept by the Secretary.
- (9) A copy of an inventory kept under subsection (8) shall be kept—
 - (a) for a period of 6 years after the preparation of the inventory; and
 - (b) either—
 - (i) in a legible form; or
 - (ii) in a non-legible form capable of being reproduced in a legible form.

(10) Where a copy of a will or similar instrument is kept by the Secretary under subsection (5), the Secretary may—

- (a) upon an application made in a manner specified by him;
- (b) upon being satisfied that—
 - (i) the applicant intends to apply for a grant in respect of the estate of the deceased concerned; and
 - (ii) the will or instrument is necessary for or relevant to the application for a grant; and

(c) upon payment of a fee specified by the Secretary, provide to the applicant a copy of the copy of the will or instrument kept by the Secretary.

(11) Where an inventory has been prepared under subsection (3) in respect of a safe deposit box, the Secretary may—

- (a) upon an application made in a manner specified by him;
- (b) upon being satisfied that the applicant—
 - (i) has a legitimate interest in the estate of the deceased concerned; or
 - (ii) (in the case of a jointly rented safe deposit box) is a surviving renter of the safe deposit box; and

(c) upon payment of a fee specified by the Secretary, provide to the applicant a copy of the inventory kept by him under subsection (8).

60E. Authorization for removal

(1) Where an inventory has been prepared under section 60D(3) in respect of a safe deposit box, the Secretary may—

- (a) upon an application made—
 - (i) in a manner specified by him; and
 - (ii) by—
 - (A) the executor or any one of the executors of the deceased concerned;
 - (B) a person who intends to apply for a grant in respect of the estate of the deceased concerned; or
 - (C) (in the case of a jointly rented safe deposit box) a surviving renter of the safe deposit box; and

- (b) upon being satisfied that—
 - (i) a document (including a will or similar instrument) included in the inventory is necessary for or relevant to an application under section 15 or 24(1) or an application for sealing of a probate or letters of administration under section 49; or

(ii) a document included in the inventory—

(A) belongs prima facie to a person other than the deceased who has an urgent need for the document; and

(B) the removal of the document from the safe deposit box will not prejudice the legitimate interest of any person in the estate of the deceased,

issue to the applicant an Authorization for Removal from Bank Deposit Box specifying the document.

(2) Where an inventory has been prepared under section 60D(3) in respect of a jointly rented safe deposit box with survivorship arrangement, the Secretary may—

(a) upon an application made in a manner specified by him by a surviving renter of the safe deposit box;

(b) upon being satisfied by an affidavit by the applicant that any document or article included in the inventory belongs to the applicant; and

(c) (where the applicant is neither the executor nor one of the executors of the deceased concerned nor a person who intends to apply for a grant in respect of the estate) upon production by the applicant of a written consent of—

(i) the executor or one of the executors of the deceased concerned; or

(ii) a person who intends to apply for a grant in respect of the estate of the deceased concerned,
to the removal of the document or article from the safe deposit box,

issue to the applicant an Authorization for Removal from Bank Deposit Box specifying the document or article.

(3) For the avoidance of doubt, an authorization for removal can be issued under both subsections (1) and (2).

(4) If—

(a) the Secretary issues an authorization for removal in respect of a safe deposit box; and

(b) the holder of the authorization—

(i) presents the authorization to the bank concerned; and

(ii) produces sufficient proof of his identity to the bank,

the bank shall, subject to subsection (5), allow the holder of the authorization to, subject to the condition attached to the certificate under section 60G(1) (if any), take possession of the document or article specified in the authorization.

(5) If a document specified in an authorization for removal is a will of the deceased concerned or similar instrument, the bank shall only allow the holder of the authorization to take possession of it under subsection (4) after placing a copy of it in the safe deposit box.

60F. Form of certificate and authorization

The form of—

- (a) a certificate for release of money;
 - (b) a certificate for inspection; or
 - (c) an authorization for removal,
- shall be specified by the Secretary.

60G. Secretary may attach condition

- (1) The Secretary may attach such condition as he thinks fit to—
 - (a) a certificate for release of money;
 - (b) a certificate for inspection; or
 - (c) an authorization for removal.
- (2) The Secretary shall not attach a condition under subsection (1) if it may likely prejudice the legitimate interest of any person in the estate concerned.
- (3) A condition attached to a certificate shall be endorsed on the certificate.

60H. Protection of bank staff and bank

As long as an employee of a bank through whom the bank performed its function under section 60B(4), 60D(1), (4) or (6) or 60E(4) has acted in good faith and has exercised due care, the employee and the bank shall not incur any civil liability for—

- (a) making payment to the holder of the certificate for release of money pursuant to section 60B(4);
- (b) allowing the holder of the certificate for inspection to inspect the safe deposit box under section 60D(1);
- (c) closing or sealing the safe deposit box under section 60D(4);
- (d) allowing the holder of the certificate for inspection to take possession of anything under section 60D(6); or
- (e) allowing the holder of the authorization for removal to take possession of anything under section 60E(4).

**60I. Surviving renter's right subject to this
Ordinance in 12 months following
death of joint renter**

(1) Notwithstanding anything in the contract between a surviving renter of a jointly rented safe deposit box with survivorship arrangement and the bank concerned for the renting of the safe deposit box, his right of access to the contents of the safe deposit box under the contract shall—

- (a) (where an inventory is prepared under section 60D(3) in respect of the safe deposit box during the 12 months after the death of the deceased renter concerned) during the 12 months after the death of the deceased renter concerned;
- (b) (where no inventory is so prepared during the 12 months after the death of the deceased renter concerned) before the preparation of such inventory,

only be exercisable subject to this Ordinance.

(2) It shall be the obligation of the surviving renter to satisfy the bank as to the date of death of the deceased renter concerned.”.

PART 4

PROHIBITION AGAINST INTERMEDDLING OF ESTATE

Amendments to the Probate and Administration Ordinance

24. Section added

The Probate and Administration Ordinance (Cap. 10) is amended by adding immediately before section 61—

**“60J. Prohibition against intermeddling
of estate**

(1) This section applies—

- (a) in relation to the estate of any person who dies on or after the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005); and
- (b) to—
 - (i) any part of an estate; or
 - (ii) any property,
situated in Hong Kong when the deceased concerned dies.

(2) Any person who, without lawful authority or reasonable excuse, deals with—

- (a) any part of the estate of a deceased person; or
- (b) any property held by the deceased in the capacity of a trustee or the manager of a Tso or Tong,

which is not set out in the schedule and additional schedule (if any)—

- (c) exhibited under section 15A;
- (d) annexed to a grant made in respect of the estate; or
- (e) annexed to an instrument effecting the sealing of a grant in respect of the estate under section 49AA,

commits an offence.

(3) Subject to section 60K(9), any person who, being neither the executor of a deceased person nor the person entitled in priority to the administration of the estate of a deceased person, takes possession of or in any way administers—

- (a) any part of the estate; or
- (b) any part of the income of any part of the estate,

without—

- (c) lawful authority or reasonable excuse; or
- (d) first filing an application in respect of the estate—
 - (i) to the Official Administrator for the exercise of his power under section 15;
 - (ii) for a grant under section 24; or
 - (iii) for sealing of a grant under section 49, supported by an affidavit exhibiting a schedule, or a corrective affidavit exhibiting an additional schedule, setting out such part of the estate,

commits an offence.

(4) If an employee of a bank through whom the bank performed its function under section 60B(4), 60D(1), (4) or (6) or 60E(4) has acted in good faith and has exercised due care for that purpose, the employee and the bank shall, for the purposes of determining whether he or it has committed an offence under subsection (2) or (3) by performing that function, be regarded as having acted with lawful authority.

(5) If—

- (a) a bank acting through an employee of it allows a surviving renter of a jointly rented safe deposit box with survivorship arrangement to exercise, subject to section 60I, his right of access to the contents of the safe deposit box under the contract for the renting of the safe deposit box; and
- (b) the employee has acted in good faith and has exercised due care for that purpose,

the bank and the employee shall, for the purposes of determining whether it or he has committed an offence under subsection (2) or (3) by allowing the exercise of that right, be regarded as having acted with lawful authority.

(6) Subject to section 60K(9), any executor of a deceased person or any person entitled in priority to the administration of the estate of a deceased person who—

- (a) takes possession of, or in any way administers, any part of the estate or the income of any part of the estate within the prescribed period commencing on the date on which the deceased dies; and
- (b) fails to submit within the prescribed period an application in respect of the estate—
 - (i) to the Official Administrator for the exercise of his power under section 15;
 - (ii) for a grant under section 24; or
 - (iii) for sealing of a grant under section 49, supported by an affidavit exhibiting a schedule, or a corrective affidavit exhibiting an additional schedule, setting out such part of the estate,

commits an offence.

(7) Subject to section 60K(9), any executor of a deceased person or any person entitled in priority to the administration of the estate of a deceased person who takes possession of, or in any way administers, any part of the estate or the income of any part of the estate after the expiry of the prescribed period commencing on the date on which the deceased dies without first submitting an application in respect of the estate—

- (a) to the Official Administrator for the exercise of his power under section 15;
- (b) for a grant under section 24; or
- (c) for sealing of a grant under section 49,

supported by an affidavit exhibiting a schedule, or a corrective affidavit exhibiting an additional schedule, setting out such part of the estate commits an offence.

(8) In subsections (6) and (7), “prescribed period”—

- (a) in a case in which—
 - (i) an application to the Official Administrator for the exercise of his power under section 15; or
 - (ii) an application for a grant under section 24, is made, means 12 months;
- (b) in a case in which an application for sealing of a grant under section 49 is made, means 18 months.

(9) A person who commits an offence under subsection (2), (3), (6) or (7) shall be liable on conviction to—

- (a) a fine at level 3; and
- (b) an additional penalty equal to the value of—
 - (i) the relevant part of the relevant estate; or
 - (ii) the relevant part of the income of the relevant part of the relevant estate,as the case may be.

**60K. Exemption from section 60J for estate
not exceeding \$50,000**

- (1) This section applies to—
 - (a) any deceased person who dies on or after the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005); and
 - (b) any property situated in Hong Kong when the deceased concerned dies.
- (2) The Secretary may—
 - (a) upon an application by the executor of a deceased person or the person entitled in priority to administer the estate; and
 - (b) upon being satisfied by an affidavit of the applicant that—
 - (i) all properties beneficially owned by the deceased as at the date of his death are money not exceeding \$50,000 in aggregate; and
 - (ii) the deceased did not hold any property as trustee or as the manager of a Tso or Tong as at the date of his death,issue to the applicant a confirmation notice in respect of the estate.
- (3) An affidavit under subsection (2) shall—
 - (a) exhibit a schedule in duplicate setting out all properties beneficially owned by the deceased as at the date of his death; and
 - (b) verify the truthfulness and correctness of it and of the schedule exhibited by it to the best of the knowledge, information and belief of the person by whom it is sworn.
- (4) Where a confirmation notice is issued upon an application supported by an affidavit, a duplicate of the schedule exhibited by the affidavit under subsection (3) shall be attached to the confirmation notice.
- (5) Where—
 - (a) a confirmation notice is issued under subsection (2) in respect of the estate of a deceased person; and

- (b) the applicant for the confirmation notice is subsequently—
 - (i) aware of any property beneficially owned by the deceased as at the date of his death which has not been disclosed in the schedule exhibited to the affidavit concerned;
 - (ii) aware that the deceased held any property as trustee or as the manager of a Tso or Tong as at the date of his death; or
 - (iii) aware of any inaccuracy in the schedule attached to the confirmation notice,

the applicant shall, as soon as practicable, give a written notice of the fact to the Secretary.

(6) If, at any time after issuing a confirmation notice under subsection (2), the Secretary is satisfied on reasonable ground (whether upon a notice given under subsection (5)) that—

- (a) the estate of the deceased concerned is not wholly made up of money not exceeding \$50,000 beneficially owned by the deceased as at the date of his death;
- (b) the deceased held any property as trustee or as the manager of a Tso or Tong as at the date of his death; or
- (c) there is any material inaccuracy in—
 - (i) the affidavit filed in respect of the confirmation notice; or
 - (ii) the schedule exhibited by such affidavit,

the Secretary may, by notifying the holder of the confirmation notice in writing, cancel the confirmation notice.

(7) Where the Secretary cancels a confirmation notice under subsection (6), the holder of the notice shall surrender it to the Secretary as soon as practicable.

(8) A person who contravenes subsection (7) commits an offence and shall be liable on conviction to a fine at level 1.

(9) Where a confirmation notice issued under subsection (2) is in force, section 60J(3), (6) and (7) shall not apply to—

- (a) the taking possession or administration by the holder of the notice of any property which is set out in the schedule exhibited by the affidavit to which the confirmation notice relates; and
- (b) any act incidental to such taking possession or administration of property.

(10) An application, affidavit, schedule or notice under this section shall be in such form as the Secretary may determine.”.

PART 5

REGISTRAR'S POWER TO REQUIRE INFORMATION AND
SCHEDULE OF ASSETS AND LIABILITIES

Amendments to the Probate and Administration Ordinance

25. Section added

The Probate and Administration Ordinance (Cap. 10) is amended by adding immediately after section 8—

“8A. Registrar may require information

The Registrar may—

- (a) require any applicant for a grant to provide any information relating to the estate concerned, including but not limited to the value of the estate, which appears to the Registrar to be necessary for the purposes of the exercise of the jurisdiction under section 3; and
- (b) require provision of such information in the form of an affidavit.”.

26. Section added

The following is added—

**“15A. Affidavit concerning assets and liabilities of
estate relating to summary administration**

(1) In this section—

- (a) “assets” means assets in the form of real property or personal property situated in Hong Kong;
- (b) “liabilities”, in relation to a deceased person, means—
 - (i) liabilities contracted by the deceased in Hong Kong to persons ordinarily resident in Hong Kong; or
 - (ii) any other liabilities contracted by the deceased and charged on any property of the deceased situated in Hong Kong.

(2) An application to the Official Administrator for the exercise of his power under section 15 to get in and administer the estate of a person who dies on or after the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005) shall be supported by an affidavit sworn by the applicant and filed by the applicant with the Registry.

(3) An affidavit referred to in subsection (2) shall exhibit a schedule setting out the assets and liabilities of the deceased as at the date of his death (including assets and liabilities of the deceased in the capacity of a trustee or the manager of a Tso or Tong) known to the applicant.

(4) If, at any time before or after the Official Administrator exercises his power under section 15, any inaccuracy in a schedule exhibited under subsection (3) or an additional schedule exhibited under subsection (5) comes to the knowledge of the applicant concerned, he shall file a corrective affidavit with the Registry.

(5) A corrective affidavit referred to in subsection (4) shall exhibit an additional schedule setting out—

- (a) the details of the inaccuracy in a schedule exhibited under subsection (3) or an additional schedule exhibited under this subsection; and
- (b) (where applicable) the assets and liabilities of the deceased as at the date of his death known to the applicant that should have been set out in that schedule but are not so set out.

(6) An affidavit or corrective affidavit referred to in subsection (2) or (4) shall verify the truthfulness and correctness of the schedule or additional schedule exhibited by it to the best of the knowledge, information and belief of the person by whom it is sworn.

(7) An affidavit, a corrective affidavit, a schedule or an additional schedule referred to in this section shall be in a form specified by the Registrar by general notice published in the Gazette.”.

27. Section added

The following is added—

“24A. Affidavit concerning assets and liabilities of estate

(1) In this section—

- (a) “assets” means assets in the form of real property or personal property situated in Hong Kong;

- (b) “liabilities”, in relation to a deceased person, means—
 - (i) liabilities contracted by the deceased in Hong Kong to persons ordinarily resident in Hong Kong; or
 - (ii) any other liabilities contracted by the deceased and charged on any property of the deceased situated in Hong Kong.

(2) An application for a grant in respect of the estate of a person who dies on or after the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005) shall be—

- (a) supported by an affidavit sworn by the applicant and filed by him with the Registry; and
- (b) accompanied by a duplicate of the schedule exhibited by such affidavit under subsection (3).

(3) An affidavit referred to in subsection (2) shall exhibit a schedule setting out the assets and liabilities of the deceased as at the date of his death (including assets and liabilities of the deceased in the capacity of a trustee or the manager of a Tso or Tong) known to the applicant.

(4) If, before the court makes a grant under section 3, any inaccuracy in a schedule exhibited under subsection (3) or an additional schedule exhibited under subsection (5) comes to the knowledge of the applicant concerned, he shall file—

- (a) a corrective affidavit; and
- (b) a duplicate of the additional schedule exhibited by such affidavit under subsection (5),

with the Registry.

(5) A corrective affidavit referred to in subsection (4) shall exhibit an additional schedule setting out—

- (a) the details of the inaccuracy in a schedule exhibited under subsection (3) or an additional schedule exhibited under this subsection; and
- (b) (where applicable) the assets and liabilities of the deceased as at the date of his death known to the applicant that should have been set out in that schedule but are not so set out.

(6) Where the grant applied for is to cover only a part of the estate of the deceased, the reference to “the assets and liabilities of the deceased” in subsection (3) or (5) shall be construed to mean the assets and liabilities of the deceased constituting that part of the estate.

(7) The duplicate schedule referred to in subsection (2)(b) and any duplicate additional schedule filed under subsection (4) in respect of an application for a grant shall be annexed to the grant.

(8) If, after the court makes a grant under section 3, any inaccuracy in a schedule or additional schedule annexed to the grant comes to the knowledge of the executor or administrator, he shall—

(a) file—

(i) a corrective affidavit; and

(ii) a duplicate of the additional schedule exhibited by such affidavit under subsection (9),

with the Registry; and

(b) deliver the grant to the Registry together with such affidavit.

(9) A corrective affidavit referred to in subsection (8)(a) shall exhibit an additional schedule setting out—

(a) the details of the inaccuracy in the schedule or additional schedule annexed to the grant; and

(b) (where applicable) the assets and liabilities of the deceased as at the date of his death known to the executor or administrator that should have been set out in that schedule but are not so set out.

(10) Where a grant covers only a part of the estate of a deceased person, the reference to “the assets and liabilities of the deceased” in subsection (9) shall be construed to mean the assets and liabilities of the deceased constituting that part of the estate.

(11) Where a grant is delivered to the Registry under subsection (8)(b), the court may—

(a) amend the grant appropriately (if necessary); and

(b) return the grant to the executor or administrator with the duplicate additional schedule filed under subsection (8)(a)(ii) annexed to the grant without removing any duplicate schedule or duplicate additional schedule previously annexed to the grant.

(12) Notwithstanding subsections (6) and (10), the court or the Registrar may require an applicant for a grant or an executor or administrator to file an affidavit exhibiting a schedule setting out all of the assets and liabilities of a deceased person as at the date of his death known to the applicant, executor or administrator despite the grant covers or is to cover only a part of the estate.

(13) For the avoidance of doubt, the value of assets other than cash does not have to be stated in a schedule or an additional schedule exhibited under this section.

(14) An affidavit or corrective affidavit referred to in subsection (2), (4), (8) or (12) shall verify the truthfulness and correctness of the schedule or additional schedule exhibited by it to the best of the knowledge, information and belief of the person by whom it is sworn.

(15) An affidavit, a corrective affidavit, a schedule or an additional schedule referred to in this section shall be in a form specified by the Registrar by general notice published in the Gazette.”.

28. Section added

The following is added—

“49AA. Application for sealing of grant to be supported by affidavit

- (1) In this section—
 - (a) “assets” means assets in the form of real property or personal property situated in Hong Kong;
 - (b) “liabilities”, in relation to a deceased person, means—
 - (i) liabilities contracted by the deceased in Hong Kong to persons ordinarily resident in Hong Kong; or
 - (ii) any other liabilities contracted by the deceased and charged on any property of the deceased situated in Hong Kong.
- (2) An application for sealing of a grant under section 49 in respect of the estate of a person who dies on or after the commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005) shall be—
 - (a) supported by an affidavit sworn by the applicant and filed by him with the Registry; and
 - (b) accompanied by a duplicate of the schedule exhibited by such affidavit under subsection (3).
- (3) An affidavit referred to in subsection (2) shall exhibit a schedule setting out the assets and liabilities of the deceased as at the date of his death (including assets and liabilities of the deceased in the capacity of a trustee or the manager of a Tso or Tong) known to the applicant.
- (4) If, before the court seals the grant under section 49, any inaccuracy in a schedule exhibited under subsection (3) or an additional schedule exhibited under subsection (5) comes to the knowledge of the applicant concerned, he shall file—
 - (a) a corrective affidavit; and
 - (b) a duplicate of the additional schedule exhibited by such affidavit under subsection (5),with the Registry.
- (5) A corrective affidavit referred to in subsection (4) shall exhibit an additional schedule setting out—

- (a) the details of the inaccuracy in a schedule exhibited under subsection (3) or an additional schedule exhibited under this subsection; and
- (b) (where applicable) the assets and liabilities of the deceased as at the date of his death known to the applicant that should have been set out in that schedule but are not so set out.

(6) Where the grant if and when sealed will cover only a part of the estate of the deceased, the reference to “the assets and liabilities of the deceased” in subsection (3) or (5) shall be construed to mean the assets and liabilities of the deceased constituting that part of the estate.

(7) The duplicate schedule referred to in subsection (2)(b) and any duplicate additional schedule filed under subsection (4) in respect of an application for sealing of a grant shall be annexed to the instrument effecting the sealing.

(8) If, after the court seals a grant under section 49, any inaccuracy in a schedule or additional schedule annexed to the instrument effecting the sealing comes to the knowledge of the executor or administrator, he shall—

- (a) file—
 - (i) a corrective affidavit; and
 - (ii) a duplicate of the additional schedule exhibited by such affidavit under subsection (9),with the Registry; and
- (b) deliver the grant and the instrument effecting the sealing to the Registry together with such affidavit.

(9) A corrective affidavit referred to in subsection (8)(a) shall exhibit an additional schedule setting out—

- (a) the details of the inaccuracy in the schedule or additional schedule annexed under subsection (7) to the instrument effecting the sealing of the grant; and
- (b) (where applicable) the assets and liabilities of the deceased as at the date of his death known to the executor or administrator that should have been set out in that schedule but are not so set out.

(10) Where a grant as sealed covers only a part of the estate of a deceased person, the reference to “the assets and liabilities of the deceased” in subsection (9) shall be construed to mean the assets and liabilities of the deceased constituting that part of the estate.

(11) Where an instrument effecting the sealing of a grant is delivered to the Registry under subsection (8)(b), the court may—

- (a) amend the instrument appropriately (if necessary); and

- (b) return the grant and the instrument to the executor or administrator with the duplicate additional schedule filed under subsection (8)(a)(ii) annexed to the instrument without removing any duplicate schedule or duplicate additional schedule previously annexed to the instrument.

(12) Notwithstanding subsections (6) and (10), the court or the Registrar may require an applicant for the sealing of a grant or an executor or administrator to file an affidavit exhibiting a schedule setting out all of the assets and liabilities of a deceased person as at the date of his death known to the applicant, executor or administrator despite the grant if and when sealed will cover, or the grant as sealed covers, as the case may be, only a part of the estate.

(13) For the avoidance of doubt, the value of assets other than cash does not have to be stated in a schedule or an additional schedule exhibited under this section.

(14) An affidavit or corrective affidavit referred to in subsection (2), (4), (8) or (12) shall verify the truthfulness and correctness of the schedule or additional schedule exhibited by it to the best of the knowledge, information and belief of the person by whom it is sworn.

(15) An affidavit, a corrective affidavit, a schedule or an additional schedule referred to in this section shall be in a form specified by the Registrar by general notice published in the Gazette.”.

PART 6

CONSEQUENTIAL AMENDMENTS

Specification of Public Offices

29. Schedule amended

The Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) is amended by adding—

“Secretary for Home Affairs Probate and Administration Ordinance
(Chapter 10), sections 60B, 60C, 60D,
60E, 60F, 60G and 60K.”.

High Court Fees Rules

30. Probate Jurisdiction

The Second Schedule to the High Court Fees Rules (Cap. 4 sub. leg. D) is amended by repealing item 2.

Probate and Administration Ordinance

31. Schedule 1 amended

Schedule 1 to the Probate and Administration Ordinance (Cap. 10) is amended, in paragraph 8(b) of Part II, by adding “(if any)” after “estate duty”.

Non-Contentious Probate Rules

32. Interpretation

Rule 2(2) of the Non-Contentious Probate Rules (Cap. 10 sub. leg. A) is amended, in the definition of “gross value”, by adding “(if any)” after “duty”.

33. Rule substituted

Rule 43 is repealed and the following substituted—

**“43. Application for grant to be supported by
documents required under the Estate
Duty Ordinance**

Where the Estate Duty Ordinance (Cap. 111) applies in relation to the estate of a person, an application for the grant in respect of the estate shall be supported by such documents as may be required under that Ordinance.”.

Intestates' Estates Ordinance

34. Succession to estate on intestacy

Section 4 of the Intestates' Estates Ordinance (Cap. 73) is amended—

- (a) in subsection (3), by adding “(if any)” after “death duties”;
- (b) in subsection (4), by adding “(if any)” after “death duties”.

Matrimonial Causes Rules

35. Further proceedings on application under rule 101

Rule 102(3)(a) of the Matrimonial Causes Rules (Cap. 179 sub. leg. A) is amended by adding “(if any)” after “estate duty”.

36. Forms

The Appendix is amended, in Form 17, in paragraph 3, by adding “(if any)” after “estate duty”.

Inheritance (Provision for Family and Dependants) Ordinance

37. Interpretation

Section 2(1) of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481) is amended, in paragraph (a) of the definition of “net estate”, by adding “(if any)” after “estate duty”.

38. Provisions as to trustees in relation to sections 12 and 13

Section 15(1) is amended by adding “(if any)” after “estate duty”.

39. Effect, duration and form of orders

Section 21(1) is amended by adding “(if applicable)” after “estate duty”.

PART 7

SAVING PROVISION

40. Saving provision for item 2 of the Second Schedule to the High Court Fees Rules

The Second Schedule to the High Court Fees Rules (Cap. 4 sub. leg. D) as in force immediately before the commencement of this Ordinance shall continue to apply in relation to the estate of any person who dies before such commencement as if section 30 had not been enacted.

PART 8

MISCELLANEOUS

41. Power of the Secretary for Justice

The Secretary for Justice may by notice published in the Gazette amend any provision of—

- (a) the Probate and Administration Ordinance (Cap. 10);
- (b) the Estate Duty Ordinance (Cap. 111); and
- (c) the Inland Revenue Ordinance (Cap. 112),

as amended by this Ordinance by repealing a reference to the commencement date of this Ordinance and substituting the actual calendar date on which this Ordinance came into operation.