

Bills Committee on the District Court (Amendment) Bill

Jurisdiction on Probate Matters

On 1 February 2000, the Administration responded to Members' enquiry as to why Order 76 relating to contentious probate proceedings was excluded from the new rules of the District Court. The Bills Committee has asked the Administration to re-consider Members' views that probate actions which are not complex by nature and within the jurisdiction of the District Court should be dealt with in the District Court.

Current arrangements

2. The Court of First Instance of the High Court exercises exclusive jurisdiction over a number of areas, including probate actions. Over the years, expertise in handling probate proceedings and contentious probate actions has been built up in the High Court.

3. The Probate Registry of the High Court is responsible for processing all applications for grants of representation to the estates of deceased persons and for issuing probate grants. These applications are dealt with by the staff of the Probate Registry in accordance with established procedures under the supervision of the Registrar of the High Court. In 1999, the Probate Registry processed over 9,000 applications for the grant of representations. It is noted that 99% of these applications are non-contentious.

4. It is noted that there were very few probate actions (an average of about 10 in the past few years). Moreover, if an application develops into a probate action, it is very likely that it is highly contentious in nature. In practice, if there is a dispute over the grant of probate, the Probate Master will conduct a chamber hearing. If the dispute cannot be resolved at the hearing, the matter will be determined by way of a probate action before a judge of the Court of First Instance. After the action is completed, the case will be transferred to the Probate Registry of the High Court for processing the application for the grant of representation.

5. We note that Members do not disagree with the arrangement whereby all probate applications should be dealt with centrally by the Probate Registry of the High Court.

Jurisdiction on probate actions

6. We have re-considered members' views and compared the pros and cons of the two options, viz for the High Court to retain exclusive jurisdiction over probate actions vis-à-vis for the jurisdiction to be split between the High Court and the District Court. Our considerations are set out as follows -

- (a) According to the experience of the court, probate actions are usually complex by nature and therefore warrant specialised handling. The judge of the Court of First Instance in charge of probate actions and the Probate Master of the High Court have developed expertise in probate matters through supervising and overseeing probate applications and the operation of the Probate Registry, and presiding over interlocutory hearings arising from probate applications. Maintaining the status quo would reinforce the expertise already built up in this area of law in the High Court. Having regard to the small number of cases each year, the present arrangement is more conducive to the delivery of quality justice;
- (b) With about only 10 probate actions each year, and bearing in mind that most of these cases involve fairly complicated and fine questions of law and evidence, it is expected that probate actions would only be dealt with by the District Court on very rare occasions under Members' proposal. To ensure that the District Court is also equipped to deal with probate actions, both the Judges and the masters of the District Court are required to build up expertise in this field, but given the rare occasions on which they are required to deal with such cases, it would be difficult for them to build up the required expertise;
- (c) Probate actions usually involve inspection of or reference to original wills and probate documents already filed with the Probate Registry of the High Court. After an action is completed, the case will have to be transferred to the Probate Registry of the High Court for processing the application for the grant of representation. If some probate actions are dealt with by the District Court while the relevant documents are kept in the Probate Registry of the High Court, it may result in inconvenience to litigants as the case would have to be transferred to and fro between High Court and District Court

more than once; and

(d) While we appreciate the rationale behind the proposal on conferring upon the District Court the jurisdiction to hear certain less contentious probate actions, we consider the actual benefits to be derived from such proposal are more apparent than real given the present circumstances as described at (a) and (b).

Way forward

7. For the considerations set out in paragraph 6 above, we are of the view that it is pre-mature to consider conferring on the District Court the jurisdiction on probate actions at this stage. Bearing in mind Members' view that it may help save litigation costs should the District Court be given the jurisdiction to hear certain less contentious probate actions, we shall closely monitor the number and nature of probate actions filed with the High Court and review our position in the light of any changing circumstances.