

STATE OF SABAH

INTESTATE SUCCESSION ORDINANCE 1960 (Sabah No. 1 of 1960)

LIST OF AMENDMENTS

<i>Ordinance/ Enactment No.</i>	<i>Sections amended</i>	<i>Effective date of amendment</i>
10/1961	2, 3	21-9-1961
9/1966	7	20-6-1966
Act 160	10 (a) (ii)	29-8-1975

An Ordinance to make provision for the distribution of intestate estates.

[7th April 1960]

ENACTED BY the Governor of the Colony of North Borneo with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Intestate Succession Ordinance 1960.

Scope of Ordinance.

2. Nothing in this Ordinance shall apply to the estate of any Native or any Muslim or shall affect any rules of Native law and custom or of Muslim law in respect of the distribution of the estate of any such person.

Interpretation.

3. In this Ordinance-

“child” means a legitimate child and where the deceased is permitted by his personal law a plurality of wives includes a child by any of such wives and includes any child adopted or registered as such under any written law for the being in force in Sabah *;

“intestate” includes any person who leaves a will but dies intestate as to some beneficial interest in his property;

“issue” includes children and the descendants of deceased children;

“next-of-kin” means the next-of-kin (other than a descendant) computed according to the table of consanguinity in the Schedule;

“personal chattels” mean horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but do not include any chattels used at the death of the intestate for business purposes nor money or securities for money.

Law regulating distribution.

4. (1) The distribution of the movable property of a person deceased shall be regulated by the law of the country in which he was domiciled at the time of his death.

(2) The distribution of the immovable property of a person deceased shall be regulated by this Ordinance, wherever he may have been domiciled at the time of his death.

Property of an intestate to be distributed.

5. Subject to the provision of the Administration of Native and Small Estates Ordinance

* Throughout the Ordinance “Sabah” substituted for “Colony” and “North Borneo” by virtue of G.N.S. 87 1965.

(*Cap. 1.*),* after the commencement of this Ordinance, if any person shall die intestate, he being at the time of his death domiciled in Sabah, and being possessed beneficially of property, whether movable or immovable, or both, situated in Sabah, and, if any person shall die intestate, he being at the time of his death domiciled outside Sabah and being possessed beneficially of immovable property situated in Sabah, such property or the proceeds thereof, after payment thereout of the expenses of due administration as prescribed by the Administration of Native and Small Estates Ordinance [*Cap. 1.*] aforesaid or the Probate and Administration Ordinance [*Cap. 109.*],† as the case may be, shall be distributed among the persons entitled to succeed beneficially thereto.

Persons held to be similarly related to deceased.

6. For the purpose of distribution—

- (a) there shall be no distinction between those who are related to a person deceased through his father and those who are related to him through his mother nor between those who are actually born in his lifetime and those who at the date of his death were only conceived in the womb but who have subsequently been born alive; and
- (b) those related to a person deceased by the half blood shall rank immediately after those of the whole blood related to him in the same degree.

Rules for distribution.

7. In effecting such distribution the following rules shall be observed—

RULE (1)

If an intestate dies leaving a surviving spouse, no issue and no parent the spouse shall be entitled to the whole of the estate.

* *Cap. 1* has been repealed by Act A 127 but not yet in force.

† *Cap. 109* has been repealed by Act 128 of 1972 but not yet in force.

RULE (2)

If an intestate dies leaving a surviving spouse and issue the spouse shall be entitled to one-third of the estate.

RULE (3)

Subject to the rights of the surviving spouse, if any, the estate (both as to the undistributed portion and the reversionary interest) of an intestate who leaves issue shall be distributed by equal portions to and amongst the children of such person dying intestate and such persons as legally represent such children, in case any of the said children be then dead, save that where any child is or was a married woman the amount of her portion shall be reduced by the amount of any money or other property given, paid or settled by the intestate on account of her marriage.

Proviso No. (1) — The persons who legally represent the children of an intestate are their descendants and not their next-of-kin.

Proviso No. (2) — Descendants of the intestate to the remotest degree stand in the place of their parent or other ancestor, and take according to their stocks the share which he or she would have taken.

RULE (4)

If an intestate dies leaving a surviving spouse and no issue but a parent or parents the spouse shall be entitled to all the personal chattels of the estate and one half of the remaining property of the estate.

RULE (5)

If there are no descendants the parent or parents of the intestate shall take the estate, in equal portions if there be two parents, subject to the rights of the surviving spouse (if any) as in Rule (4) provided.

RULE (6)

If there are neither surviving spouse, descendants, nor parents, the brothers and sisters, or children of brothers or sisters of the intestate shall share the estate in equal portions between the brothers and sisters and the children of any brother and sister shall take according to their stocks the share which he or she would have taken.

RULE (7)

If there are no surviving spouse, descendants, parents, brothers and sisters but grand-parents of the intestate the grand-parents shall take the whole of the estate in equal portions.

RULE (8)

If there are no surviving spouse, descendants, parents, brothers and sisters or their children or grand-parents but uncles and aunts of the intestate the uncles and aunts shall take the whole of the estate in equal portions.

RULE (9)

In all other cases, the estate shall go to the next-of-kin, ascertained in accordance with the table in the Schedule, computing up from the intestate to the common ancestor and then down again to the claimant, the next-of-kin of equal degree sharing equally *inter se*.

RULE (10)

In default of distribution under the foregoing Rules the Government of Sabah shall be entitled to the whole of the estate.

Special provision if the intestate leaves lawful widows.

8. If any person so dying intestate be permitted by his personal law a plurality of wives, and shall leave surviving him more wives than one, such wives shall share among them

equally the share that the wife of the intestate would have been entitled to, had such intestate left one wife only surviving him.

Children's advancements not to be taken into account.

9. Subject to the provisions of Rule (3) of section 7 where a distributive share of the property of a person dying intestate is claimed by a child or any descendant of a child of such person no money or other property which the intestate may during his life have given, paid or settled to or for the advancement of the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.

Amendment of the Administration of Native and Small Estates Ordinance.

10. The Administration of Native and Small Estates Ordinance* [Cap. 1.] is amended—

(a) in section 2 thereof—

(i) by inserting immediately after the word "native" in the second line of the definition of the expression "native estate" the words "or of a deceased Muslim subject to the jurisdiction of a Native Court under paragraph (c) of subsection (1) of section 5 of the Native Courts Ordinance"* [Cap. 86.]; and

(ii) by deleting the symbol and figure "RM3,000" which occurs in the second line of the definition of the expression "small estate" and by substituting therefor the symbol and figure "RM5,000".

†(b) by repealing subsection (1) of section 10 and substituting therefor the following subsection—

"(1) After hearing the application the Collector shall, wherever possible, make an order for distribution and in making such order shall give effect to any division of the estate agreed on by any surviving spouse, issue and parents and shall, where no such agreement exists—

* Cap. 1 has been repealed by Act A 127 but not yet in force.

* Cap. 86 has been repealed by Enactment No. 3 of 1992.

† See Ord. No. 8 of 1961.

- (a) in the case of a native or a Muslim, distribute the estate according to the law or custom having the force of law applicable to the deceased; and
- (b) in any other case, distribute the estate according to the will of the deceased, or if there be no will, distribute the estate in accordance with the Intestate Succession Ordinance, 1960”.

Amendment Wills Ordinance, Cap. 158.

11. Subsection (2) of section 1 of the Wills Ordinance is amended by inserting immediately after the word “Muslims” in the first line thereof the words “subject to the jurisdiction of the Native Courts under paragraph (c) of subsection (1) of section 5 of the Native Courts Ordinance”* [Cap. 86].

Amendments of Procedure Ordinance, 1926.

12. Section 14 of the Procedure Ordinance, 1926 (*First Schedule to Revised Edition of Laws Ordinance.*), is amended by deleting the comma after the words “public policy” therein and by deleting the words and comma “and claims in intestacy shall be determined by the racial law of the deceased,”.

Saving.

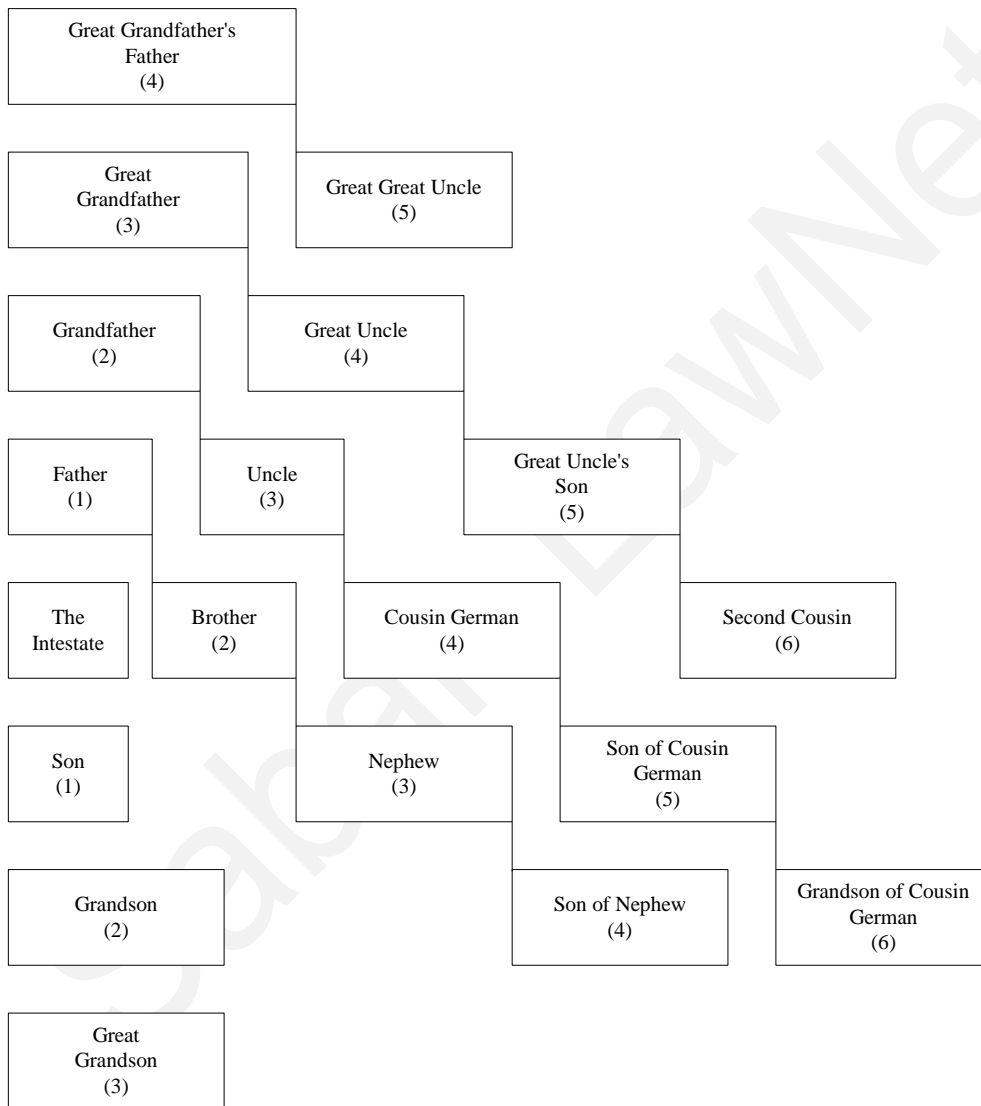
13. (1) Notwithstanding any provision in this Ordinance to the contrary where any intestate of the Chinese race was born in China and established a domicile of choice in North Borneo before the fifteenth day of July, 1946, the Administrator-General may, if he is satisfied that the surviving spouse, issue and any parent desire the estate to be distributed in accordance with the racial law of the deceased, by order, authorise the distribution of such estate in accordance with the law of China governing distribution of intestate estates on the said fifteenth day of July, 1946.

(2) In this section the term “Administrator-General” means any person appointed Administrator-General under subsection (1) of section 27 of the Probate and Administration

* Cap. 86 has been repealed by Enactment No. 3 of 1992.

Ordinance [Cap. 109.]*.

SCHEDULE
TABLE OF CONSANGUINITY



Note:— In this table the degrees are shown up to the sixth. Degrees beyond this can be ascertained by

* Cap 109 has been repealed by Act 128 of 1972 but not yet in force.

extending the table.

To ascertain the degree of consanguinity compute from the intestate to the common ancestor and down to the claimant each step forming one degree.

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