



LAWS OF MALAYSIA

REPRINT

Act 98

SMALL ESTATES (DISTRIBUTION) ACT 1955

Incorporating all amendments up to 1 January 2006

PUBLISHED BY
THE COMMISSIONER OF LAW REVISION, MALAYSIA
UNDER THE AUTHORITY OF THE REVISION OF LAWS ACT 1968
IN COLLABORATION WITH
PERCETAKAN NASIONAL MALAYSIA BHD
2006

**SMALL ESTATES (DISTRIBUTION)
ACT 1955**

First enacted 1955 (Ordinance
No. 34 of 1955)

Revised 1972 (Act 98 w.e.f.
1 November 1972)

PREVIOUS REPRINTS

First Reprint 1994

Second Reprint 2000

LAWS OF MALAYSIA

Act 98

SMALL ESTATES (DISTRIBUTION) ACT 1955

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation

PART II

ADMINISTRATION OF SMALL ESTATES

3. Application of Part and definition of small estate
4. Jurisdiction in respect of small estates
5. High Court to grant probate of testamentary dispositions relating to small estates
6. High Court to have power to reseal a grant of representation affecting a small estate
7. Power of the Registrar to transfer petitions relating to an intestate small estate to a Collector
8. Petition for distribution
9. Service of notice of petition for distribution
10. Appointment of representatives of minors or persons of unsound mind
11. Place of hearing of petition for distribution
- 11A. Collector's power to summon and examine witnesses, administer oaths or affirmations, and compel production and delivery of documents
12. Procedure on hearing and the duties of Collector thereon

Section

13. Order for distribution of small estate
14. Determination of collateral disputes
15. Powers of the Collector in distributing the estate
16. Procedure after hearing
17. Subsequent applications
18. Duty of Settlement Officer and penghulu
19. Reference on point of law or custom

PART III**SPECIAL PROVISIONS RELATING TO NEGERI
SEMBILAN**

20. Application of Part
21. Interpretation
22. All tribal estates to be “small”
23. Jurisdiction
24. Principles of distribution
25. Appeals

PART IV**SPECIAL PROVISIONS RELATING TO SABAH**

26. Application of Part
- 26A. Certain native estates to be “small”
- 26B. Small estates of natives of Sabah
- 26C. Procedure of Native Courts in Sabah
- 26D. Sale of native land in Sabah

PART V**MISCELLANEOUS**

27. Estate partly administered
28. Exclusion of provisions of certain other laws
29. Appeal
30. Regulations

Section

31. Advocates
32. Repeal
33. Saving and transitional
34. Special provisions for Malacca and Penang

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

LAWS OF MALAYSIA**Act 98****SMALL ESTATES (DISTRIBUTION)
ACT 1955**

An Act relating to the distribution of small estates of deceased persons and matters incidental thereto.

*[Kelantan—1 December 1955, L.N. 494/1955;
Johore, Negeri Sembilan, Pahang, Perak, Perlis, Selangor and
Terengganu—1 July 1957, L.N. 258/1957;
Kedah—1 August 1962, L.N. 170/1962;
Penang—23 December 1965, Pg. L.N. 35/1965;
Malacca—30 December 1965, M.L.N. 65/1965;
Federal Territory of Labuan—1 January 1989,
P.U. (B) 724/1988]*

PART I**PRELIMINARY****Short title and commencement**

1. (1) This Act may be cited as the Small Estates (Distribution) Act 1955, and shall come into force in relation to any State on such date as the Minister may, by notification in the *Gazette*, appoint and the Minister may appoint different dates for different provisions of this Act.

(2) In bringing this Act into force in Sarawak the Minister may by order make such modification thereto as he deems necessary in relation to its application to the estates of deceased persons who at the time of their death were natives of Sarawak.

(2A) This Act shall come into force in the Federal Territory of Labuan on such date as the Minister may by order specify, and such order may provide for such modifications to this Act in its application in the Federal Territory of Labuan as the Minister may deem necessary, and also for the consequential repeal or amendment of any other written law in so far as it applies in the Federal Territory of Labuan.

Interpretation

2. In this Act, unless the context otherwise requires—

“Collector” means—

- (a) in relation to Sarawak, the District Officer appointed for a district and includes any Assistant District Officer or Sarawak Administrative Officer appointed for the district or part thereof;
- (b) in relation to Sabah, the Collector of Land Revenue appointed for a district and includes any Assistant Collector of Land Revenue appointed for the district or part thereof; and
- (c) in relation to the States in Peninsular Malaysia, the Land Administrator appointed for a district and includes any Assistant District Land Administrator appointed for the district or part thereof;

“Director General of Lands and Mines” means the Director General of Lands and Mines (Federal) and, in relation to an estate the whole of the immovable property comprised in which is situated in Sabah or Sarawak, includes the Director of Lands and Surveys, Sabah, or the Director of Lands and Surveys, Sarawak, as the case may require;

“Director of Lands and Mines” means a Director of Lands and Mines (State) and includes the Director of Lands and Surveys for Sabah and the Director of Lands and Surveys for Sarawak;

“distribution order” means an order for the distribution of a small estate made under this Act;

“High Court” means the High Court in Malaya or the High Court in Sabah and Sarawak, as the case may require;

“native” means a native of Sabah or a native of Sarawak;

“native of Sabah” has the meaning assigned to the word “native” in the Interpretation (Definition of Native) Ordinance of Sabah [*Cap. 64*];

“native of Sarawak” has the meaning assigned to the word “native” in the Interpretation Ordinance of Sarawak [*Cap. 1*];

“Native Title” has the meaning assigned thereto in the Land Ordinance of Sabah [*Cap. 68*];

*“Official Administrator” has the meaning assigned to it in the Probate and Administration Act 1959 [Act 97];

“penghulu”, with reference to Sabah and Sarawak, shall be construed as a reference to a native chief by whatever style called;

“petition for distribution” means a petition for the distribution of a small estate lodged under section 8;

“prescribed” means prescribed by regulations made by the Minister under section 30;

“purchaser” means a person who, at the date of the filing by himself, or by any other person, of a petition for distribution, is in occupation of any land registered in the name of the deceased, whether as sole proprietor or co-proprietor, by virtue of an agreement for the sale of that land or any interest therein by the deceased to himself or to any person through whom he claims;

“Registrar” means the Registrar of the High Court and includes a Deputy Registrar, a Senior Assistant Registrar and an Assistant Registrar of the High Court;

“Registrar of Titles” includes a Registrar or Assistant Registrar appointed under section 3 of the Land Code of Sarawak [Cap. 81];

“State” includes a Federal Territory.

PART II

ADMINISTRATION OF SMALL ESTATES

Application of Part and definition of small estate

3. (1) This Part shall have effect throughout Malaysia.

(2) For the purposes of this Act a small estate means an estate of a deceased person consisting wholly or partly of immovable property situated in any State and not exceeding six hundred thousand ringgit in total value.

(Proviso omitted by P.U. (B) 217/1974).

(3) For the purposes of this section the value of the property comprised in an estate shall be deemed to be its value at the date of the filing of a petition for probate or letters of administration or lodging of a petition for distribution under this Act in respect of the estate or, if more than one such petition has been filed or lodged in respect of the same estate, at the date of the filing or lodging of the earliest petition.

*NOTE—This definition has been deleted in Probate and Administration Act 1959 [Act 97] and has been replaced by “Corporation”—see paragraph 2(a) and (b) [Act A912]. See also subsection 43(3), Public Trust Corporation Act 1995 [Act 532].

(4) In ascertaining the value of the property comprised in an estate no deduction shall be made on account of the debts of the deceased but there shall not be included in the estate for those purposes any property which the deceased held or was entitled to as a trustee and not beneficially:

Provided that any land held in the name of the deceased by any form of registered title shall be deemed to be part of his estate whether subject to caveat or not unless the land is expressly registered in his name as representative or as trustee or as guardian.

Jurisdiction in respect of small estates

4. (1) Save as in this Act otherwise provided no interest in any small estate shall devolve on or vest in any person by virtue of any instrument other than an order or grant made under this Act.

(2) The Collector of the district where the greater part in value of the property is situated shall have exclusive jurisdiction to deal with the distribution and administration of the whole estate wherever situated:

Provided that the Director of Lands and Mines where all the property is situated in one State or the Director General of Lands and Mines where the property is situated partly in one State and partly in another, may upon application duly made in that behalf, order that any petition under this Act shall be heard and determined by the Collector of any other district, notwithstanding that the property in that district consists solely of movable property, whenever it is made to appear that such an order will tend to the general convenience of the parties or witnesses or is otherwise expedient for the ends of justice; and the Collector shall thereupon have exclusive jurisdiction to order distribution of the estate and, if necessary, to grant letters of administration thereof.

(3) Any order made by the Director of Lands and Mines or the Director General of Lands and Mines under subsection (2) shall be final and not subject to any appeal.

(4) A copy of any order made under subsection (2) shall be sent to the applicant and to any Collector who in the opinion of the Director of Lands and Mines or the Director General of Lands and Mines, as the case may be, is affected thereby.

(5) The Collector for each district in which is situated any part of the immovable property comprised in an estate in respect of which a petition for distribution has been lodged shall determine the value of that property, as at the date of lodging the petition, or, if more than one petition has been lodged, as at the date of lodging the earliest petition, and every such valuation shall be conclusive for the purposes of this Act.

High Court to grant probate of testamentary dispositions relating to small estates

5. (1) Subject to this section, nothing in this Act shall affect the exclusive jurisdiction of the High Court to grant probate of any will or testamentary disposition or letters of administration in any case in which the deceased has left a valid will or other valid testamentary disposition in respect of a small estate or part thereof and the grant when made shall have effect in all respects as if the estate had not been a small estate.

(2) If upon the hearing of any petition for probate or for letters of administration with a will or copy of a will annexed, probate or letters of administration with the will or a copy of a will annexed are not granted the Court may if satisfied that all the necessary parties are before the Court—

- (a) grant letters of administration to any person to whom letters would have been granted on an intestacy if the estate had not been a small estate;
- (b) direct that a petition for distribution of the estate be lodged under section 8; or
- (c) order any Collector named in the order to proceed with the distribution of the estate as if a petition therefor had been duly lodged.

(3) Where any order is made under paragraph (2)(c) the Collector therein named shall, upon receipt of a copy of the order, forthwith proceed to distribute the estate in accordance with this Act.

High Court to have power to reseal a grant of representation affecting a small estate

6. Nothing in this Act shall affect the exclusive jurisdiction of the High Court to reseal any grant of representation made outside

Malaysia in respect of the estate of a deceased person and where any grant has been resealed affecting a small estate, the grant shall have effect as if the estate had not been a small estate.

Power of the Registrar to transfer petitions relating to an intestate small estate to a Collector

7. (1) If the Registrar is satisfied that any intestate estate in respect of which a petition for letters of administration has been filed in the High Court is a small estate he shall transfer such petition to the Collector having jurisdiction to order distribution of that estate under section 4 and the Collector may at his discretion either treat the petition as if it were a petition for distribution of the estate under section 8 or if the case so requires direct that a fresh petition under that section shall be lodged.

(2) If at any stage of any proceedings in the High Court relating to the estate of a deceased person it appears—

- (a) that the deceased was a member of a tribe within the meaning of Part III or that any part of the estate was property affected by a tribal custom within the scope of Part III; or
- (b) that the deceased at the time of his death was a native of Sabah,

the proceedings shall be stayed and the matter shall be referred to the Director General of Lands and Mines and the proceedings shall not be continued in the High Court unless and until the Director General of Lands and Mines has certified in writing under his hand that the estate is not, or is not deemed to be, a small estate under this Act.

Petition for distribution

8. (1) Where any person has died intestate leaving a small estate, any person claiming to be interested in the estate as a beneficiary, or a creditor, or a purchaser, or in the circumstances mentioned in subsection 18(1) the penghulu or a Settlement Officer of the district or of the locality in which any land of which the deceased was the proprietor is situated, or the Corporation*, may lodge with the Collector having jurisdiction under section 4 a petition, in the prescribed form, for the distribution of the estate.

*NOTE—The original provision which used the word “Official Administrator” is now construed as “Corporation”—see subsection 43(3), Public Trust Corporation Act 1995 [Act 532].

(2) The petitioner shall deliver to the Collector all issue documents of title to immovable property relating to the estate in his possession or power.

(3) The Collector shall thereupon give notice to the principal registry of the High Court of the lodging with him of the petition and shall ascertain from the registry whether any petition relating to the estate has, before that petition having been lodged, been filed in the High Court or lodged with any other Collector.

(4) If no such petition has been so filed or lodged the Collector shall investigate the facts and matters alleged in the petition and determine whether the estate is or is not a small estate and whether he has jurisdiction under section 4.

(5) For the purpose of determining whether any estate is or is not a small estate the Collector shall value the movable property comprised therein wherever situate.

(6) The valuation of the movable property comprised in an estate by the Collector under this section shall be conclusive for the purpose of this Act.

(7) If the Collector decides that the estate is not a small estate he shall transfer the petition, with or without amendment, to the High Court and the petition shall, unless the Court otherwise directs, be treated therein as if it were a petition for letters of administration upon an intestacy;

Provided that this subsection shall not apply in any case where a petition in respect of the estate has been transferred to the Collector under subsection 7(1).

(8) If the Collector decides that the estate is a small estate but that the greater part in value of the property comprised therein is not situated in his district, he shall either transfer the petition to the Collector for the district in which in his opinion the greater part in value of the property is situated or apply to the Director of Lands and Mines or the Director General of Lands and Mines, as the case may require, for an order to be made under subsection 4(2).

(9) If the Collector has notice that any other petition for distribution had been previously lodged in respect of the estate with any other Collector or that any application has been made to the Director of Lands and Mines or the Director General of Lands and Mines under subsection 4(2) or that any petition for probate

or letters of administration with a will or a copy of a will annexed has been filed in the High Court in respect of the estate he shall forthwith stay all proceedings upon the petition before him until either, as the case may be, that other petition has been transferred to him under subsection (8) or an order has been made by the Court under paragraph 5(2)(c) directing him to distribute the estate or an order has been made under subsection 4(2) conferring jurisdiction upon him.

Service of notice of petition for distribution

9. (1) Subject to section 8 the Collector having jurisdiction in respect of the small estate shall, as soon as possible after the lodging of the petition for distribution thereof, cause notice of the petition and of the date and place of hearing to be served in the prescribed manner upon all persons who are named in the petition as beneficiaries of or claimants to the estate or any interest therein or who appear to the Collector to be interested in the distribution of the estate:

Provided that no proceedings under this Act shall be invalid on account of any omission or failure to serve any such notice upon any person unless the omission or failure has in the opinion of the High Court occasioned any substantial injustice.

(2) The Collector shall also cause notice of the petition and of the date and place of the hearing thereof to be published in such manner and at such times and places as may be prescribed.

Appointment of representatives of minors or persons of unsound mind

10. (1) Where any person, who is named in the petition as a beneficiary of or claimant to the estate or any interest therein or who appears to the Collector to be interested in the distribution of the estate, is or appears to the Collector to be a minor or a person of unsound mind the Collector may, by an order in writing, appoint some suitable and proper person to be the guardian of the minor or person of unsound mind for the purposes of all proceedings for the distribution of the estate under this Act and all such proceedings shall be as effective and binding upon all persons concerned as if that person had not been a minor or person of unsound mind.

(2) In appointing a person to be a guardian under this section, the Collector shall have regard to any personal law or custom affecting the minor or person of unsound mind.

Place of hearing of petition for distribution

11. (1) Every petition for distribution shall be heard in such place in his district as the Collector having regard to the convenience of the parties and witnesses generally may appoint.

(2) Every place in which a petition for distribution is heard shall during the hearing be deemed an open and public place to which the public shall have access.

(3) Without prejudice to the extent of his powers under subsection (1), where the question, or one of the questions, at issue in any hearing of a petition for distribution relates to a particular lot of land the Collector may, in his discretion, hold the hearing, or any part thereof at a convenient place on or near to that land.

Collector's power to summon and examine witnesses, administer oaths or affirmations and compel production and delivery of documents

11A. (1) The Collector shall, in relation to the hearing of a petition for distribution, have all the powers of a Magistrates' Court in the exercise of its civil jurisdiction for the summoning and examination of witnesses (including any person on whom a notice of the petition is required to be served under section 9), for the administration of oaths or affirmations and for compelling the production and delivery to him of all documents, including issue documents of title and other documents evidencing title.

(2) Every person required to appear before, or to produce or deliver any document to, the Collector under subsection (1) shall be legally bound to do so within the meaning of sections 174 and 175 of the Penal Code [*Act 574*].

Procedure on hearing and the duties of Collector thereon

12. (1) The Collector shall record in writing the evidence of all witnesses in attendance, and allow cross-examination of any such witnesses by any person present who claims to be interested in the

estate or who has been appointed a guardian of any such person under section 10. All such evidence shall be given on oath or affirmation.

(2) The Collector may, in his discretion, examine as a witness any person who appears to him to be capable of giving relevant evidence and shall allow him to be cross-examined by any person present who claims to be interested in the estate or who has been appointed a guardian of any such person under section 10.

(3) The Collector may require the attendance of any penghulu whom he believes to be able to give any material information regarding the deceased or his estate and may examine him as a witness.

(4) The Collector shall call evidence when necessary to ascertain the religious or customary law applicable to the devolution of the estate of the deceased.

(5) The Collector shall ascertain the amounts of the estate duty, if any, the funeral expenses and debts of the deceased, wherever arising.

(6) The Collector shall consider the claims of any alleged purchasers who attend the hearing and shall ascertain and record who, at the date of the hearing, is in actual occupation of any land claimed by an alleged purchaser, the date, as nearly as the evidence admits, when he went into occupation, and who, at the date of lodging the petition, was in possession of the relevant issue document of title.

(7) The Collector shall ascertain, in such manner as may be most appropriate, the law applicable to the devolution of the estate of the deceased, and shall decide who in accordance with that law are the beneficiaries and the proportions of their respective shares and interests.

(8) The Collector may, if he considers it necessary or desirable, adjourn the hearing from time to time and may appoint a different place for any such adjourned hearing.

(9) At any time before the making of a distribution order the Collector may reopen the hearing for the purpose of taking further evidence on any relevant matter and shall reopen the hearing for such purpose if so directed by the Director of Lands and Mines.

(10) Where the Collector who is conducting or has conducted any hearing of a petition under this section dies, or is unable through illness, transfer or any other cause to exercise his functions under this Act, any other Collector may continue with the hearing or re-hear the whole or part of the evidence already taken or carry out any other function under this Act in relation to the petition.

Order for distribution of small estate

13. (1) At the conclusion of the hearing the Collector shall by his order make provision for the payment out of the estate of the estate duty, if any, and of the funeral expenses and debts of the deceased, wherever arising, and for the repayment to any person of any fees paid by that person under this Act and may, if necessary, direct the whole or such part of the estate as he may specify to be sold and the expenses, debts, fees and duty to be paid from the proceeds of the sale and subject thereto and to the following provisions of this section shall distribute the residue of the estate according to their respective shares and interests among the beneficiaries but subject to section 15:

Provided that where there is in force any written law relating to *baitulmal* the Collector shall before distributing any part of the estate of a deceased Muslim satisfy himself that any share of the estate which is due to the *baitulmal* has been duly paid or proper provision made for the payment thereof.

(2) The Collector shall by his order direct the share of any infant beneficiary in any immovable property to be registered in the name of a suitable person as trustee and shall enter a caveat to protect his interest during minority.

(3) If the Collector finds that the deceased was a trustee for any person of any land held in the name of the deceased though not registered as such, he shall unless in any case he thinks it proper to refer to the Court order the trust property to be transmitted to a new trustee or to the beneficiary as he shall think fit but without prejudice to any registered rights or interests in the land of any creditor of the deceased or any person deriving title through the deceased.

(4) If the nature of the case so requires the Collector shall, instead of or in addition to making a distribution order, grant letters of administration to such person as he shall think fit, subject

to such security as he may require and may in his discretion dispense with security. The letters of administration shall be subject to such limitations as the Collector may think fit to specify in the grant.

(5) If the Collector finds that any person has proved his claim to be a purchaser within the meaning of section 2 of any land registered in the name of the deceased he shall, by his order, transmit the land to the purchaser, subject to such conditions as to the payment of any outstanding balance of the purchase money or otherwise as he may think fit to impose.

(6) If in the opinion of the Collector any person claiming to be a purchaser of any land registered in the name of the deceased is not such a purchaser but is entitled to any sum as compensation or relief out of the estate of the deceased he shall record a finding to that effect and shall provide in the order for the payment of that sum to that person as a debt of the deceased.

(7) If it appears that the estate is or is likely to be insolvent the Collector shall grant letters of administration to some fit person on behalf of the general body of creditors or else order the estate to be administered in bankruptcy by the Director General of Insolvency.

Determination of collateral disputes

14. (1) If in the course of the hearing it is certified by the Collector to be necessary or desirable in the interests of justice that any collateral dispute should be decided before a distribution order is made, the Collector may defer the making of any distribution order in respect of the estate or of that part of the estate which in his opinion is or may be affected directly or indirectly by the determination of that dispute and shall thereupon cause the dispute to be determined in accordance with this section.

(2) For the purposes of this section a “collateral dispute” means a dispute as to whether—

- (a) any property movable or immovable or any right or interest in any such property forms part of the estate of the deceased;
- (b) any person is entitled beneficially to any property movable or immovable or any right or interest in any such property which the deceased at the time of his

death held or was entitled to hold as a trustee and not beneficially;

- (c) any debt or liquidated sum in money is payable to any person claiming the same out of the assets of the deceased or any debt or liquidated sum in money is due or payable by any person to the estate of the deceased; and
- (d) any share or any right or interest in any share of a beneficiary in the estate of the deceased has been assigned to or vested in any other person, whether a beneficiary or not.

(3) In the case of any collateral dispute the Collector shall, after ensuring that all necessary parties are before him or have had sufficient opportunity to attend, proceed to hear and determine the dispute and may make such order thereon as may be just.

(4)–(7) (*Deleted by Act A702*).

(8) Subject to any regulations made under section 30, sections 9, 10, 11 and 12, with such modifications as may be necessary, shall apply to the hearing and determination of collateral disputes by Collectors under this section.

(9) Any order made by a Collector under this section shall have the same force and effect and shall be enforceable in the same manner as if it had been made by a court but there shall be no appeal from such an order except under section 29.

(10) The Collector shall, when necessary, give effect by his distribution order to any order made by him under this section.

Powers of the Collector in distributing the estate

15. (1) Where the Collector is satisfied that all the beneficiaries of the estate being of full age and capacity have agreed between themselves as to the manner in which the estate should be distributed, the Collector may, after recording in the distribution order the terms of the agreement, and the assent of the parties thereto, distribute the estate in the manner provided for by the agreement unless it shall appear to the Collector to be unjust or inequitable so to do.

(2) Where any such agreement has been entered into by all the beneficiaries who are of full age and capacity the Collector may, if in his opinion it is in the interests of any other beneficiary who is a minor or a person not of full capacity to do so, assent to the agreement on behalf of that minor or person and may thereupon after recording the terms of the agreement and the assent of the parties thereto and of his own assent on the part of the minor or person distribute the estate in the manner provided for by the agreement.

(3) Where two or more beneficiaries are entitled to share in any land comprised in the estate the Collector may, at his discretion, having regard to the interests of those concerned and the interests of good cultivation—

- (a) allocate separate lots to individual beneficiaries;
- (b) allocate separate lots to two or more beneficiaries as co-proprietors or tenants in common in undivided shares; or
- (c) subject to any other written law restricting the subdivision of land, order any lot to be subdivided by survey into parcels proportionate to the shares of the beneficiaries concerned, fixing a time within which they are to deposit the appropriate survey fees in the Land Office and providing that in default of such deposit the land be registered in the names of those beneficiaries as co-proprietors or tenants in common in undivided shares.

(4) The Collector, at his discretion, in order to prevent the excessive subdivision of land or the holding of small lots of land in common by numerous persons or in complicated fractional interests—

- (a) where the share of a beneficiary is small, may order the land or any part thereof allocated to any other beneficiary or a specified interest therein to be charged to the beneficiary for amount of his share, together with interest at such rate as may be just, not exceeding five per centum per annum, in lieu of allocating to him a proprietary interest;
- (b) where the value of any interest or share in land or lot allocated to a beneficiary is less than the value of the share in the estate to which the beneficiary is entitled,

may direct that the difference in value be made up to him in money by the other beneficiaries in such proportion as is equitable and may order, if necessary, that any such payment and interest thereon at such rate as may be just, not exceeding five per centum per annum, be secured by a charge upon any share or shares of those other beneficiaries;

(*bb*) may order that the undivided distributive share of any beneficiary in any land or lot be allocated to another beneficiary and that such other beneficiary pay to the first-mentioned beneficiary such sum of money as may be determined by the Collector to be the value of such undivided distributive share:

Provided that no order shall be made under this paragraph unless the Collector has first informed the beneficiaries concerned of the terms of his proposed order under this paragraph and the second-mentioned beneficiary has deposited with the Collector the sum of money proposed to be determined by the Collector as the value of the distributive share of the first-mentioned beneficiary;

- (*c*) may order the land or any part of it to be sold in such manner as may be prescribed; or
- (*d*) may order the land or any part of it to be sold by tender among the beneficiaries in such manner as may be prescribed, but subject to a reserve price determined by the Collector which shall not be less than the market value of the land, or part of the land, at the date of the tender.

(5) In the exercise of any discretion under this section the Collector shall take into consideration the matters set forth in the First Schedule.

(6) No distribution order made in accordance with subsections (3), (4) and (5) shall have effect where any beneficiary affected thereby is a native, unless every such beneficiary being of full age and capacity shall have assented thereto, and where any beneficiary is a minor or a person not of full capacity, the assent shall have been given on his behalf by a guardian appointed under section 10.

Procedure after hearing

16. (1) The distribution order shall be drawn up forthwith by the Collector and shall lie in his office for the period within which notice of appeal may be given and, if notice of appeal under section 29 has been given, shall continue to lie in the office until the appeal has been withdrawn or decided, and shall if necessary be amended or redrawn to conform with the decision on appeal. The Collector shall then arrange for the order so far as it relates to land to be registered as may be necessary and shall act under subsection (3) where applicable.

(2) The Collector making a distribution order may sign and enter any caveat required to be registered with the order, whether in his own or any other registry or office.

(3) Where a sum of money in the possession of the Collector is payable to any person under or by virtue of a distribution order, the Collector shall deposit such sum of money with the Corporation[†] if—

- (a) the whereabouts of such person are not known;
- (b) such person refuses to accept payment of such sum of money;
- (c) such person lacks legal capacity; or
- (d) for any other reason it is not practicable to pay such sum of money to such person.

(4) Where a sum of money has been deposited with the Corporation[†] under subsection (3), the Corporation* shall hold such sum as trustee for the person entitled to it, and may apply the same for the benefit of that person, or may pay the said sum to that person if he makes a claim thereto in writing and the Corporation[†] is satisfied as to his identity, entitlement, and legal capacity to receive it.

Subsequent applications

17. (1) Where it becomes necessary to appoint a new trustee or a new administrator or to make any other or further order or to withdraw a caveat the party interested may make an application to the Collector, in the prescribed form or in any other form which the Collector may permit, and thereupon the Collector shall

*NOTE—The original provision which used the word “Public Trustee” is now construed as “Corporation”—see subsection 43(3), Public Trust Corporation Act 1995 [Act 532].

investigate the matter and cause notice to be given to any other party affected and if the matter is contentious he shall set it down for hearing in the same manner as a petition for distribution under this Act and after the investigation or hearing he shall make such order or do any other act as may be necessary to give effect to his decision and if necessary shall arrange for the order so far as it relates to land to be registered as may be necessary.

(2) Where a minor beneficiary has attained majority the Collector may either withdraw the caveat to enable the trustee to transfer the interest to the beneficiary or make an order transmitting the interest from the trustee to the beneficiary as proprietor and in the latter case an order withdrawing the caveat may be incorporated in the same instrument as the transmission.

(3) The Collector may for any cause he thinks fit at any time either of his own motion or on the application of any beneficiary or creditor revoke any grant of administration made by him and may likewise order any administrator to file accounts or to supply such other particulars concerning the administration of the estate as he may require.

Duty of Settlement Officer and penghulu

18. (1) Where a proprietor of any land has died and no proceedings, to the knowledge of a Settlement Officer of the district, or the penghulu of the locality, in which the proprietor's land is situated, have within six months of the date of death been taken to obtain a grant of probate or letters of administration or for distribution under this Act of the estate of the deceased, the said Settlement Officer or the said penghulu shall report the matter to the Collector and the Collector may thereupon direct the Settlement Officer or the penghulu, or some other Settlement Officer of the district or some other penghulu, to lodge a petition for distribution of the estate unless he has reason to believe that the land was not part of a small estate, in which case he shall report the matter to the Corporation*.

(2) No fees under this Act shall be payable by the Settlement Officer or the penghulu upon the lodging of any petition under this section or on any consequent proceedings but at the conclusion of the hearing the Collector shall assess the fees that would have been payable under this Act if the petition had been lodged by

*NOTE—The original provision which used the word “Official Administrator” is now construed as “Corporation”—see subsection 43(3), Public Trust Corporation Act 1995 [Act 532].

some person other than the Settlement Officer or the penghulu and shall in his distribution order direct that they shall be paid out of the estate.

Reference on point of law or custom

19. (1) If any difficult point of law or custom arises in any proceedings under this Act, the Collector may—

- (a) if the question relates to Islamic law or Malay custom or to native law or custom of Sabah or Sarawak, refer the matter for decision to the Ruler of the State in which his district is situated or to such other person or body of persons as the Ruler may direct; or
- (b) if the question relates to any other matter, may state a case for the opinion and directions of the High Court.

(2) Every reference and every statement of case under subsection (1) shall be in writing and shall contain a statement of the facts on which an opinion or decision is required, and the Collector shall give effect to any opinion, decision or directions thereby obtained.

(3) Where any question is referred to the High Court under this section the reference may be heard and disposed of by a Judge in Chambers.

(4) The High Court shall not give any opinion upon any question referred to it under section unless all those persons interested in the proceedings who in the opinion of the High Court are likely to be affected by the opinion have had an opportunity to appear and be heard by the Court either in person or by advocate and the costs of any such hearing shall be borne by such persons or by the estate and in such proportion as the Court may direct.

PART III

SPECIAL PROVISIONS RELATING TO NEGERI SEMBILAN

Application of Part

20. (1) This Part shall apply only in the districts of Jelebu, Kuala Pilah, Rembau and Tampin in the State of Negeri Sembilan.

(2) Part II shall apply without modification in all cases where the deceased was not a member of a tribe.

(3) Where the deceased was a member of a tribe, Part II shall take effect subject to the provisions of this Part in respect of any property comprised in the estate of the deceased and situated within the districts to which this Part applies.

Interpretation

21. (1) In this Part “Enactment” means the Customary Tenure Enactment of Negeri Sembilan [*F.M.S. Cap. 215*] and “tribe” means one of the tribes specified in Schedule B to the Enactment.

(2) This Part shall be read with the Enactment and words defined therein shall have the same meanings in this Act.

(3) In the event of any conflict between this Act and the Enactment the provisions of the Enactment shall prevail.

(4) For the purpose of this Part the estate shall not include such part of the estate as is “customary estate” within the meaning of the Enactment.

All tribal estates to be “small”

22. The estate of any deceased person who was at the time of his death a member of a tribe shall be deemed to be a small estate, whatever its total value, and every such person shall be deemed for the purposes of this Act to have died intestate in respect of that estate.

Jurisdiction

23. (1) The Collector of the district in which is located the tribe or section of a tribe of which the deceased was a member shall have exclusive jurisdiction over the estate under this Act:

Provided that if the value of the estate exceeds five thousand ringgit the hearing of any petition for distribution shall be before one or more officers nominated for that purpose by the Menteri Besar of the State of Negeri Sembilan and the officer shall have all the powers of a Collector having jurisdiction over the estate under this Act.

(2) Where the deceased has left customary estate in addition to other property the Collector or other officer nominated under this section shall, wherever practicable, fix the hearing of the application under section 10 of the Enactment for the same time and place as the hearing under section 12 of this Act.

Principles of distribution

24. In making any distribution order, the Collector, which expression, in this section, shall be deemed to include the officer nominated under section 23, shall apply the following principles:

- (a) if any land appears to be ancestral customary land, though not registered as such, it shall be transmitted to the customary heiress, subject if necessary to life occupancy;
- (b) where any property is found as a fact to be *harta pembawa* or *harta dapatan* it may be transmitted to the customary heiress of the deceased subject to the right of any other person to a share in or charge over that property according to the principle of *untung*, where applicable, and on registration of the order the Collector may, if necessary, add the words “Customary Land” to any title affected but he shall not be bound to do so;
- (c) where any property is found as a fact to be *harta carian bujang* or *harta carian laki bini* it may be transmitted according to the custom of the *luak* and on registration of the order the Collector may, if necessary, add the words “Customary Land” to any title affected but he shall not be bound to do so;
- (d) the Collector shall give effect to customary adoptions where they are satisfactorily proved;
- (e) in all cases regard shall be had to any partial distribution of property made or agreed upon in the lifetime of the deceased and to the existence of any property which is affected by any such distribution or agreement though not part of the estate;
- (f) wherever practicable the Collector shall avoid transmitting undivided shares in any one lot to members of different tribes; and
- (g) where funeral expenses are by the custom chargeable on specific property and the party on whom that property

ought to devolve has not paid them, the Collector may require the party to pay the funeral expenses as a condition of inheriting that property or may, by the order, charge that property with the amount of the funeral expenses.

Appeals

25. (1) Any appeal under section 29 which relates to customary land or to the estate of a deceased member of a tribe shall be heard by an Appeal Committee appointed by the Ruler, instead of by the High Court, and subject to confirmation by the Ruler the report of the Committee shall be final. The Ruler may make rules of procedure and prescribe fees for such appeals.

(2) Unless and until an Appeal Committee is appointed under subsection (1) any such appeal shall be heard in the same manner as an appeal under section 15 of the Enactment.

PART IV

SPECIAL PROVISIONS RELATING TO SABAH

Application of Part

26. This Part shall apply only in the State of Sabah.

Certain native estates to be “small”

26A. (1) The estate of any deceased person who at the time of his death was a native of Sabah shall if it consists of immovable property all of which is held under Native Title, whatever its value, and movable property (if any) not exceeding twenty thousand ringgit in value shall be deemed for the purposes of this Act to be a small estate.

(2) In the case of an estate which is deemed to be a small estate under subsection (1) Part II shall take effect subject to this Part. In the case of other small estates Part II shall apply without modification.

Small estates of natives of Sabah

26B. When a petition for distribution relates to an estate which is deemed to be small estate under subsection 26A(1), the Collector shall refer the petition to the appropriate Native Court constituted under the Native Court Ordinance of Sabah [*Cap. 86*] unless in his

opinion for any reason it should be dealt with under the Probate and Administration Act 1959, in which event the Collector shall send the record of the case and his finding to the High Court.

Procedure of Native Courts in Sabah

26c. When a petition has been referred to the Native Court, the Court shall, as far as possible, follow the procedure prescribed in this Act, and shall exercise exclusively, in lieu of the Collector, the authority therein granted to the Collector, and shall make a distribution order having regard to subsection 1(2) and (3) of the Wills Ordinance of Sabah [*Cap. 158*] and the law or custom having the force of law applicable to the deceased, and the decision of the Native Court shall be forwarded to the Collector, who shall arrange for the order of that Court so far as it relates to any interest in land to be registered as may be necessary.

Sale of native land in Sabah

26d. Land registered in the name of a deceased native of Sabah may be sold by order of the Native Court to pay debts of the deceased or to satisfy the claim of a beneficiary who is not a native, but the bidding in the case of land held under Part IV of the Land Ordinance of Sabah shall be restricted to natives.

PART V

MISCELLANEOUS

Estate partly administered

27. (1) Where, before the coming into force of this Act, letters of administration have been granted by the High Court and the estate has not been fully administered, any further application relating to the same estate may be made to the High Court, whether the estate is, or has become, a small estate within the meaning of this Act or not.

(2) Where before the coming into force of this Act a grant of probate or letters of administrations has been made by any authority other than the High Court, and the estate has not been fully administered any further application relating to the same estate may be made to a Judge or Registrar of the High Court in the State in which the grant was made and thereupon the Registrar shall call for the file of the former proceedings which may be continued as though they had been commenced in his registry:

Provided that if for any reason, in the opinion of the Judge or the Registrar, the proceedings cannot conveniently be so continued, the Judge or Registrar may direct that a new petition be filed in the High Court or that a petition for distribution be lodged with a Collector pursuant to section 8.

(3) Where before the coming into force of this Act an application for distribution or for a grant of letters of administration of a small estate under any written law repealed by this Act has been made to a Collector or, in the case of Sarawak, a Probate Officer, and the estate has not been fully administered the Collector shall have jurisdiction to continue the proceedings and shall continue them in accordance with this Act, as early as the circumstances admit.

Exclusion of provisions of certain other laws

28. None of the provisions of any law relating to duties on estates of deceased persons or of any rules of court, so far as all such provisions regulate the practice and procedure in granting letters of administration or the imposition and collection of duties payable on the estates of deceased persons, shall apply to any proceedings under this Act except so far and with such modifications as may be prescribed.

Appeal

29. (1) Subject to the other provisions of this Act and to subsection (5) any person aggrieved by any order, decision or act made or done by a Collector under this Act may appeal to the High Court:

Provided that no appeal shall lie from any such order, decision or act so far as the same is based on and in accordance with a decision of the Ruler or of any other person or body in respect of a reference under paragraph 19(1)(a) or in accordance with the opinion of the High Court in respect of a reference under paragraph 19(1)(b):

Provided further that in the State of Terengganu when the appeal is in respect of any decision of the Collector in relation to an interest claimed under the Settlement Enactment [*Tr. 65 of 1356*] the appeal shall lie to the Land Court constituted under that Enactment.

(2) The time limited for appeal and the procedure in every such appeal shall unless otherwise provided by rules made under

section 30 conform to the limited for, and the procedure in, a civil appeal from a Sessions Court with such variations as may be necessary and the same fees shall be payable.

(3) If any doubt or difficulty shall arise on any point of procedure in any such appeal any party may apply in writing to the Registrar at the registry in which the appeal is pending or intended to be filed and the Registrar shall give such directions as may be necessary.

(4) The decision of the High Court upon any such appeal shall be final, and shall not be subject to any further appeal.

(5) Decisions of the Native Court in Sabah shall be subject to appeal and revision as provided in the constitution of that Court.

Regulations

30. The Minister may make regulations to carry into effect the objects of this Act and to prescribe anything required to be prescribed under this Act.

Advocates

31. (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 ringgit 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 a comparable proceeding.

Repeal

32. (1) The Enactments mentioned in the first and second columns of the Second Schedule are repealed to the extent specified in the third column thereof.

(2) (*Omitted*).

Saving and transitional

33. (1) Nothing in this Act shall affect the validity of proceedings instituted under the laws repealed by this Act but the same shall be carried on in accordance with this Act and any such proceeding may be amended as may appear to be necessary or proper to bring it into conformity with this Act.

(2) Subject to this Act, the Corporation*, Malaysia shall be deemed to have taken the place of the Administrator General, Sabah, and of the Probate Officers in Sarawak.

Special provisions for Malacca and Penang

34. The provisions of the Third Schedule shall have effect in relation to a small estate (or a part of a small estate) which consists of immovable property situated in the State of Malacca or the State of Penang.

FIRST SCHEDULE

[Subsection 15(5)]

MATTERS TO BE TAKEN INTO CONSIDERATION BY COLLECTOR IN DISTRIBUTING ESTATE

In determining whether to make a distribution order in accordance with any agreement between the beneficiaries or in settling the terms of any distribution order providing for the distribution of land the Collector shall have regard to the following considerations:

- (a) dividing land into several lots in several names may seriously diminish the value of the estate as a whole;
- (b) the real value of small shares, especially when represented by complicated fractions, is less than their proportionate values;
- (c) it is not conducive to good cultivation or to peace in a family for persons who may have conflicting interests to be undivided co-proprietors of land;
- (d) it is greatly to the advantage of an infant that his co-proprietors should be those most nearly related to him; and

*NOTE—The original provision which used the word “Official Administrator” is now construed as “Corporation”—see subsection 43(3) of the Public Trust Corporation Act 1995 [Act 532].

- (e) valuations are necessarily estimates and are only approximately correct; it is therefore unnecessary that the estimated value of a lot should be the precise amount of a beneficiary's mathematical share; it is sufficient if the estimated value of a lot substantially corresponds to the beneficiary's calculated share.

SECOND SCHEDULE

[Section 32]

REPEAL

(1)	(2) Short title	(3) Extent of Repeal
F.M.S. Cap. 8	... The Probate and Administration Enactment	Chapter XIX.
Johore No. 8 of 1936	... The Small Estates Enactment 1936	The whole.
Kedah No. 56	... Enactment No. 56 (Land)	Section 86.
Kedah No. 1	... Enactment No. 1 (Administration of Estates)	Sections 19, 20, 21 and the words "or Magistrate" in section 22.
Kelantan No. 2 of 1930	... The Administration Enactment 1930	Section 23.
Perlis No. 11 of 1356	... The Land Enactment 1356	Section 90.
Perlis No. 1 of 1338	... The Administration of Estates Enactment 1338	Sections 17 and 18 and the words "or Magistrate" in sections 19, 20, 22, 70 respectively and the words "or the Magistrate" wherever occurring in section 30.
Sabah Cap. 1	... Administration of Native and Small Estates Ordinance	The whole.
Terengganu Enactment No. 22 of 1356	... The Probate and Administration Enactment	Paragraphs 19(ii)(c) and (d).
Terengganu Enactment No. 3 of 1357	... The Land Enactment	Section 46.

THIRD SCHEDULE

[Section 34]

SPECIAL PROVISIONS RELATING TO MALACCA AND PENANG

1. In this Schedule “Commissioner”, “holding” and “Interim Register” have the same meaning as in the National Land Code (Penang and Malacca Titles) Act 1963 [*Act 518*].

2. Without prejudice to section 27, the Collector may make a distribution order in respect of a small estate of a person who died at any time before the date when this Act came into force in relation to the States of Penang and Malacca, but not if the estate has been or is being administered under the law in force before that date for the administration of estates.

3. (1) Where the Collector is satisfied in respect of a holding which is or forms part of a small estate that—

(a) the person registered in the Interim Register as the proprietor of the holding is dead; and

(b) some other person would be entitled (or if that other person is dead, would have been entitled while he was alive) to be registered as proprietor of the holding but for a failure or failures by any person, including that other person, to obtain probate or letters of administration on the death of the person registered as proprietor or any subsequent occupier,

he may make in pursuance of paragraph 2 such distribution orders as are necessary in his opinion to vest the holding in that other person.

(2) Where two or more orders are made under subparagraph (1) in respect of a single holding, they shall be regarded as a single order for the purpose of assessing any duty or fee payable under any written law on the making of a distribution order under this Act.

(3) The making of an order under subparagraph (1) in respect of a death which took place on or after 1 January 1935, and before 4 December 1957, shall not cause any person to incur liability for the payment of any Estate Duty fee under Rule 17 of the Small Estates (Distribution) Rules 1955 [*L.N. 495 of 1955*].

4. (1) Before making any order under paragraph 3, the Collector shall hold an enquiry for the purpose of satisfying himself as to the matters mentioned in subsubparagraphs (a) and (b) of that paragraph and may, in an appropriate case, combine the enquiry with a hearing under section 12.

(2) Section 12 shall apply with necessary modifications to an enquiry under subparagraph (1).

LAWS OF MALAYSIA

Act 98

SMALL ESTATES (DISTRIBUTION) ACT 1955

LIST OF AMENDMENTS

Amending law	Short title	In force from
L.N. 332/1958	Federal Constitution (Modification of Laws) (Ordinances and Proclamations) Order 1958	13-11-1958
Ord. 26/1959	Small Estates (Distribution) (Amendment) Ordinance 1959	30-05-1959
Ord. 35/1959	Probate and Administration Ordinance 1959	01-02-1960
Act 7/1964, s. 5	Courts of Judicature Act 1964	16-09-1963
Penang L.N. 36/1965	Small Estates (Penang and Malacca) Order 1965	23-12-1965
Malacca L.N. 65/1965	Small Estates (Penang and Malacca) Order 1965	30-12-1965
P.U. (B) 324/1970	Notification under section 3 of Titles of Office Ordinance 1949	01-01-1971
Act A127	Small Estates (Distribution) (Amendment and Extension) Act 1972	23-06-1972
P.U. (B) 217/1974	Order under subsection 3(2)	01-07-1974
Act 160	Malaysian Currency (Ringgit) Act 1975	29-08-1975
Act A399	Small Estates (Distribution) (Amendment) Act 1977	10-06-1977
P.U. (A) 357/1980	Subordinate Courts Act (Extension) Order 1980	01-06-1981
Act A533	Small Estates (Distribution) (Amendment) Act 1982	18-10-1979

Amending law	Short title	In force from
Act A702	Small Estates (Distribution) (Amendment) Act 1988	01-01-1989; except para. 3(1)(a), (b), (c): 25-03-1985; para. 3(1)(e): 01-02-1974

LAWS OF MALAYSIA

Act 98

SMALL ESTATES (DISTRIBUTION) ACT 1955

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
1	Act A702	01-01-1989
2	Act A702	01-02-1974; 25-03-1985
3	P.U. (B) 217/1974 Act 160 Act A399 Act A533 Act A702	01-07-1974 29-08-1975 10-06-1977 18-10-1979 01-01-1989
4	Act A702	01-01-1989
8	Act A702	01-01-1989
11A	Act A702	01-01-1989
12	Act A702	01-01-1989
14	Act A702	01-01-1989
15	Act A702	01-01-1989
16	Act A702	01-01-1989
18	Act A702	01-01-1989
23	Act 160	29-08-1975
26A	Act 160	29-08-1975
29	Act A702	01-01-1989
31	Act 160	29-08-1975

