



# LAWS OF SARAWAK

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ONLINE VERSION

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## **Chapter 80 (1948 Edition)**

### **ADMINISTRATION OF ESTATES ORDINANCE**

*Incorporating all amendments up to 30th November, 2009*

*Prepared and Compiled by*

STATE ATTORNEY-GENERAL'S CHAMBERS  
SARAWAK

**LAWS OF SARAWAK****CHAPTER 80  
(1948 Edition)****ADMINISTRATION OF ESTATES ORDINANCE**

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## LAWS OF SARAWAK

### \*CHAPTER 80 (1948 Edition)

#### \*ADMINISTRATION OF ESTATES ORDINANCE

*An Ordinance to provide for the due and proper administration of the estates of deceased persons.*

*[1st November, 1933]*

#### Short title

1. This Ordinance may be cited as the \*Administration of Estates Ordinance.

#### Interpretation

2. In this Ordinance—

“letters of administration” means the official grant of representation issued to the representative of a person dying intestate;

“probate” means the official grant of representation issued to the representative of a person dying testate;

“Probate Officer” means—

†(a) in Kuching in respect of Malay and Dayak estates the District Officer, and in respect of all other estates the person appointed in that behalf by the Minister by notification in the Sarawak Government *Gazette*‡ such person being known by such title as the Minister may by notification direct:

(b) elsewhere the Officer-in-Charge of the District.

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\* This Ordinance has been declared Federal Law by **F.L.N. 200/65** and shall be repealed when the Probate and Administration Act 1959 [*Act 97*] is brought into force in Sarawak.

† Am. Act 5/65, Act 26/67 and Reprint Commissioner.

‡ The Probate Officer, Public Trustee’s Office, Kuching — *G.N. 1653/67*. Amanah Raya Berhad Kuching w.e.f. 1.8.1995 [*P.U.(B) 351/95*] see s. 43 of the Public Trust Corporation Act 1995 [*Act 532*].

**Jurisdiction of Probate Officer**

3. The Probate Officer may—

(a) issue probate and letters of administration of the estates of deceased persons leaving assets within his District;

(b) at his discretion take possession of and administer any asset within his District belonging to a deceased person in the event of there being no person competent or willing to administer them;

(c) at his discretion administer any estate which appears to be insolvent.

**Dealings with assets prior to official representation**

4.—(1) No person (other than a Probate Officer) shall assume possession of, dispose of, or deal with the assets of a deceased person (other than heirlooms, household and personal effects, including jewellery, such jewellery not being of a greater value than five hundred ringgit) unless he has obtained a grant of probate or letters of administration or the authentication under section 14 of a grant issued by a British authority referred to in that section:

Provided that a relative or friend of a deceased person may take possession of any asset for the purpose of safe keeping, pending the issue of such probate or letters of administration or such authentication, but such relative or friend shall report them to the Probate Officer as provided in subsection (2).

(2) Any person having in his possession, custody, or control any property or asset of a deceased person (not being property exempted under subsection (1)) shall immediately report the fact to the nearest Probate Officer. Wilful failure to report will render the offender liable on conviction to a fine which may extend to three times the value of the property so retained or to imprisonment for a term not exceeding one year.

(3) Any unauthorized person disposing of, dealing with, or causing loss or damage to any asset of a deceased person shall be liable in damages to the heirs or beneficiaries of the deceased.

#### PRELIMINARIES TO GRANT OF PROBATE AND LETTERS OF ADMINISTRATION

##### **All property to be declared and Estate Duty paid on them**

5. A grant of probate or letters of administration shall not be issued until—

(a) an affidavit and inventory in the prescribed form of all the property, assets and effects (not exempted under section 4(1)) of the deceased in, or recoverable in, the State, including all outstanding book and other debts due and owing to the deceased, has been sworn by the applicant; and

(b) the proper Estate Duty\* on them has been paid.

##### **Will to be deposited**

6. A grant of Probate shall not be issued unless—

(a) the original will or, if the will has already been proved in a foreign country, a true copy of it, certified by the foreign authority, has been deposited with the Probate Officer;

(b) the Probate Officer is satisfied that the will was duly executed by the testator in the manner required by law.

##### **Persons entitled to probate**

7. The following persons are entitled to probate in the order stated:

(a) the person or persons nominated in the will as executors or the equivalent of them;

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\* Estate duty was abolished w.e.f. 1.11.91 see *Act 476*, ss. 45 & 46

- (b) the person or persons who, in the case of an intestacy, would be entitled to letters of administration under section 8;
- (c) the residuary legatee or legatees;
- (d) any other person taking an interest under the will.

### **Persons entitled to letters of administration**

**8.** The following persons, if of full age and of sound mind, are entitled in the order stated to letters of administration to a deceased person's estate:

- (a) the deceased's widower;
- (b) the male heirs of the deceased;
- (c) the deceased's father;
- (d) the brother or brothers of the whole blood of the deceased;
- (e) the deceased's widow (or primary widow if more than one);
- (f) the deceased's nearest male relative;
- (g) the deceased's nearest female relative;
- (h) any creditor of the deceased, who shall enter into a bond for such amount and with such sureties, or has furnished such security, as the Probate Officer shall require.

### **Power to issue grant to any other person**

**9.—(1)** If, in the opinion of the Probate Officer, the person or persons entitled to probate or letters of administration is or are unfit to act, he may issue the grant to the person or persons next entitled, or to any suitable person or persons who may be willing to act.

(2) The Probate Officer may in his discretion require any person, besides a creditor of the deceased, applying for probate or letters of administration to enter into a bond or to furnish security as in the case of a creditor.

### **Absentees**

**10.**—(1) Probate or letters of administration shall not be granted to any person outside the State.

(2) If the person entitled to probate or letters of administration be absent from the State, probate or letters of administration, as the case may be, may be granted to his duly constituted attorney:

Provided that there be no other person equally entitled to probate or letters of administration present, willing and competent to act.

(3) An attorney holding probate or letters of administration shall be subject to the same liabilities in all respects as an executor or administrator in his own right.

### **Application in person**

**11.** An application for probate or letters of administration shall be made in person to the Probate Officer.

## FORM OF GRANT

### **Form of grant**

**12.** Grants of probate or letters of administration shall be in the form prescribed.

### **Annexures**

**13.**—(1) A list of all the property, assets and effects of the deceased, declared in the affidavit and inventory required by section 5(a), shall be annexed to the grant of probate or letters of administration.



(2) A certified copy of the will shall be annexed to all grants of probate.

### **Power to authenticate grant obtained elsewhere in British Empire**

**14.—**(1) Where a grant of probate or letters of administration in respect of a deceased person owning assets in the State has not been obtained under this Ordinance, a grant of representation to the estate of such person obtained from the proper authority in any part of the British Empire (including British Protectorates and Mandated Territories) or from any competent British Court in any foreign country shall be effective in the State as regards property specified in a schedule authenticated under the hand and official seal of the Probate Officer and annexed to it.

(2) Such authentication shall be conditional upon payment of the Estate Duty under the Estate Duty Ordinance [*Cap. 29 (1958 Ed.)*]\* and the due fulfilment of such other conditions as are required in the case of a grant of probate or letters of administration, as the case may be, under this Ordinance.

(3) The holder of a grant so authenticated shall have the same powers and be subject to the same liabilities and obligations as an executor or administrator under a grant of probate or letters of administration issued under this Ordinance.

### **EFFECT OF GRANT AND DUTIES OF EXECUTORS AND ADMINISTRATORS**

#### **Effect of grant of probate, etc.**

**15.** The issue by a Probate Officer of probate or letters of administration shall vest in the executor or administrator named therein, and if more than one, jointly, for the purpose of administration, all the property, estate and effects of the deceased set out in the list annexed to the grant and all property exempted under section 4(1).

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\* This Ordinance was repealed by *Act 476* w.e.f 1.11.91 and estate duty was abolished then.

### **Corrective affidavits**

**16.**—(1) Any asset omitted from the inventory required by section 5(a), may be declared by a further affidavit, and the asset added by the Probate Officer to the list annexed to the grant, after payment of such further duty and interest as may be due on it.

(2) If an asset (not exempted under section 4(1)) has been knowingly omitted from the inventory the person making the affidavit shall on conviction in a High Court\* be liable to a fine which may amount to ten times the value of the asset omitted and to imprisonment for a term not exceeding five years, and on conviction in a Sessions Court\* to a like fine not exceeding five hundred ringgit and to imprisonment for a term not exceeding two years.

### **Duties of executors and administrators**

**17.** On obtaining probate or letters of administration, the executor or administrator, as the case may be, shall immediately—

(a) collect and recover all the property, assets and effects covered by the grant;

(b) discharge out of them all the debts due by the deceased which are legally recoverable; and

(c) distribute the residue of the estate among the beneficiaries or heirs of the deceased, according to the will of the deceased or, as the case may be, in the shares to which they are entitled by recognized law or custom:

Provided that before distributing the residue of the estate the executor or administrator may reimburse himself out of the assets of the estate in respect of any moneys paid by him on account of funeral expenses. Estate Duty, other probate expenses, and any other necessary expenses incurred by him on behalf of the estate.

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\* See *Act 91* and s. 111, *Act 92*.

**Liability for nonpayment of deceased's debts**

**18.** An executor or administrator who distributes the assets of the estate among the heirs or beneficiaries without having discharged all the debts contracted by the deceased which are legally recoverable, shall be personally liable to such creditors.

Provided that if he has published a notice in a prominent place outside the office of the Probate Officer and in the *Gazette* at least five weeks prior to such distribution, calling upon all creditors to submit their claims within one month of the date of publication of the notice, he shall be protected against all claims which have not been notified to him prior to such distribution.

**Unsatisfied creditor's right to follow assets**

**19.** A creditor proving a valid claim against the deceased which has not been discharged may follow assets into the hands of the heirs or beneficiaries.

**Sale of assets for administration purposes**

**20.—(1)** An executor or administrator may sell all or any portion of the estate for any of the following purposes:

- (a) paying off the deceased's debts;
- (b) recovering any expenses lawfully incurred on behalf of the estate (including Estate Duty, funeral and other probate expenses);
- (c) discharging pecuniary legacies under the will;
- (d) distributing the estate among the heirs or beneficiaries;
- (e) converting the assets of the estate into property of a non-wasting nature, or into investments approved by the Probate Officer:

Provided that any property or asset specifically bequeathed in the deceased's will, shall not be sold—

- (i) for the purposes (d) and (e) in any event;
- (ii) for purpose (c) unless the will directs that pecuniary legacies shall be paid in priority to specific legacies;
- (iii) for purposes (a) and (b) until all the other assets of the estates have been realized and the proceeds found insufficient; and then only so much of such property or assets so specifically bequeathed shall be sold as is necessary for such purpose.

(2) For the purpose of this section, property “specifically bequeathed” means any particular property or asset (other than money) bequeathed to any particular person or persons or for any particular purpose, not being the subject of a residuary bequest.

#### **Abatement of legacies**

**21.** Where the assets of the estate are insufficient to enable all the pecuniary legacies under the will to be paid in full, such legacies shall, unless the will otherwise provides, abate proportionately.

#### **Retention of estate pending ultimate distribution**

**22.** If, owing to the terms of the will, the minority or unsoundness of mind of any heir or beneficiary, or for any other cause, the executor or administrator is unable to transfer the property or any portion thereof to the heirs or beneficiaries or any of them, he shall retain such property until—

- (a) a trustee is appointed by a Court of competent jurisdiction to hold the property in trust;
- (b) the beneficiaries or heirs attain majority or otherwise become legally capable of possessing the property.

***Devastavit executors, etc.***

**23.**—(1) An executor or administrator shall be responsible to the beneficiaries or heirs for any loss, deterioration or depreciation of the property while in his possession or under his control if caused by his own negligence or default.

(2) If an executor or administrator—

(a) continues at a loss a business of which the deceased was sole proprietor; or

(b) allows the deceased's share in any business in which he was a partner and which is being continued at a loss by the remaining partners to remain in the business without taking steps to recover such share,

he shall be liable to the beneficiaries or heirs to the extent of the loss suffered by the estate, unless he satisfies the Court that his conduct was justifiable in the circumstances.

**Executors and administrators not entitled to remuneration**

**24.** An executor or administrator shall not be entitled to any remuneration for his services, unless by special order from the Court or, in the case of an executor, unless a special provision to that effect is contained in the will.

**To account for all profits made**

**25.** An executor or administrator shall account to the beneficiaries or heirs for any profit made by him out of, or in respect of, the assets of the estate, other than authorized remuneration.

**Administrators to keep accounts**

**26.**—(1) Executors and administrators shall keep true and complete accounts of their administration and shall—

(a) produce the accounts to the beneficiaries or heirs when called upon to do so;

(b) file a copy with the Probate Officer when called upon to do so.

(2) An executor or administrator who fails to produce a true and complete account of his administration when called upon to do so by the Probate Officer shall be liable to a fine not exceeding one hundred ringgit.

#### **Leases, mortgages, etc., by administrators**

27.—(1) An executor or administrator shall not lease, mortgage or pledge any portion of the estate without the written sanction of the Probate Officer, or without an order from a Court of competent jurisdiction.

(2) Contravention of this section shall render the executor or administrator liable to a fine not exceeding one hundred ringgit.

(3) No Government Officer shall register any deed of lease or mortgage by an executor or administrator without production of such sanction or order.

#### **Debts incurred by administrators not to be charged on the estate**

28. An executor or administrator shall be personally liable for all debts incurred by him on behalf of the estate, and such debts shall not be recoverable by the creditors against the assets of the estate, but the executor or administrator shall be entitled to be indemnified out of such assets in respects of debts properly and lawfully incurred by him on such behalf.

### MISCELLANEOUS PROVISIONS

#### **Reference to Court**

29. An executor or administrator may refer to the Court for settlement any question arising in the course of winding up the estate, and the costs thereof shall be borne by the estate, unless the Court otherwise directs.

**Fees for official administration**

**30.** If a Probate Officer shall administer any assets of a deceased person by virtue of the powers conferred upon him by section 3 the same fees and commission shall be charged as in the case of bankruptcy, and such fees and commission shall be in addition to Estate Duty.

**Probate Officer may summon executor or administrator to appear before him**

**31.—(1)** A Probate Officer may summon any executor or administrator, or any person who has intermeddled with the estate or any assets thereof, or who has any knowledge of any matter relating thereto, to appear before him and answer any question relating to the estate that may be put to him.

(2) Failure to appear and answer without good cause shall render the person summoned liable to a fine not exceeding two hundred ringgit or to imprisonment for a term not exceeding two months.

**Revocation of grant**

**32.—(1)** A Probate Officer may revoke his grant of probate or letters of administration at any time upon good cause being shown.

(2) Notice of revocation shall be posted outside the office of the Probate Officer and shall be inserted in the *Gazette*.

**Probate Officer may supply information**

**33.** The Probate Officer if he thinks fit may upon payment of a fee of fifty sen supply to interested persons on the form contained in the Schedule information from the register on the subjects mentioned in that form.

**Power to make rules**

**34.** The Minister\* with the approval of the Majlis Mesyuarat Kerajaan Negeri† may, by notification in the *Gazette*, make rules‡ to carry this Ordinance into effect.

*SCHEDULE*

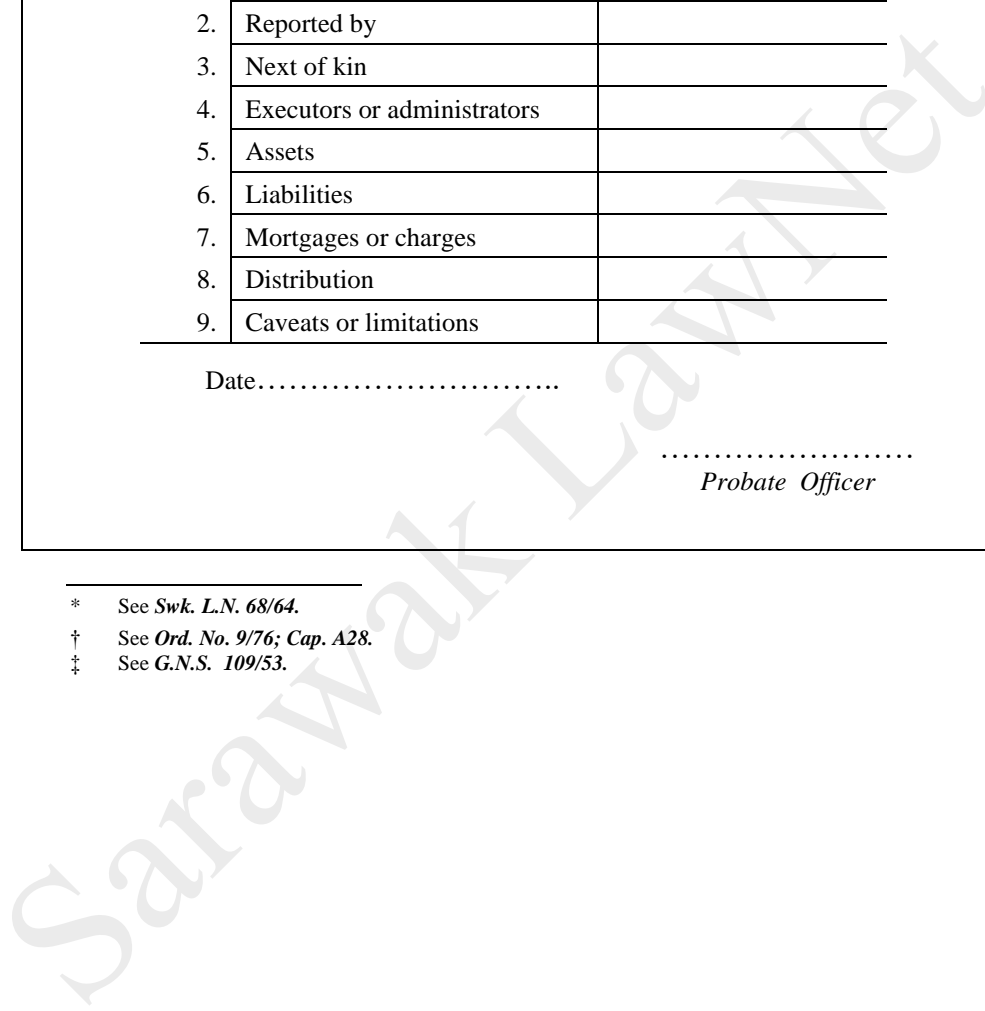
EXTRACT FROM REGISTER OF DECEASED PERSON'S ESTATES  
In the estate of ..... (deceased).

1.	Date and place of death	
2.	Reported by	
3.	Next of kin	
4.	Executors or administrators	
5.	Assets	
6.	Liabilities	
7.	Mortgages or charges	
8.	Distribution	
9.	Caveats or limitations	

Date.....

.....  
*Probate Officer*

\* See *Swk. L.N. 68/64.*  
 † See *Ord. No. 9/76; Cap. A28.*  
 ‡ See *G.N.S. 109/53.*





THE ADMINISTRATION OF ESTATES ORDINANCE  
THE ADMINISTRATION OF ESTATES (FORMS) RULES, 1953

*[G.N.S. 109/53]*

Pursuant to section 34 of the Administration of Estates Ordinance [*Cap. 80 (1948 Ed.)*], the Governor in Council\* has approved the following rules made by the Chief Secretary\* in exercise of the powers conferred upon him by that section:

**Citation and commencement**

1. These rules may be cited as the **Administration of Estates (Forms) Rules, 1953**, and shall come into force on the 1st day of December, 1953.

**Prescription of forms**

2. The granting of probate and letters of administration shall be the forms prescribed the Schedule.

SCHEDULE
PROBATE
(sections 12 and 34)

\*IN THE DISTRICT OFFICE AT .....

\*IN THE OFFICE OF THE

BE IT KNOWN that at the date hereunder written, the Last Will and Testament of, ..... (deceased)

(a copy whereof is annexed hereto) late of .....

who died on the ..... day of .....

at .....

was

proved before me and that Administration of all the within-mentioned Property of the Deceased was granted by me under section 3 of the Administration of Estates Ordinance to.....

.....he Executors and Trustees named in the said Will, having being first sworn well and truly to administer the same.

AND IT IS HEREBY CERTIFIED that an affidavit in verification of the account of the said Estate has been delivered duly stamped, wherein it is shewn that the net value of the said Estate amounts to RM .....

Gross RM.....
Debts .....
Net RM .....

on which Estate Duty at the rate of ..... per cent has been paid

amounting to RM .....

(Receipt No. ....)

Dated the ..... day of .....20.....

.....  
*Probate Officer.*

\_\_\_\_\_

*\*Strike out whichever is inapplicable.*

Sarawak LawNet



Life Insurance Policies

Sarawak LawNet

OTHER ASSETS:

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.....  
.....  
.....

Total Assets RM

\_\_\_\_\_  
\_\_\_\_\_

Sarawak LawNet

(sections 12 and 34)

\*IN THE DISTRICT OFFICE AT .....  
\*IN THE OFFICE OF .....  
IN THE ESTATE OF ..... (deceased)

BE IT KNOWN that at the date hereunder written, Letters of Administration of all the within-mentioned Property of .....

late of .....  
of who died INTESTATE on the day of ..... 20....  
at ..... with the Jurisdiction of the said Office were granted under section 3 of the Administration of Estates Ordinance [Cap. 80 (1948 Ed.)] to .....

having been first Sworn well and faithfully to administer the same by paying the just debts of the said INTESTATE and distributing the residue of the said Estate according to law, and to exhibit a true and perfect inventory and render a just account of administration unto the said Office whenever required to do so.

AND IT IS CERTIFIED that an affidavit in verification of the account of the said Estate has been delivered duly stamped wherein it is shewn that the net value of the said Estate amount to ..... on which Estate Duty at the rate of .....per cent has been paid amounting to RM.....Receipt No. (.....).

Griss RM.....  
Debts .....  
Net RM .....

Dated the ..... day of .....20.....

.....

Probate Officer.

\* Strike out whichever is inapplicable.

ed.

This

HOUSE PROPERTY, LAND and GARDENS

Declared value :

..... RM.....  
.....  
.....  
.....  
.....

STOCKS and SHARES to be valued at Market price

at date of death .....

.....  
.....

Cash at Bank: —on current a/c .....

on deposit .....

Money ou on morgage .....

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.....  
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Other debts owing to deceased

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Life Insurance Policies

OTHER ASSETS:

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Total Assets RM

\_\_\_\_\_  
\_\_\_\_\_

Sarawak LawNet