

## **PRACTICE DIRECTION 20.1**

### **NON-CONTENTIOUS PROBATE PRACTICE**

#### **PART I – NON-CONTENTIOUS APPLICATIONS**

1. Save where the Non-Contentious Probate Rules (Cap. 10A) or any other legislation provide to the contrary, an application for an order in non-contentious probate proceedings will be made *ex-parte* by filing an affidavit containing the relevant information with the Probate Registry. The application will be considered by the Probate Registrar, who will endorse his order on the back-sheet of the affidavit.
2. The Probate Registrar may, if he thinks fit, require any application to be made by way of summons in Miscellaneous Proceedings to the Registrar or a Judge.
3. The order which is made must be drawn up and filed in the usual way.
4. In most cases, it will be necessary to make reference to the order in the application for the grant.

#### **PART II – DECEASED DOMICILED OUTSIDE HONG KONG**

5. An application for an order pursuant to Rule 29 of the Non-Contentious Probate Rules (Cap. 10A) will be made *ex-parte* and may be filed in the Probate Registry at the same time together with the application for grant.
6. The application will be made by filing an affidavit, which will contain such relevant information as is required in support of the application. The Registrar will endorse the back-sheet of the affidavit with any order which he makes.

7. The solicitor will be required to draw up the order which is made, to have it completed in the normal manner and to file it with the papers in the probate file. A solicitor will not be required to make reference to an order in the application which is made to the Court for a grant to issue.

### **PART III – AUTHENTICATION OF FOREIGN PUBLIC DOCUMENTS INCLUDING DEATH CERTIFICATES**

8. Authentication of a foreign public document including but not limited to a death certificate should be made on the document or certificate itself and not on its English/Chinese translation.

### **PART IV – AFFIRMATION OF IDENTITY**

9. In the following cases, the Probate Registry may dispense with the requirement of filing an Affidavit/Affirmation of Identity under Rule 5(2) of the Non-Contentious Probate Rules (Cap. 10A): –
  - (a) Surviving spouse applying for letters of administration of a deceased spouse with supporting document consisting of original or sealed copy Hong Kong marriage certificate or duly legalised foreign marriage certificate;
  - (b) Child/Parent applying for letters of administration of a deceased parent/child with supporting document consisting of original or sealed copy Hong Kong birth certificate or duly legalised foreign birth certificate which shows both the names of the child and parents;
  - (c) Sibling applying for letters of administration of a deceased sibling with supporting documents consisting of original or sealed copy Hong Kong birth certificates or duly legalised foreign birth certificates of the applicant and the deceased which show both names of their parents;

- (d) Executor/executrix applying for probate or beneficiary applying for letters of administration with the Will annexed where his/her relation to the testator can be clearly identified from the Will and where supporting document as per paragraph (a), (b) or (c) above is filed to prove such relationship or where the identities and/or relationships of such executors/executrices/beneficiaries can be identified by reference to the identity document number and/or description recited in the Will;
- (e) Administrator appointed pursuant to an order under Section 36 of the Probate and Administration Ordinance (Cap. 10);
- (f) Applicant applying for a grant under Rule 29(a) and (b) and 31 of the Non-Contentious Probate Rules (Cap. 10A);
- (g) Lawful attorney himself (affirmation of identity of the donor of the power of attorney is still necessary but may be dispensed with if any one of the paragraphs above applies);
- (h) Co-administrator nominated and appointed by the surviving spouse;
- (i) Applicant being a solicitor holding a current practising certificate;
- (j) Officer applying on behalf of trust corporation; and
- (k) In other cases where real difficulties can be demonstrated.

## **PART V - PROOF OF MARRIAGES CELEBRATED IN THE MAINLAND**

10. Where the validity of the marriage is not in issue, a marriage certificate issued by the appropriate authority in the Mainland after the 1<sup>st</sup> day of May, 1950 shall be received as *prima facie* evidence of the facts stated in the certificate.

## **PART VI – DOCUMENTS USED IN DIFFERENT FILES**

11. Where an original document has been filed it will remain in the Court file where it is kept.
12. If the original document is required to be used in a subsequent Court file, the applicant may file a photocopy in lieu thereof provided that the applicant is the same person who filed the original document. The photocopy document shall be endorsed by the applicant to show in which previous Court file the original document may be found.

## **PART VII – SEALING OF FOREIGN GRANTS**

13. In addition to the prevailing practice for an application for sealing of foreign grant to be signed either by the applicant himself or by his lawfully constituted attorney in Hong Kong, such an application may be signed by the applicant's Hong Kong solicitors.

## **PART VIII – AMENDMENTS TO SCHEDULE OF PROPERTY/ASSETS AND LIABILITIES ANNEXED TO THE GRANT RELATING TO THE ESTATE OF THE DECEASED**

14. If the amendment relates solely to the description of an item, the application for amendment need not be supported by any affidavit. Upon the payment of a prescribed fee, the amended schedule as annexed to the grant will be endorsed by the Probate Registry. This

is without prejudice to any requirement of the Commissioner of Estate Duty for an affidavit in respect of such amendment for the deceased who died before 11<sup>th</sup> February 2006.

15. In all other cases, including amendments to the value of an item of property, the application must be supported by an affidavit.

#### **PART IX – ALTERATION OF GRANT BY UNAUTHORISED PERSON**

16. No grant which has been sealed may be altered without an order of the Court. If an alteration has been made in a grant by an unauthorised person after its issue, the grant will be impounded, and a duplicate grant must be obtained, which will then be amended, by a court order, in the usual course. If the alteration is extensive or of a serious character, the grant will be revoked. The Court may report such misconduct to the appropriate authority as the circumstances require.

#### **PART X – RELEASE OF ESTATE DUTY PAPERS, WHERE APPLICABLE, WILL AND DEATH CERTIFICATE FROM THE PROBATE REGISTRY BEFORE ISSUE OF GRANT**

17. Before a grant of representation is issued, the Estate Duty papers, where applicable, the Will and the Death Certificate filed may be released at the Probate Registry Counter to the solicitor on record or to his clerk or representative upon production of an authorization letter identifying the recipient, which must be returned to the Probate Registry on request and in any event before the issue of the grant. Once a grant is issued, the above documents will be retained by the Probate Registry.

18. The Estate Duty Papers may include the following: –
- (a) Schedule of Property and Certificate of Exemption from estate duty thereon;
  - (b) Schedule of Trust Property and Certificate of Exemption from estate duty thereon;
  - (c) Schedule of Joint Property and Certificate of Exemption from estate duty thereon;
  - (d) Schedule of Gifted Property and Certificate of Exemption from estate duty thereon;
  - (e) Schedule of Property in respect of unadministered property and Certificate of Exemption from estate duty thereon;
  - (f) Schedule of Property for Grant *Ad Colligenda Bona* and Certificate of Exemption from estate duty thereon;
  - (g) Schedule of Property for Grant Pending Suit and Certificate of Exemption from estate duty thereon;
  - (h) Statement in Lieu of Affidavit and Certificate of Exemption.

#### **PART XI – CHECKLIST**

19. The lodgment of an application for grant will not be accepted by the Probate Registry unless, among other necessary documents, it is accompanied by a duly completed checklist as appearing in the Appendix or its updated version (if any) published by the Judiciary.

## **PART XII – GUIDE TO NON-CONTENTIOUS PROBATE PRACTICE**

20. All practices set out in the Guide to Non-Contentious Probate Practice published by the Judiciary in 2013 or its updated version (if any), together with its subsequent supplements, shall be adhered to as far as practicable.

## **PART XIII – DELAY**

21. Where it is shown that the applicant/solicitor has not expeditiously handled the application, for example, by not answering requisitions promptly, he may be required to give an explanation. Where appropriate, including when the Court has imposed a time limit for answering the requisitions, the applicant/solicitor should before the expiry of any time limit imposed by the Court inform the Probate Master of the difficulties and seek an extension of time. In extreme cases of delay, the Probate Master may require the applicant/solicitor to show cause why such an application should not be dismissed, without prejudice to the applicant's right to make a fresh application.

## **PART XIV – BADLY PREPARED APPLICATION**

22. To minimise the processing time for badly prepared application, for example, oath not following the Specified Form and/or failing to show the most basic particulars required for the application, such as domicile of the deceased and the applicant's entitlement and capacity etc., which will necessitate many rounds of requisitions and result in long delays, the Probate Master may require the applicant/solicitor to show cause why such an application should not be dismissed, without prejudice to the applicant's right to make a fresh application.

**PART XV – OATH SERVICE WITHIN THE PROBATE  
REGISTRY**

23. Oath service relating to affidavit or declaration on application for grant and amendment of grant is available to the applicant/solicitors acting for the applicant(s) at the Probate Registry.
24. This Practice Direction supersedes the existing Practice Direction 20.1.
25. This Practice Direction shall take effect on 11 September 2023.

Dated this 23<sup>rd</sup> day of August 2023.

(Andrew Cheung)  
Chief Justice

Appendix



**Application for Grant  
Checklist**  
(To be filed when the application is lodged)

IN THE ESTATE OF (name),  
Deceased.

**Instructions**

1. Please read Practice Direction 20.1, the Guide to use the Specified Forms and the Guide to Non-Contentious Probate Practice ("the Guide to NCPP") before completing this Checklist.
2. You MUST complete all sections by putting a tick (NOT a cross) in each of the boxes, unless otherwise stated.
3. If any part of this checklist is not completed as aforesaid, please explain in details under Section K as to why it is so. Requisition will be raised if no or no satisfactory explanation is given. It may also delay processing of the application.
4. \*Please delete or adapt as appropriate.
5. Abbreviations used in this Checklist are the same as those in the Guide to NCPP.

**Section A – Application Form**

(Please refer to Gazette Notice No.4 of 2006 published on 21.1.2006 for the Form number.)

- A1  I confirm that the following Specified Form is appropriate in the present application.  
(Please tick one box in the followings.)

Deceased died on or after 11.2.2006

Deceased died before 11.2.2006

- |       |                          |       |                          |
|-------|--------------------------|-------|--------------------------|
| L1.1a | <input type="checkbox"/> | L1.1b | <input type="checkbox"/> |
| L1.2a | <input type="checkbox"/> | L1.2b | <input type="checkbox"/> |
| L1.3a | <input type="checkbox"/> | L1.3b | <input type="checkbox"/> |
| L1.4a | <input type="checkbox"/> | L1.4b | <input type="checkbox"/> |
| L1.5a | <input type="checkbox"/> | L1.5b | <input type="checkbox"/> |
| L1.6a | <input type="checkbox"/> | L1.6b | <input type="checkbox"/> |
| W1.1a | <input type="checkbox"/> | W1.1b | <input type="checkbox"/> |
| W1.2a | <input type="checkbox"/> | W1.2b | <input type="checkbox"/> |
| W1.3a | <input type="checkbox"/> | W1.3b | <input type="checkbox"/> |
| W1.4a | <input type="checkbox"/> | W1.4b | <input type="checkbox"/> |

Others, if any, please specify \_\_\_\_\_

- A2  I have advised the applicant(s) to make all reasonable enquiries, to conduct all known searches and to make full and frank disclosure in the above Specified Form (which is an *ex-parte* application) as well as the risk of being prosecuted for perjury, if it contains any incorrect or false information.

**Section B – Death of the Deceased**

- B1  The death of the Deceased is duly proved by his/her:  
(Please tick as appropriate in the circumstances.)

- Death certificate
- Death certificate duly authenticated
- Death certificate duly authenticated together with certified translation
- Others, if any, please specify \_\_\_\_\_

The original of it is filed herein.

**Section C – Domicile of the Deceased**

(Please tick one box in C1 (a) - (d). Please read paragraphs 47-59 of the Guide to NCPP, if necessary.)

- C1 (a)  The Deceased died domiciled in Hong Kong. He/She had a permanent HKID card, a copy of it is filed herein.
- (b)  The Deceased died domiciled in Hong Kong notwithstanding that he/she did not have a permanent HKID card. The affidavit/affirmation of \_\_\_\_\_ is filed herein to support for it.
- (c)  The Deceased died domiciled outside Hong Kong in \_\_\_\_\_. He/She had a foreign passport showing such nationality, a copy of it is filed herein.
- (d)  The Deceased died domiciled outside Hong Kong in \_\_\_\_\_ notwithstanding that he/she did not have a foreign passport showing such nationality. The affidavit/affirmation of \_\_\_\_\_ is filed herein to support for it.

**Section D – Basis of Application**

(Please consider carefully the entitlement to a grant by the applicant(s), choose and complete at least one sub-section under (1) to (6), others will be left in blank.)

**(1) Rule 19 NCP**

(This sub-section is to be completed when the Deceased died domiciled in Hong Kong leaving a will. Please read paragraphs 150-156 of the Guide to NCPP, if necessary.)

- D1.1  I have gone through the will and consider that the applicant(s) is/are ranked r. 19 \_\_\_\_\_ under NCP.
- D1.2  The person(s) enjoying higher priority has/have been cleared off in the following manner.

Person(s) with priority	Name(s) (Some capacities may not exist under the will, if so, state N/A.)	Clearing off by (Proof of death, renunciation, etc.)
r.19 (i)		
r.19 (ii)		
r.19 (iii)		
r.19 (iv)		
r.19 (v)		
r.19 (vi)		

**(2) Rule 21 NCPR**

(This sub-section is to be completed when the Deceased died domiciled in Hong Kong without leaving a will. Please read paragraphs 60-88 of the Guide to NCPP, if necessary. )

- D2.1       Having regard to the information available, I consider that the applicant(s) is/are ranked r. 21 \_\_\_\_ under NCPR.
  
- D2.2       The person(s) enjoying higher priority than the applicant(s) has/have been cleared off in the following manner.

Person(s) with priority	Name(s) (Some capacities may not exist, if so, state N/A.)	Clearing off by (Proof of death, renunciation, etc)
r.21 (1) (i)		
r.21 (1) (ii)		
r.21 (1) (iii)		
r.21 (1) (iv)		
r.21 (2) (i)		
r.21 (2) (ii)		
r.21 (3)		
r.21 (4)		

**(3) Rule 29 (a) NCPR**

(This sub-section is to be completed when the Deceased died domiciled outside Hong Kong.)

(In D3.1, please tick either (a) or (b). Please read paragraphs 242-245 of the Guide to NCPP, if necessary.)

- D3.1 (a)     The present application is made pursuant to the order dated \_\_\_\_\_ made by this court under the *ex-parte* application HCEA \_\_\_\_\_ of \_\_\_\_\_.
  
- (b)     The affidavit/affirmation of \_\_\_\_\_ is filed herein (by way of *ex-parte* application) for an order of this court supporting the present application for grant.
  
- D3.2       I have examined the court sealed and/or certified foreign \*[grant] [order] [decree] filed herein and I consider that the applicant(s) was/were entrusted with the administration (as distinguished from inheritance) of the estate of the Deceased by the court having jurisdiction at the place where he/she died domiciled.

**(4) Rule 29 (b) NCPR**

(This sub-section is to be completed when the Deceased died domiciled outside Hong Kong.)

(In D4.1, please tick either (a) or (b). Please read paragraphs 242, 243, 246-253 of the Guide to NCPP, if necessary.)

- D4.1 (a)  The present application is made pursuant to the order dated \_\_\_\_\_ made by this court under the *ex-parte* application HCEA \_\_\_\_\_ of \_\_\_\_\_.
- (b)  The affidavit/affirmation of \_\_\_\_\_ is filed herein (by way of *ex-parte* application) for an order of this court supporting the present application for grant.
- D4.2  An affidavit/affirmation of law of \_\_\_\_\_ (who is a \*[practicing lawyer with not less than 5 years of post qualification experience in the relevant jurisdiction] [an expert in the area with appropriate academic and/or professional qualification]) is filed herein to support the application.
- D4.3  I confirm that, before the preparation of his/her affidavit/affirmation of law, the said foreign expert has been informed by me of the usual requirement of the Hong Kong court. I have also vetted through the said affidavit/affirmation of law and considered that the same has been duly complied with, to my satisfaction.
- D4.4  I share the view of the said foreign expert that the concept of grant does not exist in the relevant jurisdiction and that the applicant(s) is/are entitled to administer the estate of the Deceased there.

**(5) Rule 29 (c) NCPR**

(This sub-section is to be completed when the Deceased died domiciled outside Hong Kong.)

(In D5.1, please tick either (a) or (b). Please read paragraphs 242, 243, 246-253 of the Guide to NCPP, if necessary.)

- D5.1 (a)  The present application is made pursuant to the order dated \_\_\_\_\_ made by this court under the *ex-parte* application HCEA \_\_\_\_\_ of \_\_\_\_\_.
- (b)  The affidavit/affirmation of \_\_\_\_\_ is filed herein (by way of *ex-parte* application) for an order of this court supporting the present application for grant.
- D5.2  An affidavit/affirmation of law of \_\_\_\_\_ (who is a \*[practicing lawyer with not less than 5 years of post qualification experience in the relevant jurisdiction] [an expert in the area with appropriate academic and/or professional qualification]) is filed herein to support the application.
- D5.3  I confirm that, before the preparation of his/her affidavit/affirmation of law, the said foreign expert has been informed by me of the usual requirement of the Hong Kong court. I have also vetted through the said affidavit/affirmation of law and considered that the same has been duly complied with to my satisfaction.
- D5.4  I share the view of the said foreign expert that both r.29 (a) and (b) are not applicable. The applicant(s) should be issued with a local grant because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**(6) Other Application(s)**

- D6.1  The applicant(s) is/are (also) relying on the following to support his/her/their application.  
(More than one box may be ticked in the followings.)
- Rule 30 NCPR (Grant to attorneys)
  - Rule 31 NCPR (Grant on behalf of person under 21)
  - Rule 32 NCPR (Grant where person under 21 co-executor)
  - Rule 33 NCPR (Grant in case of mental or physical incapacity)
  - Rule 34 NCPR (Grant to trust corporations and other corporate bodies)
  - Section 49 PAO (Sealing of grants by Courts outside Hong Kong)
  - Section \_\_\_ PAO/Rule \_\_\_ NCPR

**Section E – The Applicant(s)**

- E1  I confirm that the identity of the applicant(s) has been proved to my satisfaction by checking:  
(More than one box may be ticked in the followings.)
- Marriage Certificate
  - Birth Certificate
  - Copy of HKID or other identity document(s)
  - Affidavit of Identity in S.F. M2.1
  - Others, if any, please specify \_\_\_\_\_

The original of such document(s) is/are filed herein.

- E2  I also confirm that the requirement as to the number of the applicant(s) under s.25 PAO has been complied with.

**Section F – The Will**

(This section is to be completed when the Deceased died leaving a will, otherwise leave it blank.)  
(In F4 - F9, please tick either (a) or (b) therein.)

- F1  I confirm that the \*[original will] [court certified and sealed copy will] of the Deceased is filed herein.
- F2  I confirm that a copy of the will without markings on the back sheet (to be annexed in the grant to be issued) is filed herein.
- F3  I confirm that r.8 NCPR for marking of the will has been complied with.
- F4 (a)  I consider that the will was validly executed and in good order for probate according to the provisions of WO.
- (b)  S.5 (2) WO application is needed. The affidavit/affirmation of \_\_\_\_\_ is filed to persuade the court to accept that there is no reasonable doubt that document dated \_\_\_\_\_ embodies the testamentary intentions of the Deceased.

- F5 (a)  I have inspected the will and confirm that the execution of it is prima facie in good order.
- (b)  The execution of the will is not in good order on face of it. The affidavit/affirmation of \_\_\_\_\_ (in S.F. W3.1) is filed herein to explain the circumstances under which the testator duly executed the will.
- F6 (a)  I have inspected the will and confirm that the handwriting and signature(s) of the testator thereon do not require elaboration on face of it.
- (b)  The will was handwritten and the signature(s) of the testator thereon requires elaboration. The affidavit/affirmation of \_\_\_\_\_ (in S.F. W3.2) is filed herein to explain the handwriting and signature(s) of the will.
- F7 (a)  I have inspected the will and confirm that the plight and condition of it is in good order.
- (b)  The plight and condition of the will is not in good order. The affidavit/affirmation of \_\_\_\_\_ (in S.F. W3.3) is filed herein to explain the obliterations, interlineations, corrections and/or any other matters requiring to be accounted thereon.
- F8 (a)  I have inspected the will and confirm that there is no alteration made previously or subsequently to the execution of the same.
- (b)  There is/are alteration(s) made previously or subsequently to the execution of the will. The affidavit/affirmation of \_\_\_\_\_ (in S.F. W3.4) is filed herein to explain the circumstances under which the testator made the alteration(s).
- F9 (a)  I confirm that s.23A WO application is not needed.
- (b)  S.23A WO application is needed. The affidavit/affirmation of \_\_\_\_\_ is filed herein for the rectification of [particulars of clerical error and/or failure to understand the instructions of the testator].

**Section G – Schedule of Property/Assets and Liabilities**

(In G1, please tick either (a) or (b).)

- G1 (a)  The Deceased died on or after 11 February 2006 and the followings are filed herein:  
(Please tick as appropriate in the circumstances.)
- S.F. N2.1
- S.F. N4.1 in duplicate
- Inventory list of Safe Deposit Box, if any, attached to S.F. N4.1
- (b)  The Deceased died before 11 February 2006 and the followings are filed herein:  
(Please tick as appropriate in the circumstances.)
- Estate Duty Payment or Exemption Certificate + Schedule of Property in duplicate  
or
- Estate Duty Exemption Certificate in duplicate + Statement in lieu of Affidavit

**Section H – Other documents**

(This section may be left in blank if all supporting document(s) have been mentioned above.)

H1  I confirm that the following document(s) has/have also been filed to support the present application.  
(More than one box may be ticked in the followings.)

- Renunciation
- Nomination
- Power of Attorney
- Divorce Certificate
- Order
- Others, if any, please specify \_\_\_\_\_

**Section I – Authentication**

(In I1, please tick only one box from (a), (b) or (c). Please see footnote 44 at page 45 of the Guide to NCPP, if necessary.)

- I1 (a)  I confirm that all public documents filed herein are issued by Hong Kong authorities. As such, no authentication is required.
- (b)  I confirm that all foreign public documents filed herein have been duly authenticated.
- (c)  I confirm that all foreign public documents filed herein have been duly authenticated except \_\_\_\_\_

\_\_\_\_\_.  
An affidavit/affirmation by \_\_\_\_\_ is filed herein to set out the circumstances why the usual requirement cannot be complied with despite reasonable efforts having been spent and that waiver of the same is hereby applied for.

**Section J – Requirement of Surety Guarantee**

(In J1, please tick either (a) or (b). Please read paragraphs 121–123 of the Guide to NCPP, if necessary.)

- J1 (a)  I confirm that the applicant(s) has/have been advised that the requirement of surety guarantee will not be raised by the court under r.38 (1) NCPR.
- (b)  I confirm that the applicant(s) has/have been advised that the requirement of surety guarantee will be raised by the court under r.38 (1) NCPR. The applicant(s) hereby pray(s) for dispensation of this requirement because:  
(Please tick as appropriate in the circumstances.)

- The estate has no known creditors or liabilities
- No beneficiary needs such protection
- All beneficiaries consented to the dispensation of such requirement (written consents are filed herein)
- Others, if any, please specify \_\_\_\_\_

**Section K – Other Matters**

(You may include in this section any additional information to assist the court, for example, family tree of the Deceased, chronology of events, case(s) to support particular proposition(s), reason(s) why any of the boxes cannot be completed, problem(s) spotted by the solicitor in the application. You may also leave it blank if it is a simple application.)

K1             I set out below other information that will assist the Court to process the present application.

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**Section L – Confirmation**

(The solicitor shall sign in his or her own name, NOT in the firm's name.)

L1             I, [name of the solicitor-in-charge], solicitor for the applicant(s), having conduct of the present application, confirm that the above are true and accurate to the best of my information and belief.

Signed:	Date:
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