

Abstract

There are 3 types of persons who may file an application with the court to appoint the administrator of the deceased's estate according to section 1713 of the civil and commercial code: the heir, the interested person, and the public prosecutor. The provisions do not provide the definition of the term "interested person". There are just the Supreme Court's judgments most of which agree that the interested persons shall be the persons who have due interest in the estate of the deceased. But in my point of view, the due interest shall not be limited only to the interest in the estate. In certain cases there might be the filing of such application by virtue of the legal representative or the guardian of a minor or an incapacitated person, or in the case that the public prosecutor file an application with the court to appoint the administrator of the deceased's estate. The latter persons seem to have no direct relation with the deceased; however, they have certain legal duties to take care of the minor or the ward, as the case may be. In the some cases while the couple are not legally married and do not have any earnings which they earn together but if they are the right and proper persons, they shall be deemed by the court to be the interested persons who have the right to file the application to appoint the administrator of the estate. *Ipsa facto*, in my opinion, this is the right principle because the concept of appointing the administrator of the estate is to properly administrate the estate of the deceased in favour of the persons who have the right to the succession. In certain cases, to take only the matter of the property into consideration of the due interest may not be a rightful account.

Furthermore, on the issue of the due interest in the application of the administrator of the estate, section 1713 of the civil and commercial code provided that there are three types of persons, the heir; the interested person; and the public prosecutor, who have the right to file an application with the court to appoint the administrator of the deceased's estate. However, the provision does not specify the order of the right of such people to file the application. But in certain cases despite the interested person they are, the Supreme Court decide that they have no right to file the application to appoint the administrator of the estate, for instance, the debtor of the *de cuius* while the mass of the estate has the heir. In such case, I reflect that it might be unfair to such debtor if the heir refuse to pay the debt of the *de cuius*.

This issue illustrates me that the person, whether they are the heir or the interested person, who may file an application to appoint the administrator of the estate shall not be defined with too limited construction by the court. Instead, the court should consider the reasonableness and the benefit of the estate and the person who will be affected by the estate. There are certain types of persons in certain cases given as the examples herein such as the person to whom all the heirs have given their consensus to be the administrator of the estate. I consider that such person shall be deemed the interested person because the construction of the term "the interested person" in accordance with section 1713 should include the person who is authorized by all the heirs. However, in the cases that the de cuius has more than one heir but there is the conflict of interest, the person who is authorized by some of the heirs shall not be deemed the interested person who has the right to file the application in favour of all the heir.

In the case that such estate is vested in the kingdom, there raises the question that whether the kingdom will be deemed the interested person or not. In my opinion, there are three types of persons who can file an application to appoint the administrator of estate according to section 1713. Even though the kingdom is not the heir of the de cuius, the kingdom may become an inheritor by operation of the provision 1753. As a result, the kingdom shall be deemed the interested person who can file an application with the court to appoint the administrator of the deceased's estate. This issue concerns the problem of the construction of provision and there is still the question of the state of being the interested person or not as occurred in the matter of the kingdom, the couple who are not legally married, the debtor of the estate, and the person who is authorized by all the heirs. There are two considerations which may be applied with these issues.

1. There should be a clear specification of the consecutive order of the persons who have the right to file such application with the court. This can be done by comparing the Non-Contentious Probate Rule of England with section 1629 of the civil and commercial code, which provides the consecutive order of the inheritors arranged by the closeness to the de cuius. If there are many people who have the right to file the application, the person who has a prior right to the succession will also have the prior right to file such application to the court. In the case that the person who has the prior right do not file the application, there should be

the limit of time provided. If the period of time provided for such person ends, the next person in the order can file the application to appoint the administrator of the deceased's estate instead and so on. This measure seems more suitable and makes the prior person(s), who can be either the administrators by the de cuius' will or the heirs, not to neglect or ignore to file the application with the court to appoint the administrator of the deceased's estate, which will help reduce disputes and the cases that will be brought to the court concerning the deceased's estate.

The advantage of the provision of consecutive order of the persons who have the right to file the application is; it brings clarity to the provision and helps greatly reduce the problem of construction. Although this measure is prevalent among the common law countries such as England and The United States of America and is not popular among the civil law countries; but, after taking a consideration, if it is found suitable and possible and will have a good benefit in practice, this measure can be applied with our legal system also.

2. Besides the provision of consecutive order of the persons who have the right to file the application, there is yet another option. In Thailand, there is no provision which provides such order. This might be because it is impossible to inflexibly specify that who is and who is not the requisitioner of such appointment especially to the interested person. Hence, such issue should be left to be construed by the court. In construing an issue of the interested person it should provide an opportunity to the person who has a close relation with the estate to be able to file an application to appoint the administrator of the estate. But to grant the requisitioner to become the administrator of the estate or not is the discretion of the court. The court may appoint no person at all to be the administrator if the court finds the requisitioner not appropriate. Therefore my concern is, if there is no appropriate person to become the administrator of the estate, how can we solve the issue of the estate? Because if it is left neglected, it may bring loss to the relative of the estate. It is recommended that the government organization such as The Ministry Of Finance perform the duty of the administrator of the estate so that there will be most just to each party.

Personally, I agree with the 2nd measure, because it can help solve the problem without the necessity to make an amendment to any provision. Nonetheless, the provision

can be enforced appropriately and justly and allows persons who involve with the estate to file the application with the court without denying anybody's right. The court is the one who take into consideration, as the case might be, which person is deserved. If such guiding principle is determined, the issue of the interested person in filing an application with the court to appoint the administrator of the deceased's estate will be clearer and this will make the administration of the estate appropriate and accurate.