

**For information**

**LegCo Panel on Administration of Justice and Legal Services**

**Work of the Probate Registry in the Judiciary**

**Purpose**

The purpose of this paper is to provide Members with the following information:

- (a) The work and manpower situation of the Probate Registry; and
- (b) Improvement measures that have been and will be taken to facilitate the work of the Probate Registry.

**Background**

2. At the meeting of the LegCo Panel on Administration of Justice and Legal Services held on 28 May 2012, Members enquired about the work and manpower situation of the Probate Registry in the Judiciary and requested the Judiciary Administration to provide the relevant information.

**The Probate Registry of the High Court**

Functions

3. When a person dies, with or without having made a Will, a Grant<sup>1</sup> is normally required before his/her estate can be administered and disposed of.

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<sup>1</sup> Pursuant to Section 2 of the Probate and Administration Ordinance, Cap. 10, a Grant means a grant of probate or of administration.

4. All applications for Grant are filed with the Probate Registry, which include:

(a) *Contentious Applications*

For contentious applications, the case would be dealt with by the Probate Judge on application of the affected parties. It is only after the contention has been cleared would the case be referred back to the Probate Registry for the issue of Grant. Contentious applications constitute a very small portion of all probate applications. In 2011, only 32 cases involved contentious probate proceedings as against 15,500 applications filed with the Probate Registry.

(b) *Non-contentious Applications*

For non-contentious applications, the Registrar of the High Court (“the Registrar”) is empowered to process in accordance with section 5 of the Probate and Administration Ordinance, Cap. 10. Rule 5 of the Non-Contentious Probate Rules, Cap. 10A further stipulates that the Registrar shall not allow the issue of any Grant until all inquiries which he may see fit to make have been answered to his satisfaction. The role of the Probate Registry is primarily to assist the Registrar to process these applications and to raise requisitions so that a Grant is issued to the right person under the law. Over 99% of probate applications are non-contentious.

Caseload

5. The caseload of the Probate Registry has been increasing from 11,212 in 2005 to 15,500 in 2011, i.e. 38% over a six-year period. The increase in caseload may be attributed to a number of factors, including the abolition of estate duty in February 2006 and the increasing number of probate cases which involved estates from payouts from the Mandatory Provident Fund<sup>2</sup>.

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<sup>2</sup> With the implementation of the Mandatory Provident Fund (“MPF”) Schemes in December 2000, the estate of a deceased person who had participated in an MPF scheme would have to be dealt with through the Probate Registry.

6. A table showing the caseloads of the Probate Registry since 2005 is at **Annex**.

Set-up

7. Applications for Grant are processed by the following two sections of the Probate Registry:

(a) *Public Application Section (“PA Section”)*

The PA Section deals generally with applications submitted directly by unrepresented applicants. These are normally relatively simple applications for Grant where the relevant estate is not complex, or the Registrar considers it proper to offer help.

(b) *Solicitors Application Section (“SA Section”)*

The SA Section handles largely applications for Grant lodged by solicitors on behalf of the applicants. Such applications are usually more complicated. Besides, the SA Section also deals with complicated cases involving unrepresented applicants referred from the PA Section.

8. It should be noted that while the number of applications filed in the SA Section remained relatively stable or has slightly decreased in recent years, the number of applications filed in the PA Section had increased from 4,605 in 2005 to 9,951 in 2011, i.e. by 116%.

9. Apart from the PA and SA Sections, there is the General Administration Section which provides counter enquiry, telephone hotline as well as walk-in and telephone appointment booking services for members of the public. It also provides general administrative and clerical support to the Probate Registry as a whole.

The Manpower Position

10. The Probate Registry is under the overall direction of the Registrar. Under the Registrar, there are High Court Masters, designated as Probate Masters, who are empowered under sections 2 and 5 of Cap. 10 to process and approve non-contentious applications for Grant. In view of the increasing workload, more Masters have been deployed to undertake

probate-related work. Currently, there are six Probate Masters as against two in the past.

11. As regards the Probate Registry, it is led by a Chief Probate Officer (“CPO”) who oversees its daily operation. At present, the Probate Registry has a team of 35 staff, comprising CPO, Senior Probate Officers (“SPO”), Probate Officers (“PO”), Assistant Probate Officers (“APO”) and clerical staff to support the daily operation of the Probate Registry. Given that a higher level of skill and knowledge is required for handling the complex applications filed in the SA Section, the processing officers in the SA Section are in general more senior in ranking (either SPO or PO) and have acquired a number of years of experience in the probate matters.

#### Procedure for Processing Non-Contentious Grant Applications

12. It should be noted that the nature of the probate jurisdiction is inquisitorial. A Grant is an important legal document which usually authorizes a grantee to deal with a particular estate without limitation. Hence, the Registrar as well as the staff of the Probate Registry acting on his behalf are under a duty to make inquiries if required and see that they are answered satisfactorily.

13. In applying for a Grant, the applicants have to complete the appropriate specified form(s) and provide all relevant documents, papers and evidence to prove their entitlement to the Grant.

14. For applications filed in the PA Section, the applicant is required to make an appointment for interview via hotline or personal attendance at the Probate Registry. The applicant is required to have the necessary form(s) completed and the relevant documents ready by the time of the interview. During the interview, the processing officers (who may be a PO or an APO) would screen the forms and documents provided by the applicant and assist the applicant on procedural matters in relation to the application. The interview would normally last for about half an hour. If the papers are considered to be in order, the application would be accepted for filing right away and consideration would be given to the issue of a Grant. If follow up actions are required, the applicants would be given the necessary procedural advice and assistance.

15. For applications filed in the SA Section, the processing officers (who may be an SPO or a PO) would go through the applications and assist the Probate Masters to raise requisitions if required. Requisitions can be answered by way of affirmations/affidavits and documents as well as by answers set out in correspondence. Since the applications are generally more complicated, requisitions may be raised more than once.

### Processing Time

16. The Probate Registry has been striving to process applications from both the PA and SA sections within reasonable timeframe within the resources available.

17. Concerning the applications filed in the PA Section, 99% of the applications had the Grant issued within two months from the date of filing in 2011.

18. As regards the applications lodged with the SA Section, over 74% had Grant issued within six months from the date of filing in 2011. 15% were issued between six and 12 months and the remaining 11% were issued beyond 12 months.

19. It should be noted that the above processing time includes not only the time taken by the Probate Registry and the Probate Masters in processing the applications, but also the time taken by the applicants/practitioners for answering requisitions, which is beyond the Probate Registry's control.

### Accommodation

20. The Probate Registry is currently located on the third lower ground floor in the High Court Building. Counters are provided for meeting and interviewing applicants. Space is also provided to support the operation of the Probate Registry, including accommodation for the staff and space for file storage, etc.

## **Improvement Measures Taken**

21. The Probate Registry has been striving to improve the effectiveness of its operation and enhance the quality of its service.

### **(a) *Regarding the Unrepresented Applicants***

- (i) A booklet and a video had been produced to assist the unrepresented applicants to understand the procedural practice, including, for example, the new procedures applied as a result of the abolition of estate duty in 2006;
- (ii) In 2007, the specified forms for application for Grant were issued and a Guide to use them was also published. They are available on Judiciary's website for applicants' easy reference; and
- (iii) To improve the services provided to the public, the Probate Registry implemented a Telephone Appointment System in January 2008. Apart from attending personally at counter, the applicant can make an appointment through the enquiry hotline under the Telephone Appointment System. This enables the unrepresented applicants to get prepared for the appointment with the processing officers in the Probate Registry with advance booking.

### **(b) *Regarding the Practitioners***

- (i) To assist the practitioners to understand the usual requisitions of the Probate Registry, a document named "Common Requisitions: Probate Registry" has been published since 2003. This document has been uploaded on the Judiciary's website and is regularly updated by the Probate Registry and the Probate Masters. In 2011, the hit rate of this document exceeded 2,000;
- (ii) To facilitate the processing of individual Grant application submitted by solicitors, a special appointment system designed to enable practitioners to meet with the Probate Master for certain types of

requisitions was introduced in October 2003. The appointment system was further extended in November 2005 to cover any requisitions raised. It gives a chance to the probate practitioners to explain to the Probate Master any practical difficulties faced by the applicant in complying with the outstanding questions and to explore with the Probate Master possible means to resolve the problem;

- (iii) There is a regular dialogue between the Judiciary and the legal practitioners so as to keep the practitioners abreast of the Probate requirements. One example is the Joint Standing Committee on Probate Practice (“the Committee”). The Committee, which comprises the Registrar, Probate Masters, CPO and members of the Probate Committee of the Law Society of Hong Kong, would meet regularly to discuss issues of concern. To foster better communication between the Probate Registry and the legal profession and to improve the quality of the probate practice, the Committee has agreed that meeting would be held every six months instead of 12 months from November 2011 onwards;
- (iv) To assist the probate practitioners to check all supporting documents required when preparing applications, the Probate Registry, in consultation with the Committee, has introduced a checklist for use since 2007. In addition, improvement measures are being considered to facilitate retrieval of documents by the practitioners; and
- (v) The Probate Masters would also give advice or render assistance in the seminars organized by the Probate Committee of the Law Society of Hong Kong on probate practice.

(c) ***Regarding the Registry***

- (i) Measures have been put in place to ensure closer monitoring of the progress of applications under processing. A report on more complicated cases which need extra time for processing and/or more rounds of

requisitions would regularly be prepared and submitted to the Probate Master for reference and monitoring. The Probate Master may review these applications and provide steer to the processing officers where necessary; and

- (ii) From time to time, workshops are conducted for the processing officers for sharing of experience to ensure consistency in the way of handling cases.

### **Future Improvement Measure**

22. The Probate Judge and the Probate Masters take the view that if Grant applications could follow as much as possible the practices and directions concerned, the time required for their processing should be much shortened. To facilitate the probate practitioners to familiarize with the relevant practices, a Non-Contentious Probate Practice Guide is being prepared by the Probate Masters. The Guide will set out some general practice of the Probate Registry and provide practical guidance in respect of some areas of practice that the practitioners may find difficult. With this Guide, it is hoped that the processing time will be further improved.

23. In addition, a new Practice Direction on the Probate and Administration of Estate Proceedings (other than Applications under the Non-Contentious Probate Rules (Cap. 10A)) has been promulgated and will come into effect on 1 August 2012. It covers practices in Probate actions, mediation, rectification of Wills and revocation of grants.

### **Conclusion**

24. The Judiciary will continue to monitor closely the processing time and review the situation to see whether additional resources or improvement measures are required. It will also work closely with the probate practitioners to ensure that the procedures involved are reasonably and effectively applied. The Judiciary will also continue to monitor the staffing and accommodation arrangements to ensure that they are maintained at a level that would be necessary to support the operation of the Probate Registry.



Judiciary Administration  
July 2012

Caseloads of Probate Registry

Year	Applications for Grant Received		
	PA Section	SA Section	Total
2005	4,605	6,607	11,212
2006	4,736	8,486	13,222
2007	4,452	7,843	12,295
2008	6,826	5,559	12,385
2009	8,221	5,270	13,491
2010	8,131	5,449	13,580
2011	9,951	5,549	15,500

Note : It should be noted that cases where the estate involving only money does not exceed \$50,000 in aggregate can be dealt with by the Secretary for Home Affairs