

SUMMARY ADMINISTRATION OF SMALL ESTATES¹

The administration of the estate of a deceased person by way of a grant of representation of the High Court has always been subject to intricate rules and tedious procedure. It can seldom be brought to a successful conclusion without delay and expense. It is convenient, but not always just, to blame the law and the courts for its slow progress. The rules and procedure that cause complexity and delay have a noble purpose. They are designed to ensure that maladministration is avoided and that the legitimate interests of beneficiaries and creditors are adequately protected. A deceased person's beneficiaries may find that the guiding hand of a solicitor is almost always necessary to take them through the complex paths of estate administration, particularly if the deceased's estate contains land. Persevering administrators or executors may, with the assistance of court officials, succeed in extracting a grant of representation only to find that there are numerous other steps to be taken, which may include an application² or several applications to the court.

The rules and procedure of estate administration become burdensome when applied to estates of small value, specially if they are rural estates with poor and ignorant beneficiaries. To overcome this problem a novel mode of administration called small estates distribution was introduced in the former Federated Malay States in 1918.³ Collectors of Land Revenue^{3a} were given summary powers of distribution over land owned by deceased persons if the land did not exceed \$1,000 in value. Today small estates distribution is regulated by the Small Estates (Distribution) Act 1955 (Revised 1972). Section 3(2) states (*inter alia*) that a small estate is "an estate of a deceased person consisting wholly or partly of immovable property situated in any State and not exceeding three hundred thousand ringgit in total value".⁴ Section 4 of the Act gives the Collector of Land Revenue of the district where the greater part in value of the immovable property is situated, exclusive jurisdiction to deal with the distribution.⁵

¹In this note the expression "small estate" refers to an estate within the meaning of the Small Estates (Distribution) Act 1955.

²See for example sections 60 and 72 of the Probate and Administration Act 1959.

³By adding a new section, section 37A to the F.M.S. Land Enactment of 1911.

^{3a}Collectors of Land Revenue have been renamed "District Land Administrators" for the purposes of the National Land Code by the National Land Code (Amendment) Act 1964. No amendment has yet been made to other legislation, e.g. the Small Estates (Distribution) Act 1955 where the term "Collector of Land Revenue" is used.

⁴The other requirements of a small estate are mentioned in the same section.

⁵See *Fatimah bte Mat Akir & Anor v. Sharifah bte Haji Ahmad & Ors* [1977] 1 M.L.J. 106. The High Court still retains exclusive jurisdiction to grant probate and letters of administration if the

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 and motivated Land Office staff such an estate may be distributed within a few months of the filing of a petition for distribution. 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 other inevitable procedures of estate administration. The stumbling block met by most private administrators of intestacies is the administration bond.⁶ Considerable delay will arise if the administrators cannot find suitable persons who are willing to become sureties in the administration bond. Again a grant of representation cannot be extracted from the High Court until the Collector of Estate Duty's certificate of payment or exemption or postponement is first obtained.⁷ Small estate distribution by Collectors of Land Revenue has always been free of all these difficulties. Once the beneficiaries have filed their petition with the appropriate Collector he takes over the distribution, transmission and vesting of the deceased's estate. Other major advantages are that the Collector's fees are extremely low and that lawyers are excluded from proceedings before him unless he specifically permits their appearance⁸ In the hands of an efficient Land Office this important public service is of immense value for the assistance of ignorant beneficiaries of limited means.

A singular feature of a small estate distribution is that it is restricted to estates containing wholly or partly of land. Collectors have no jurisdiction over estates which do not include land. Thus a Collector cannot assist in the administration of an estate of small value if it is made up entirely of movables. To fill this gap the Official Administrator (whose office had come into existence in 1905)⁹ was given powers of summary administration in 1955 over estates which consisted wholly of movable property and the total value of which did not exceed \$5,000.¹⁰ This figure was raised several times by legislation and ultimately stood at \$50,000 before the enactment of the Probate and Administration (Amendment) Act 1983. The statutory provisions on the Official Administrator's powers of summary administration are at present set out in section 83 of the Probate and Administration Act 1959.

Like the Collector in his distribution of small estates the Official Administrator in his summary administration has always enjoyed many ad-

deceased has left a will to regulate the distribution of his estate. See section 5 of the Act. See also *Chua Eh Swee v. Sew Chew Eng & Anor* [1982] 1 M.L.J. 84.

⁶See section 35 of the Probate and Administration Act 1959.

⁷See section 45 of the Estate Duty Enactment 1941.

⁸See section 31 of the Small Estates (Distribution) Act 1955.

⁹For a short history on the Official Administrator see P. Balan *Peranan Pentadbir Rasmi Dalam Pesaka-Pesaka Yang Tidak Mempunyai Wasiat*, The Accounting Journal (1968).

¹⁰By Section 26 of the Small Estates (Distribution) Act 1955.

vantages denied to ordinary administration in the High Court. He avoids time-consuming procedures as he is not required to obtain either a grant of the High Court or the Certificate of the Collector of Estate Duty. Branch offices of the Official Administrator are located in each State capital and a hardworking Assistant Official Administrator could wind up an estate that fell within section 83 of the Probate and Administration Act within about four months of an application to him by the beneficiaries. However, he is not compelled to accept an estate for summary administration. Section 83 makes it clear that he need only accept an estate "if in his discretion he thinks fit to do so". Consequently he has no exclusive jurisdiction over estates that fall within section 83 and beneficiaries are not compelled to use his services.

Before the Probate and Administration (Amendment) Act 1983 the position could be summarised as follows:

- (a) Collectors of Land Revenue enjoyed exclusive jurisdiction of estates that satisfied the definition of small estates under the Small Estates (Distribution) Act 1955.
- (b) The Official Administrator could, at his option and at the request of beneficiaries, undertake summary administration of an estate comprising wholly of movables and not exceeding \$50,000 in value

The Probate and Administration (Amendment) Act 1983 has made significant amendments to the principal Act, the Probate and Administration Act 1959. The Amendment Act as an entirety is discussed in this writer's survey in *Survey of Malaysian Law 1983*. This note restricts itself to the amendment to section 83(1).

It is necessary, first, to cite in full section 83(1) as it existed before the amendment.

83(1) "Subject to subsection (2)¹¹ whenever any person dies leaving property in Malaysia and the Official Administrator is satisfied after such investigation as he shall think sufficient —

- (a) that the total value of the property without 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 fifty thousand ringgit;
- (b) that the property does not include immovable property or any interest therein; and
- (c) that no petition for letters of administration is pending,

he may, if in his discretion he thinks fit to do so, by writing signed by him declare that he undertakes to administer the property, and thereupon he shall be empowered to administer it as though letters of administration, with or without the will annexed, of the estate of the deceased person had been granted to him, and his receipt shall be a sufficient discharge to any person who pays any money or delivers any property to him, and notice of every such declaration shall be filed in the proper Registry of the Court."

¹¹Subsection 2 is irrelevant for the present discussion.

Section 5 of the Probate and Administration (Amendment) Act 1983 amends section 83(1) above by

- (i) substituting for the words "fifty thousand ringgit" appearing in paragraph (a) of subsection (1) the words "three hundred thousand ringgit; and";
- (ii) deleting paragraph (b) of subsection (1) and renumbering paragraph (c) thereof as paragraph (b).

Two consequences of the Amendment Act are readily apparent. First, the value of estates subject to the Official Administrator's powers of summary administration has been raised to \$300,000. Secondly his summary administration is no more restricted to estates comprising wholly of movables. He may now accept estates that contain wholly or partly of land for summary administration. He has now encroached on the Collector's domain in that he may now administer under section 83 small estates that formerly were under the exclusive jurisdiction of Collectors of Land Revenue. Thus the Probate and Administration (Amendment) Act 1983 has impliedly amended section 4 of the Small Estates (Distribution) Act. By this indirect amendment Collectors of Land Revenue have lost their exclusive jurisdiction over small estates within the meaning of the Small Estates (Distribution) Act. It is trite law that where two statutory provisions are inconsistent with one another the later provision impliedly repeals or amends the earlier to the extent of the inconsistency¹².

Several other important points need to be stressed. Beneficiaries of a "small estate" within the meaning of the Small Estates (Distribution) Act 1955 will now have a choice whether to petition to the Collector of Land Revenue or apply to the Official Administrator for summary administration. It must be noted that both officers charge a fee for their services. The Collector's fees are minimal and does not depend on the value of the estate. Although the Official Administrator provides free service for estates below \$5,000 his fees rise with the value of the estate, and in most cases will exceed what is to be paid at the Land Office. Again since there is a Land Office in every district in this country beneficiaries in rural districts will find it more convenient and cheaper to use the Collector's services. Secondly, despite the amendment the Collector continues to enjoy exclusive jurisdiction over small estates except as against the Official Administrator. Thus if the Official Administrator declines to carry out summary administration of a small estate the beneficiaries have no choice but to petition to the relevant Collector of Land Revenue. It is relevant to note that the Small Estates (Distribution) Act does not give Collectors the option to refuse the acceptance of a small estate.

Finally, it is pertinent to remember that the Official Administrator's powers of summary administration over estates comprising wholly of movables is left untouched. The only change is that he may now accept for summary administration such estates up to the value of \$300,000.

¹²See Maxwell *On Interpretation of Statutes*, 12th Ed. by P. St. J. Langan pp. 193-196.

The amendments to section 83, of the Probate and Administration Act 1959 discussed above will certainly help to speed up the administration of estates, although it will take some time before the public becomes aware that there is another new state organ for the administration of small estates. Collectors of Land Revenue should not mourn their loss of exclusive jurisdiction over small estates for they now have a department rich in experience and expertise over estate administration to share their burden.

P. Balan

