

LEGISLATION NOTES

THE SMALL ESTATES (DISTRIBUTION) (AMENDMENT) ACT 1977 AND THE PROBATE AND ADMINISTRATION (AMENDMENT) ACT 1977

The Small Estates (Distribution) (Amendment) Act 1977 which came into force on 10th June 1977 substitutes the amount of fifty thousand dollars for the amount twenty-five thousand dollars in the definition of a 'small estate' in the Small Estates (Distribution) Act 1955 (Revised 1972). The passing of this Act marks the fourth time the definition of a small estate has been amended in the last eighteen years.

The concept of small estates distribution originated in s. 37A of the F.M.S. Land Enactment of 1911.¹ This section gave Collectors of Land Revenue powers of summary distribution over land owned by deceased persons if the land did not exceed one thousand dollars in value. In 1926 more elaborate legislation was enacted on the subject by the Probate and Administration (Amendment) Enactment 1926. This amending Enactment repealed s. 37A of the Land Enactment 1911 and moved small estates distribution to the Probate and Administration Enactment 1920. It added sixteen new sections, all dealing with small estates, to the principal Enactment. One of these new sections increased the value of small estates to three thousand dollars. This value was retained until 1949 when s. 2 of the Administration of Small Estates Ordinance amended the value to five thousand dollars. The legislation on the subject was overhauled and re-enacted in a comprehensive manner in the Small Estates (Distribution) Ordinance 1955. The new legislation retained the value of a small estate within the Ordinance at five thousand dollars, but not for long. The Small Estates (Distribution) Amendment Ordinance 1959 increased it to ten thousand dollars. When the Ordinance was revised and re-enacted as the Small Estates (Distribution) Act 1955 (Revised 1972) a new value, namely twenty-five thousand dollars, was substituted by s. 3(2) of the revised Act. Although the new Act operated from 1st November 1972, the coming into force of s. 3(2) was delayed until 1st July 1974. The latest amendment, the subject of this note, raises the value of a small estate to fifty thousand dollars, a hundred percent increase in just three years. Can there be a better illustration of the fall in the value of money in the past ten years

¹This section was added to the Land Enactment 1911 by an amendment Enactment in 1918.

than the changing definitions of small estates?

How will this amendment Act affect the general public?

Small estate distribution has always enjoyed many advantages not available to ordinary administration of intestacies. Ordinary administration is subject to intricate rules and procedure designed to ensure that an estate of a deceased person is administered properly and the legitimate interests of beneficiaries and creditors are protected. While these rules are necessary for estates of substantial value they tend to become cumbersome when applied to rural estates of small value.² It is extremely difficult for the beneficiaries of an intestacy to administer and distribute a landed estate by themselves without any legal representation. Persevering beneficiaries may, with the assistance of court officials, succeed in extracting letters of Administration but they may not be able to proceed any further without a lawyer's assistance. The order of the Court required under s. 72 of the Probate and Administration Act 1959 (Revised 1972) to sanction a vesting assent in relation to immovable property certainly requires expert assistance. Legal assistance involves lawyer's fees and costs and these the beneficiaries of estates of small value may find difficult to bear.

Small estate distribution overcomes all these problems. If an estate comes within the definition of a small estate in the principal Act, the Collector of Land Revenue where the land is situated has exclusive jurisdiction over its distribution. Once the beneficiaries have filed their petition with the Collector he takes over the entire process of distribution, transmission and vesting. Costs are minimal and usually do not exceed twenty dollars.

The aim of the legislation on small estates is to enable such estates to be distributed speedily and cheaply. In the hands of suitably trained Land Office staff a small estate may be distributed within four months of the filing of a petition for distribution.³ The ordinary administration of an intestacy by private administrators unfortunately takes a substantial length of time due to the necessity of obtaining estate duty clearance and compliance with the inevitable procedures of estate administration. Perhaps the biggest stumbling block of most private administrators of intestacies of greater value than ten thousand dollars is the administration bond.⁴ Considerable delay will arise if the administrators cannot find suitable persons who are willing to become sureties in the bond. Again a grant of representation cannot be extracted from the Court until the

² See Proceedings of the Federal Council, 20th January 1955 p. 1387-1388.

³ See Mohd. Yusof Johor Ali, *Pembabagian Harta Pesaka Kecil Di Semenanjung Malaysia* (unpublished LLB dissertation - University of Malaya, Law Library) pp. 43-46.

⁴ See s. 35 of the Probate and Administration Act 1959 (Revised 1972).

Collector of Estate Duty's certificate of payment or exemption or postponement is first obtained.⁵ Small estate distribution by the Collector has always been free of all these difficulties. That is why in the hands of a well-organised Land Office this important public service is of immense value, particularly for the assistance of ignorant beneficiaries of limited means.

For these reasons the new increase in value is most welcome. The fall in value of money and the spiralling cost of land prices have pushed the value of most small landed estates well past the twenty-five thousand dollar mark. As a result of this new amendment more estates will come under the exclusive jurisdiction of Collectors of Land Revenue and a larger cross-section of the public will be able to utilise the cheap, efficient and trouble free administration that small estate distribution is meant to provide.

How will this amendment affect the legal profession?

During the Second Reading of the Small Estates (Distribution) Bill 1955 on 20th January 1955 the Attorney General said:⁶

"Now, we have a clause in here which may commend itself to some Members of this Council but not perhaps all. It says that in proceedings before the Collector we will not normally have lawyers present. Lawyers will be excluded from proceedings before the Collector unless the Collector specifically permits their appearance. I have a feeling that it will be desirable to have a large number of lawyers on the Committee to deal with those particular provisions and other provisions of the Bill, and I am glad to say that many of the legal Members of this Council are prepared to serve on the proposed Select Committee and if they approve of these provisions you will be able to accept them with an easy conscience."

The clause referred to is the present s. 31 of the principal Act. Section 31 reads as follows:

(1) No advocate shall be entitled to appear on behalf of any party in any proceedings before the Collector under this Act except with the permission of the Collector, who may grant or withhold such permission in each case as he thinks fit.

(2) No solicitor's costs shall be allowed out of any small estate except that in a case where the estate exceeds three thousand dollars in value, the Collector may, for special reasons stated in the order, allow such costs to an amount not exceeding the amount of such costs as might be awarded in a Sessions Court in West Malaysia or the Court of a Magistrate of the First Class in East Malaysia, as the case may be, in a comparable proceeding.

⁵ See s. 45 of the Estate Duty Enactment 1941.

⁶ Proceedings of the Federal Council p. 1390.

With the aim of providing a cheap system of estate administration and distribution the legislature has discouraged the participation of lawyers in the machinery of small estate distribution. In this respect the amendment is of little importance to the legal profession. However they may note that as a result of the increased jurisdiction of Collectors of Land Revenue there is bound to be a corresponding reduction of petitions for Letters of Administration in the High Court.

How will this amendment affect the Land Offices throughout the country who render this valuable service?

Now that the value of small estates has been increased to fifty thousand ringgit the workload of these offices is bound to increase significantly. In the past the usual complaint of beneficiaries has been on the delay of a few Collectors of Land Revenue to carry out speedy distribution of estates under their care. To be fair to Collectors it must be pointed out that not all small estates are amenable to quick distribution. Some small estate though small in value may come fraught with numerous problems which have to be solved before they can be distributed. All the same it is hoped that the relevant authorities would take every step to avoid delays. Beneficiaries of small estates are usually persons of limited means who may suffer considerable hardship if the distribution of the estate is delayed beyond a reasonable time. Collectors of Land Revenue and their staff are under a tremendous responsibility to see that they live up to the aims of the Small Estates (Distribution) Act 1955 – cheap, speedy and trouble-free administration.

The smooth running of small estate distribution depends on efficient organisation and adequate training of the Land Office personnel who operate the machinery. Recently the Government created eleven posts of a new appointment called Pegawai Penyelesai Pesaka Kecil, a specially trained corps of officers whose sole duty is to undertake distribution of small estates on behalf of collectors of Land Revenue. Now that Land Offices are bound to receive larger numbers of small estates, including estates of greater complexity, it is hoped that the number of Pegawai Penyelesai Pesaka Kecil would be increased so that one such officer would be found in every district in Malaysia.

THE PROBATE AND ADMINISTRATION (AMENDMENT) ACT 1977

This Act amends the principal Act, the Probate and Administration Act 1959 by substituting various new amounts of money for some of the amounts previously stated in sections 83–86 of the principal Act. Of these amendments the most important is the change in s. 83 which deals with the Official Administrator's powers of summary administration over estates which do not include any immovable property or interest therein. Section 83(1) in its unamended form provided that whenever any person

died leaving property in Malaysia the Official Administrator may administer and distribute the estate summarily, *as though* letters of Administration with or without the will annexed had been granted to him, provided that he is satisfied that:

- (a) the total value of the property with deduction for debts, but not including the value of any property which the deceased possessed or was entitled to as trustee and not beneficially, does not exceed *twenty-five thousand dollars* and
- (b) the estate consists wholly of movable property and
- (c) no petition for letters of administration is pending.⁷

Section 2 of the amendment Act substitutes the amount fifty-thousand dollars for the amount twenty-five thousand dollars mentioned in s. 83 above.

To an extent the Official Administrator's powers of summary administration and distribution under the Probate and Administration Act 1959 and the Collector of Land Revenue's power of distribution of small estates under the Small Estates (Distribution) Act 1955 are similar. In both cases procedural formalities are reduced to a minimum. No application to court for letters of Administration is required. The Certificate of the Collector of Estate Duty is not necessary. Shed of these formalities the Official Administrator, like the Collector, is able to carry out speedy distribution of estates that come within the purview of S.83(1). The Official Administrator has a branch office in every state capital and each office is managed by a senior officer and supporting staff of considerable experience in estate administration. Provided that the estate does not come to him with complications the Official Administrator normally completes the distribution in about four months. Again beneficiaries and creditors are assured of an honest and impartial administration. For these reasons the amendment to s. 83(1) of the principal Act is warmly supported, for more estates will be able to make use of the Official Administrator's useful and efficient service.

Collectors of Land Revenue have exclusive jurisdiction over the distribution of landed intestacies that fall within s. 3 of the Small Estates (Distribution) Act 1955. The Official Administrator enjoys no such privilege over estates that satisfy the requirements set out in s. 83 of the Probate and Administration Act 1959. Beneficiaries of such estates are free to administer and distribute the estates by themselves with or without legal assistance.

Another significant difference is the rate of fees charged by the official

⁷ It must be noted that the Official Administrator's powers of administration are not restricted to summary administration under s. 83 of the Probate and Administration Act 1959. He has other important powers in connection with the administration of estates in general - see s. 81 and 82 of the Act.

Administrator for his services. The Official Administrator (Fees) Rules 1972 provides details of the fees that he is empowered to charge. As far as *summary administration* is concerned the rates are as follows:

- (a) for the first \$25,000 not more than 5 or less than 3 per cent at the discretion of the Official Administrator
- (b) for the next twenty-five thousand not more than 3 or less than 2% at his discretion

Assuming that the lower rates are charged some examples of the fees payable are as follows:

<i>Value of estate</i>	<i>Fees payable</i>
\$1000	\$30
\$5000	\$150
\$10,000	\$300
\$20,000	\$600
\$40,000	\$1,050
\$50,000	\$1,250

When compared to the nominal costs of small estate distribution the fees payable to the Official Administrator may appear to be relatively high. As it has been pointed out above beneficiaries of estates that fall within s. 83 are not compelled to use his services. They are at liberty to administer and distribute the estate by themselves, with or without legal assistance. Two points however must be stressed. First, where the estate is of small value the Official Administrator's fees would be less than the expenditure which the beneficiaries would incur if they undertook to administer and distribute the estate by themselves. Secondly, regardless of the fee charged one must not forget the many advantages that go with summary administration. It may be said with some justification that the advantages completely outweigh the fees payable. If one desires a speedy, efficient and trouble free administration then the fees payable under the 1972 Rules are fair. It is pertinent to note that in 1977 the Official Administrator administered and distributed 1115 cases under s. 83. All the same as one of the purposes of summary administration is to provide a social service to ignorant and poor beneficiaries it is hoped the rate of fees would be altered to a much lower scale.

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LEGISLATION

The following list of Acts passed and revised in Malaysia is a continuation of the list of Federal Acts contained in Vol. 4, Part I [1977] J.M.C.L. 167-169.

FEDERAL ACTS PASSED

<i>Bil. Akta/ Act No.</i>	<i>Tajuk Ringkas/Short Title</i>
184	Akta Kumpulan Wang Antarabangsa (Pengesahan Pindaan Kedua Kepada Perkara-perkara Perjanjian) 1977. International Monetary Fund (Ratification of Second Agreement to the Articles of Agreement) Act 1977.
185	Akta Kumpulanwang Persaraan Pihakberkuasa-pihakberkuasa Berkanun dan Tempatan 1977. Statutory and Local Authorities Superannuation Fund Act 1977.
186	Akta Tribunal Perkhidmatan Awam 1977. Public Service Tribunal Act 1977.
187	Akta Pinjaman (Bank Pembangunan Islam) 1977. Loans (Islamic Development Bank) Act 1977.
192	Akta Kuasa-kuasa Darurat (Kelantan) 1977. Emergency Powers (Kelantan) Act 1977.

FEDERAL ACTS REVISED

188	Treasury Bills (Local) Act 1946 (Revised 1977). Published in English Language text only.
189	Second-Hand Dealers Act 1946 (Revised 1977). Published in English Language text only.
190	Federal Capital Act 1960 (Revised 1977). Published in English Language text only.