

《遺囑認證及遺產管理條例》 (香港法例第10章) 有關擅自處理遺產的條文



《遺囑認證及遺產管理條例》(香港法例第10章) 有關擅自處理遺產的條文

註

本單張並無法律效力。如有任何疑問，請徵詢律師的意見，或通過當值律師服務的免費法律諮詢計劃徵詢法律意見。

引言

當局通過《2005 年收入（取消遺產稅）條例》，在《遺囑認證及遺產管理條例》（香港法例第 10 章）加入有關擅自處理遺產的條文。任何人在處理二零零六年二月十一日或之後去世的人士在香港的遺產時，必須遵守有關條文的規定。本單張旨在簡介有關條文。

《遺產稅條例》（香港法例第 111 章）已就擅自處理遺產的行為訂明罰則。有關的規定主要是為了保障稅收，但也附帶保障受益人對死者遺產所享有的權益。當局取消對二零零六年二月十一日或之後去世的人士的遺產徵收遺產稅後，有關遺產受益人的權益便不再受《遺產稅條例》保障。有鑑於此，當局在《遺囑認證及遺產管理條例》中增訂類似的條文，以保障受益人對死者遺產或財產所享有的權益。

有關擅自處理遺產的條文

根據《遺囑認證及遺產管理條例》，任何人如無合法權限或合理辯解而管理或處理二零零六年二月十一日或之後去世的人士的任何財產，均屬干犯刑事罪行。有關的規定載於《遺囑認證及遺產管理條例》第 60J 條。任何人觸犯擅自處理遺產的罪行，一經定罪，可被處：

- (a) 第 3 級罰款（罰款額現為 10,000 元），以及
- (b) 價值相等於該部分被擅自處理的遺產或該部分被擅自處理的遺產所得收入的額外罰款。

死者的資產負債清單

一份詳列死者在香港的所有資產及負債的清單，可供對遺產享有合法權益的人士參照。根據法例規定，任何人申請：

- (a) 以簡易方式管理遺產；
- (b) 遺囑認證或遺產管理書；或
- (c) 在香港以外的法院發出的授予書上蓋章，

均須作出誓章，並送交遺產承辦處存檔，誓章須夾附死者的資產負債清單作為證物，以支持有關申請。如申請人其後發現資產負債清單有任何錯漏，須提交修正誓章和額外清單，以作出更正。

遺囑執行人等的法律責任

死者的遺囑執行人或有權優先管理死者遺產的人士在未向遺產承辦處申請授予書*前，不可管有或管理任何部分的遺產。不過，法例也規定，遺囑執行人或有權優先管理死者遺產的人士在“訂明期間”內，可在未先行向遺產承辦處申請授予書的情況下，管有或管理有關遺產，但有關人士其後須在訂明期間內遞交申請。有關規定的目的，是給予遺囑執行人或有權優先管理死者遺產的人士足夠時間，以收集有關死者的資產和負債的資料，以及處理涉及遺產的急切事務。

遺囑執行人或有權優先管理死者遺產的人士，如有以下行為，即屬違法：

- (a) 在訂明期間內管有或管理死者的任何財產，而沒有在訂明期間屆滿前向遺產承辦處申請授予書，並附同誓章以及在誓章夾附死者的資產負債清單作為證物；
- (b) 在訂明期間屆滿後管有或管理死者的任何財產，而沒有先行向遺產承辦處申請授予書，並附同誓章以及在誓章夾附死者的資產負債清單作為證物；
或
- (c) 處理死者的任何財產，而有關的財產沒有列於提交遺產承辦處，用以支持申請授予書的資產負債清單（或額外清單）。

如申請屬在香港以外地方的法院發出的授予書上蓋章，“訂明期間”是指由死者去世當日起計的 18 個月；在其他情況下，是指由死者去世當日起計的 12 個月。

其他人士的法律責任

任何人如無合法權限或合理辯解而處理死者任何部分的遺產，而該部分遺產並未列於有關的資產負債清單或額外清單，即屬違法。

任何人如無合法權限或合理辯解而管有或以任何方法管理死者任何部分的遺產或該遺產所得收入的任何部分，或沒有先行向遺產承辦處申請授予書，並附同誓章以及在誓章夾附列明該部分遺產的資產負債清單作為證物，也屬違法。

* 授予書俗稱「承辦紙」，包括遺囑認證、遺產管理書或遺產管理書（附有遺囑）。

銀行和銀行職員的保障

民政事務總署署長根據民政及青年事務局局長轉授的權力，在接獲有關人士的申請後：

- (a) 可在特別情況下發出“需要支用款項證明書”，批准從死者銀行戶口支用款項，以支付：
 - (i) 死者的殯殮開支；
 - (ii) 死者生前贍養的人士的生活費；
- (b) 可發出“需要檢視銀行保管箱證明書”；
- (c) 可發出“自銀行保管箱取去物品授權書”；
- (d) 可就總額不超過50,000元的款項的小額遺產發出“確認通知書”。

這些安排是為了紓緩死者去世後其親屬可能面對的困難，並利便有關人士管理死者的遺產。如銀行僱員遵循有關的證明書 / 授權書 / 通知書所載的規定，並在執行職責時以真誠及應有的謹慎行事，則有關的銀行和僱員須視為已具有行事的合法權限。此外，有關的銀行和僱員不會因根據上文(a)至(c)項所述的證明書 / 授權書行事而招致任何民事法律責任。

關於“有尚存安排的聯名租用的保管箱”(即根據租用保管箱的合約條款，該保管箱任何租用人去世，並不影響該保管箱任何其他租用人自保管箱取去物品)，法例也訂明了具體的安排。只要保管箱物品清單已按照法例規定備妥，以及死者已去世12個月，銀行可准許尚存租用人自保管箱取去物品。如銀行僱員在准許尚存租用人行使這項權利時，是以真誠及應有的謹慎行事，就擅自處理遺產的條文而言，有關的銀行和僱員須視為已具有行事的合法權限。

小額遺產免受擅自處理遺產的條文約束

為了利便有關人士管理小額遺產，民政事務總署署長根據民政及青年事務局局長轉授的權力，在接獲有關申請後，可在以下情況發出確認通知書：

- (a) 所有遺產必須為總額不超過50,000元的款項；
- (b) 緊接死者去世之前，死者沒有以信託人身分或祖 / 堂的經理或司理身分持有任何財產。

在確認通知書具有效力期間，確認通知書的持有人如管有或管理夾附於該通知書的清單內所列的款項，或作出任何附帶作為，均可免受擅自處理遺產的條文約束。不過，確認通知書的持有人仍負有法律責任，須適當地履行其作為遺囑執行人或有權優先管理死者遺產的人士的職責。

查詢

關於申請以簡易方式管理遺產、授予書，或在香港以外的法院發出的授予書上蓋章，如需要進一步的資料，可聯絡遺產承辦處：

- 地 址：香港金鐘道38號高等法院大樓低層3樓
- 電 話：2840 1683
- 電 郵：probate@judiciary.hk
- 網 址：<http://www.judiciary.hk>

關於申請“需要支用款項證明書”、“需要檢視銀行保管箱證明書”、“自銀行保管箱取去物品授權書”，以及“確認通知書”的資料，可聯絡民政事務總署遺產受益人支援組：

- 地 址：香港灣仔軒尼詩道130號修頓中心3樓
- 電 話：2835 1535
- 傳 真：2122 9497
- 電 郵：ebisu@had.gov.hk
- 網 址：https://www.had.gov.hk/tc/public_services/estates.htm

如需要免費法律諮詢服務，可聯絡民政事務總署轄下的諮詢服務中心預約：

- 預約熱線：2835 2500
- 網 址：https://www.had.gov.hk/tc/public_services/public_enquiry_services/provided.htm#4

有關二零零六年二月十一日之前去世的人士的遺產管理事宜，
請與稅務局遺產稅署聯絡，電話號碼2594 3240。

民政事務總署

二零二四年二月

政府物流服務署印

Intermeddling Provisions under the Probate and Administration Ordinance, Chapter 10, Laws of Hong Kong



Intermeddling Provisions under the Probate and Administration Ordinance, Chapter 10 Laws of Hong Kong

NOTE

This leaflet has no legal effect. In case of queries, please consult your lawyer or seek legal advice through the Free Legal Advice Scheme of the Duty Lawyer Service.

Introduction

This leaflet aims to explain in simple terms the intermeddling provisions introduced into the Probate and Administration Ordinance (Chapter 10, Laws of Hong Kong) by the Revenue (Abolition of Estate Duty) Ordinance 2005. Such provisions are applicable to the handling of the estate in Hong Kong of a person who died on or after 11 February 2006.

The Estate Duty Ordinance (Chapter 111) provides for sanction against the intermeddling of estates. The provisions therein are mainly for revenue protection purposes, but incidentally also protect the interests of the beneficiaries in the estate. Following the abolition of estate duty in respect of the estate of persons who died on or after 11 February 2006, the protection afforded under the Estate Duty Ordinance falls away. In order to safeguard the interests of the beneficiaries in the estate or properties of the deceased person, provisions of similar effects have been introduced in the Probate and Administration Ordinance.

The Intermeddling Provisions

It is a criminal offence under the Probate and Administration Ordinance to administer or deal with any property of a person who died on or after 11 February 2006 without lawful authority or reasonable excuse. Section 60J of the Probate and Administration Ordinance is relevant. A person guilty of intermeddling shall be liable on conviction to -

- (a) a fine at level 3 (currently \$10,000); and
- (b) an additional penalty which is equal to the value of the intermeddled part of the estate or the intermeddled part of the income of the estate.

Schedule of Assets and Liabilities of the Deceased Person

A schedule of assets and liabilities of the deceased person located in Hong Kong would serve as a ready reference for parties with a legitimate interest in the estate. The law requires the applicant for -

- (a) summary administration of the estate;
- (b) grant of probate or letters of administration; or
- (c) sealing of a grant issued by a foreign court of probate

to prepare and file with the Probate Registry an affidavit exhibiting a schedule of assets and liabilities of the deceased person in support of the relevant application. Corrective affidavit(s) and additional schedule(s) to correct any omission or inaccuracy in the schedule of assets and liabilities are required if such is detected subsequently.

Legal Responsibilities of Executor, etc.

The executor of the deceased person or the person entitled in priority to administer the estate may not take possession of or administer any part of the estate unless he/she has filed with the Probate Registry an application for grant of representation. However, the law also provides for a “prescribed period” during which the executor or the person entitled in priority to administer the estate may take possession of or administer such estate without having first filed an application for grant as long as his/her application is subsequently filed within the prescribed period. This allows time for the executor or the person entitled in priority to administer the estate to collect information regarding the assets and liabilities of the deceased person and deal with urgent issues related to the estate.

Any executor or person entitled in priority to administer the estate who -

- (a) takes possession of or administers any property of the deceased person within the prescribed period and fails to file with the Probate Registry an application for grant (supported by an affidavit exhibiting the schedule of assets and liabilities of the deceased person) on the expiry of the prescribed period;
- (b) takes possession of or administers any property of the deceased person after the expiry of the prescribed period without first filing with the Probate Registry an application for grant (supported by an affidavit exhibiting the schedule of assets and liabilities of the deceased person); or
- (c) handles any property of the deceased person that is not in the schedule of assets and liabilities (or the additional schedule(s)) filed with the Probate Registry in support of the application for grant,

commits an offence.

The “prescribed period” is 18 months from the date of death of the deceased person in cases where an application for sealing of a grant issued by a foreign court of probate is involved; in all other cases, the prescribed period is 12 months from the date of death of the deceased person.

Legal Responsibilities of Other Parties

It is an offence for any person to deal with any part of the estate of the deceased person that is not set out in the relevant schedule of assets and liabilities or additional schedule(s) without lawful authority or reasonable excuse.

It is also an offence for any person to take possession of or in any way administer any part of the estate or any part of the income of the estate without lawful authority or reasonable excuse, or without first filing with the Probate Registry an application for grant supported by an affidavit exhibiting a schedule setting out the relevant part of the estate.

Protection for Bank and Staff

The Director of Home Affairs, under the delegated authority from the Secretary for Home and Youth Affairs, may issue on application -

- (a) the Certificate for Necessity of Release of Money from the bank account(s) of the deceased person under special circumstances to meet -
 - (i) funeral expenses of the deceased person;
 - (ii) maintenance of former dependant(s) of the deceased person;
- (b) the Certificate for Necessity of Inspection of Bank Deposit Box;
- (c) the Authorization for Removal from Bank Deposit Box; and
- (d) the Confirmation Notice in respect of small estate wholly made up of money not exceeding \$50,000 in aggregate,

to relieve possible hardship following the death of the deceased person and to facilitate the administration of the estate. If an employee of the bank has followed the provisions set out in the relevant certificate/authorization/notice and has acted in good faith and exercised due care in performing the function(s), the bank and the employee in question shall be regarded as having acted with lawful authority. Furthermore, the bank and the employee shall not incur any civil liability for such actions relating to the certificate/authorization set out at (a) to (c) above.

The law also provides for specific arrangements in respect of “jointly rented safe deposit box with survivorship arrangement” (i.e. where the box is kept pursuant to an agreement under the terms of which the access to the contents of the box of any renter of the box is not affected by the death of any other renter of the box). The bank may allow the surviving renter to exercise his/her right of access to the box on the expiry of 12 months after the death of the deceased joint renter provided that an inventory of the contents of the box has been prepared in accordance with the legal requirements. Where an employee of the bank has acted in good faith and exercised due care in allowing the surviving renter to exercise that right, the bank and the employee shall, for the purposes of the intermeddling provisions, be regarded as having acted with lawful authority.

Exemption from Intermeddling Provisions in respect of Small Estate

In order to facilitate the administration of small estate, the Director of Home Affairs, under the delegated authority from the Secretary for Home and Youth Affairs, may issue on application a Confirmation Notice in respect of small estate –

- (a) wholly made up of money not exceeding \$50,000 in aggregate; and
- (b) where the deceased person did not hold any property as trustee or as the manager of a Tso or Tong immediately before death.

Where the Confirmation Notice is in force, the taking possession of or administration of the money as set out in the schedule attached thereto by the holder and any act incidental thereto shall be exempted from the relevant intermeddling provisions. However, the holder of the Confirmation Notice is still legally obliged to appropriately discharge his/her role as the executor or the person entitled in priority to administer the estate.

Enquiries

If you wish to obtain further information on applications for summary administration of estate, grant of probate or letters of administration or sealing of a foreign grant, you may contact the Probate Registry -

- Address : LG3, High Court Building, 38 Queensway, Hong Kong
- Telephone : 2840 1683
- E-mail : probate@judiciary.hk
- Website : <http://www.judiciary.hk>

For information on applications for Certificate for Necessity of Release of Money, Certificate for Necessity of Inspection of Bank Deposit Box, Authorization for Removal from Bank Deposit Box and Confirmation Notice, you may contact the Estate Beneficiaries Support Unit of the Home Affairs Department -

- Address : 3/F, Southorn Centre, 130 Hennessy Road, Wan Chai, Hong Kong
- Telephone : 2835 1535
- Fax : 2122 9497
- E-mail : ebsu@had.gov.hk
- Website : https://www.had.gov.hk/en/public_services/estates.htm

For free legal advice, appointments can be made at the Public Enquiry Service Centres of the Home Affairs Department -

- Hotline : 2835 2500
- Website : https://www.had.gov.hk/en/public_services/public_enquiry_services/provided.htm#4

For administering the estates of persons who died before 11 February 2006, please contact the Estate Duty Office of the Inland Revenue Department at 2594 3240.

Home Affairs Department

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