

LAWS OF MALAYSIA

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Act 39

INHERITANCE (FAMILY PROVISION) ACT 1971

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INHERITANCE (FAMILY PROVISION) ACT 1971

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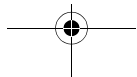
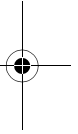
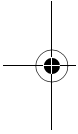
Act 39

INHERITANCE (FAMILY PROVISION) ACT 1971

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LAWS OF MALAYSIA

Act 39

INHERITANCE (FAMILY PROVISION) ACT 1971

An Act to amend the law relating to the disposition of estates of deceased persons and for other purposes connected therewith.

*[Throughout Malaysia—
1 January 1973, P.U.(B)509/1972]*

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

Short title and application

1. (1) This Act may be cited as the Inheritance (Family Provision) Act 1971.

(2) This Act shall apply throughout Malaysia but shall not apply to the estates of deceased Muslims or natives of any of the States in Sabah and Sarawak.

Interpretation

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

“annual income” means in relation to the net estate of a deceased person, the income that the net estate might be expected at the date of the order, when realised, to yield in a year;

“court” means the High Court;

“death duties” means estate duty and every other duty leviable or payable on death;

“Minister” means the Minister charged with responsibility for the administration of estates;

“net estate” means all the property of which a deceased person had power to dispose by his will (otherwise than by virtue of a special power of appointment) less the amount of his funeral, testamentary and administration expenses, debts and liabilities and estate duties payable out of his estate on his death;

“will” includes codicil;

“son” and “daughter” respectively, include a male or female child adopted by the deceased under the provisions of any written law relating to the adoption of children for the time being in force and also the son or daughter of the deceased *en ventre sa mere* at the date of the deceased.

Power of court to order payment out of net estate

3. (1) Where, after the commencement of this Act, a person dies domiciled in Malaysia leaving—

- (a) a wife or husband;
- (b) a daughter who has not been married, or who is, by reason of some mental or physical disability, incapable of maintaining herself;
- (c) an infant son; or
- (d) a son who is, by reason of some mental or physical disability, incapable of maintaining himself,

then, if the court on application by or on behalf of any such wife, husband, daughter or son as aforesaid (in this Act referred to as a “dependant” of the deceased) is of the opinion that the disposition of the deceased’s estate effected by his will, or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable provision for the maintenance of that dependant, the court may order that such reasonable provision as the court thinks fit shall, subject to such conditions or restrictions, if any, as the court may impose, be made out of the deceased’s net estate for the maintenance of that dependant:

Provided that no application shall be made to the court by or on behalf of any person in any case where the disposition of the deceased’s estate as aforesaid is such that the surviving spouse is entitled to not less than two-thirds of the income of the net estate and where the only other dependant, if any, is or are a child or children of the surviving spouse.

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(2) The provision for maintenance to be made by an order shall, subject to subsection (4), be by way of periodical payments of income and the order shall provide for their termination not later than—

- (a) in the case of a wife or husband, her or his re-marriage;
- (b) in the case of a daughter who has not been married, or who is under disability, her marriage or the cesser of her disability, whichever is the later;
- (c) in the case of an infant son, his attaining the age of twenty-one years;
- (d) in the case of a son under disability, the cesser of his disability,

or, in any case, his or her earlier death.

(3) The amount of the annual income which may be made applicable for the maintenance of a deceased's dependants by an order to be in force at any one time shall in no case be such as to render them entitled under the deceased's will or under the law relating to intestacy, or the combination of his will and that law as varied by the order to more than the following fraction of the annual income of his net estate, that is to say—

- (a) if the deceased leaves both a wife or husband and one or more other dependants, two-thirds; or
- (b) if the deceased does not leave a wife or husband, or leaves a wife or husband and no other dependant, one-half.

(4) Where the value of a deceased's net estate does not exceed forty thousand ringgit, the court shall have power to make an order providing for maintenance, in whole or in part, by way of a lump sum payment.

(5) In determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order, the court shall have regard to the nature of the property representing the deceased's net estate and shall not order any such provision to be made as would necessitate a realization that would be improvident having regard to the interests of the

deceased's dependants and of the person who, apart from the order, would be entitled to that property.

(6) The court shall, on any application made under this Act, have regard to any past, present or future capital or income from any source of the dependant of the deceased to whom the application relates, to the conduct of that dependant in relation to the deceased and otherwise, and to any other matter or thing which in the circumstances of the case the court may consider relevant or material in relation to that dependant, to the persons interested in the estate of the deceased, or otherwise.

(7) The court shall also, on any such application, have regard to the deceased's reasons, so far as ascertainable, for making the dispositions made by his will (if any), or for not making any provision or any further provision, as the case may be, for a dependant, and the court may accept such evidence of those reasons as it considers sufficient, including any statement in writing signed by the deceased and dated, so, however, that in estimating the weight, if any, to be attached to any such statement the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

(8) The court in considering for the purposes of subsection (1) whether the disposition of the deceased's estate effected by the law relating to intestacy, or by the combination of the deceased's will and that law, makes reasonable provision for the maintenance of a dependant shall not be bound to assume that the law relating to intestacy makes reasonable provision in all cases.

Time within which application must be made

4. (1) Except as provided by the following provisions of this section or section 6 an order under this Act shall not be made save on an application made within six months from the date on which representation in regard to the deceased's estate is first taken out.

(2) If it is shown to the satisfaction of the court that the limitation to the said period of six months would operate unfairly—

- (a) in consequence of the discovery of a will involving a substantial change in the disposition of the deceased's estate (whether or not involving a further grant of representation); or

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- (b) in consequence of a question whether a person had an interest in the estate, or as to the nature of an interest in the estate, not having been determined at the time when representation was first taken out; or
- (c) in consequence of some other circumstances affecting the administration or distribution of the estate,

the court may extend that period.

(3) The provisions of this Act shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the said period of six months on the ground that they ought to have taken into account the possibility that the court might exercise its power to extend that period, but this subsection shall be without prejudice to any power to recover any part of the estate so distributed arising by virtue of the making of an order under this Act.

(4) For the purposes of sections 30 and 45 of the Probate and Administration Act 1959 [*Act 97*], a dependant of a deceased person by whom or on whose behalf an application under this Act is proposed to be made shall be deemed to be a person interested in his estate.

Effect and form of the order

5. (1) Where an order is made under this Act, for all purposes, including the purposes of the laws relating to death duties, the will or the law relating to intestacy, shall have effect, and shall be deemed to have had effect, as from the deceased's death, subject to such variation as may be specified in the order for the purpose of giving effect to the provision for maintenance thereby made.

(2) The court may give such consequential directions as it thinks fit for the purpose of giving effect to an order made under this Act, but no larger part of the net estate shall be set aside or appropriated to answer by the income thereof the provision for maintenance thereby made than such a part as, at the date of the order, is sufficient to produce by the income thereof the amount of the said provision.

(3) An office copy of every order made under this Act shall be sent to the High Court Registry for entry and filing, and a

memorandum of the order shall be endorsed on, or permanently annexed to, the probate or letters of administration under which the estate is being administered.

Variation of orders

6. (1) On an application made at a date after expiration of the period specified in subsection 4(1), or, as the case may be, of that period as extended under subsection 4(2), the court may make such order as is hereinafter mentioned, but only as respects property the income of which is at that date applicable for the maintenance of a dependant of the deceased, that is to say—

- (a) an order for varying a previous order on the ground that any material fact was not disclosed to the court when the order was made or that any substantial change has taken place in the circumstances of the dependant or of a person beneficially interested in the property under the will or, as the case may be, under the law relating to intestacy; or
- (b) an order for making provision for the maintenance of another dependant of the deceased.

(2) An application to the court for an order under paragraph (1)(a) may be made by or on behalf of a dependant of the deceased or by the trustees of the property or by or on behalf of a person beneficially interested under the will or, under the law relating to intestacy.

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INHERITANCE (FAMILY PROVISION)
ACT 1971

LIST OF AMENDMENTS

Amending law	Short title	In force from
– NIL –		

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
– NIL –		
