

**ADMINISTRATION
OF NATIVE AND
SMALL ESTATES
ORDINANCE
(Cap. 1)**

CHAPTER 1.

**ADMINISTRATION OF NATIVE AND SMALL
ESTATES.**

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CHAPTER 1.

ADMINISTRATION OF NATIVE AND SMALL
ESTATES.

N.B. Ord.
No. 1 of
1941.
Ord No. 3
of 1953.

Ord. No. 19/1961

To make special provision for the administration of deceased native and small estates.

[25TH JANUARY, 1941.]

Short title.

1. This Ordinance may be cited as the Administration of Native and Small Estates Ordinance.

Interpretation.

2. For the purposes of this Ordinance, unless there is something repugnant in the subject or context—

"administrator" means an administrator appointed under this Ordinance;

"Collector" means a Collector of Land Revenue or Assistant Collector of Land Revenue for any district in which the whole or any part of the property belonging to an estate is situated;

"estate" means a native or small estate;

"native estate" means the estate in the Colony of a deceased native, irrespective of the value thereof;

"small estate" means the estate in the Colony of a deceased person other than a native not exceeding \$3,000 in total value at the date of his death, without any deduction on account of the debts of the deceased but exclusive of what the deceased was possessed of or entitled to as trustee and not beneficially.

Who may apply.

3. When the owner of any estate has died the executor named in the will of the deceased or, if there is no such executor, any person claiming, under the said will or according to the rules for the distribution of the estate of an intestate applicable in the case of the deceased, to be entitled to the whole or any part of the deceased's estate, or any creditor of the deceased, or any police officer, or, where the deceased was a native, the headman of the village in which the deceased resided or owned any property may make an application to the Collector for an order for the distribution of the estate or that he may be appointed administrator of the estate.

included by S. 3.
Ord. No. 19/61

included by sec. 16(6), (b)
Ord. No. 19/61

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Ord. No. 19/61

4. If an application under section 3 is made prior to the institution of proceedings under the Probate and Administration Ordinance the Collector of the district where the greater part in value of an estate is situated shall, subject to the provisions of this Ordinance, have exclusive jurisdiction to deal with the whole estate wherever situated in the Colony :

Jurisdiction.
Cap. 109.

Provided that the Commissioner of Lands may order any application under this Ordinance to be heard by the Collector of any other district whenever it is made to appear that such an order is expedient for the ends of justice.

5. The application under section 3 shall be in the prescribed form and shall set forth fully and truly the particulars required thereby.

Form of
application.

6. The Collector shall determine the value of any small estate in respect of which an application is made under this Ordinance and such determination shall be final and conclusive for the purpose of jurisdiction, but not otherwise. If an estate consists of property in more than one district all such property wherever situated in the Colony shall be considered one estate for the purpose of valuation.

Valuation.

7. When the application relates to a small estate the Collector shall fix a date for the hearing of the application not less than one week from the date of the receipt of the application and shall cause notice of the application in the prescribed form to be exhibited in a conspicuous manner on any land which is the subject of such application, or at the District Land Office or other public buildings or places of resort in the district in such languages as may be most readily understood by the persons concerned.

Hearing of
application
relating to
small estate.

8. In order to safeguard the estate pending distribution or the appointment of an administrator the Collector may appoint the applicant or any other person who would be entitled under section 3 to make an application, if he is willing, to be the custodian of the estate, with power to sell any perishable property thereof.

Appoint-
ment of
custodian.

9. On the date fixed for the hearing the Collector shall proceed to hear the application and any claims and objections and shall, subject to any necessary adjournment,

Hearing.

make an order for the distribution of the estate or for the appointment of an administrator. Such order shall be in the prescribed form.

(1) *Mh.*

- (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, 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.

effect to such agreement if he is of opinion that it is to the detriment of any minor beneficiary.

Dehts.

11. Before making an order for distribution the Collector shall satisfy himself that provision has been made for the payment of the debts and funeral expenses of the deceased.

Minors.

12. If on the hearing of any application under section 3 it shall appear to the Collector that any minor is entitled to be registered as the proprietor of any interest in land, the Collector shall appoint a fit and proper person to be guardian for the said minor and the name of the guardian shall also be entered, as such, in the land register.

Security by administrator.

13. When an order is made appointing an administrator the Collector shall, except in special cases, require him to furnish security by a bond in the prescribed form, with or without sureties, to an amount equal to the net value of the estate, that he will duly administer the estate and distribute the assets thereof within one year from the date of the bond.

See - Administration of Native and Small Estates (Amendment) Rules (N.S. Order No. 1 of 1941)

Forfeiture of bond.

14. If an administrator fails to carry out the terms of his bond, subject to such extension of time as may be allowed by the Collector, the bond shall be forfeited.

Failure to give security.

15. If an administrator fails to comply with an order to furnish security his appointment shall be revoked.

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 10. (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 the beneficiaries and shall, where no such agreement exists, distribute the estate according to the law or custom having the force of law applicable to the deceased.~~

(2) Nothing in this section shall prevent the Collector from making any enquiries he thinks fit to satisfy himself that all interested parties are aware of the institution of proceedings and that all the parties to any such agreement as is abovementioned fully understand and freely consent to all the terms of such agreement or from refusing to give effect to such agreement if he is of opinion that it is to the detriment of any minor beneficiary.

Debts. 11. Before making an order for distribution the Collector shall satisfy himself that provision has been made for the payment of the debts and funeral expenses of the deceased.

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Forfeiture of bond. 14. If an administrator fails to carry out the terms of his bond, subject to such extension of time as may be allowed by the Collector, the bond shall be forfeited.

Failure to give security. 15. If an administrator fails to comply with an order to furnish security his appointment shall be revoked.

16. The Collector may at any time either of his own motion or on the application of any beneficiary remove or replace any administrator and may likewise order any administrator to file accounts or to supply any other particulars concerning the administration of the estate.

Removal of administrator, and filing of accounts.

17. Any order of the Collector relating to any interest in land shall be registered in accordance with Part V of the Land Ordinance.

Succession to land. Cap. 68.

18. An administrator shall have no power to transfer land or to make any distribution to the beneficiaries of the estate without the approval of the Collector.

Transfer of land, etc.

19. Subject to the provisions of section 6 of this Ordinance, the provisions of sections 41 to 45 inclusive of the Land Ordinance, shall apply to any proceedings of the Collector under this Ordinance.

Appeal and revision. Cap. 68.

20. When an application under section 3, other than one mentioned in section 24, relates to a native estate the Collector shall refer the application to the native court unless in his opinion the estate is of such magnitude that it should be dealt with under the Probate and Administration Ordinance in which event the Collector shall send the record of the application and his finding to the High Court.

Native estates. Cap. 109.

✓ 21. When an application has been referred to the native court, it shall, so far as possible, follow the procedure prescribed in sections 7 to 18 inclusive, and shall exercise exclusively, in lieu of the Collector, the authority therein granted to the Collector, and the decisions of such court shall be forwarded to the Collector, who shall cause any order of such court relating to any interest in land to be registered as prescribed in Part V of the Land Ordinance.

Procedure of native court.

Amended by S.S. Ord. 8/6/38.

Cap. 68.

22. Land registered in the name of the deceased may be sold by order of the native court to pay the 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 shall be restricted to natives.

Sale of native land.

Cap. 68.

23. Decisions of the native court shall be subject to appeal and revision as provided in the constitution of such court.

Appeals from native court

Ord. 8/6/4

and shall make a distribution order having regard to the provisions of subsections (2) and (3) of Section 1 of the Wills Ordinance and the law or custom having the force of law applicable to the deceased.

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Application
by police
in case of
unclaimed
estate.

24. If an application under section 3 is made by a police officer in the absence of any person who appears entitled to succeed to the property of the deceased the Collector may order that the property be sold and the proceeds paid to the public revenue, less five dollars which shall be payable to the Police Fund :

Provided that if at any time thereafter any person shall establish his claim to be entitled thereto to the satisfaction of the Governor restitution shall be made to him.

Rules.

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P. 1.

25. The Governor may make rules—

(a) to prescribe any fees or charges to be made for any act, matter or thing required or permitted to be done or observed under the provisions of this Ordinance ;

(b) to prescribe the forms to be used for the purposes of this Ordinance ;

(c) generally for more effectually carrying out any of the purposes or provisions of this Ordinance.