



LAWS OF MALAYSIA

Act A1643

**SMALL ESTATES (DISTRIBUTION) (AMENDMENT)
ACT 2022**

Date of Royal Assent	19 January 2022
Date of publication in the <i>Gazette</i>	25 January 2022

Publisher's Copyright ©

PERCETAKAN NASIONAL MALAYSIA BERHAD

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means electronic, mechanical, photocopying, recording and/or otherwise without the prior permission of **Percetakan Nasional Malaysia Berhad (Appointed Printer to the Government of Malaysia)**.

LAWS OF MALAYSIA

Act A1643

SMALL ESTATES (DISTRIBUTION) (AMENDMENT) ACT 2022

An Act to amend the Small Estates (Distribution) Act 1955.

[]

ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Small Estates (Distribution) (Amendment) Act 2022.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

General amendment

2. The Small Estates (Distribution) Act 1955 [Act 98], which is referred to as the “principal Act” in this Act, is amended by substituting for the words “Land Administrator”, wherever appearing including in the shoulder notes the words “Estate Distribution Officer”, except in the definition of “Land Administrator” in section 2, sections 23, 24, 26B and 26C of the principal Act.

Amendment of section 2**3. Section 2 of the principal Act is amended—**

(a) by deleting the definition of “Director General of Lands and Mines”;

(b) by deleting the definition of “Director of Lands and Mines”;

(c) by inserting after the definition of “distribution order” the following definition:

‘ “Estate Distribution Officer” means an officer appointed under section 2c;’;

(d) by inserting after the definition of “Land Administrator” the following definition:

‘ “Majlis”, in relation to a State, means the Majlis Agama Islam, by whatever name called, established under any written law for the purpose of administering Islamic law;’;

(e) by inserting after the definition of “Native Title” the following definition:

‘ “patient” means a person who is a sole beneficiary, suffering from serious illness or injury, or who is bedridden, and unable to attend any proceedings under this Act;’;

(f) by deleting the definition of “penghulu”;

(g) by inserting after the definition of “prescribed” the following definitions:

‘ “President” means the President of Estate Distribution appointed under subsection 2A(1);

“property” means immovable property or movable property or both;’;

- (h) in the definition of “purchaser”, by inserting after the words “whom he claims” the words “, or is in possession of any movable property sold by the deceased by a written agreement;”; and
- (i) in the definition of “valuation officer”, by inserting after the words “assistant valuation officer” the words “or a registered valuer under the Valuers, Appraisers, Estate Agents and Property Managers Act 1981 [Act 242]”.

New Part IA

4. The principal Act is amended by inserting after Part I the following part:

“PART IA

PRESIDENT OF ESTATE DISTRIBUTION, DEPUTY PRESIDENT OF ESTATE DISTRIBUTION AND ESTATE DISTRIBUTION OFFICER

Appointment and powers of President of Estate Distribution

2A. (1) The Minister shall appoint from among the Estate Distribution Officers appointed under section 2C a President of Estate Distribution.

(2) The President shall have all such powers as may be necessary for or in connection with the exercise of his powers under this Act or which are reasonably incidental to such exercise.

(3) Without prejudice to the generality of subsection (2), the powers of the President shall include the power to determine the territorial jurisdiction of any Estate Distribution Officer to deal with the distribution and administration of any estate falls within the Act and to have direct control and supervision over all the Estate Distribution Officers appointed under this Act.

Appointment of Deputy President of Estate Distribution

2B. (1) The Minister may appoint such number of Deputy Presidents of Estate Distribution from among the officers appointed under section 2c to assist the President in the exercise of his powers under this Act.

(2) If for any reason the President is unable to exercise his powers, the Minister may appoint one of the Deputy Presidents to exercise the powers of the President.

Appointment of Estate Distribution Officer

2c. The Minister may appoint from among the public officers such number of Estate Distribution Officers as may be necessary for the purpose of carrying into effect the provisions of this Act.”.

Amendment of section 3

5. Subsection 3(2) of the principal Act is amended—

(a) by substituting for the words “wholly or partly of immovable” the words “of any”; and

(b) by substituting for the words “two million” the words “five million”.

Amendment of section 4

6. Section 4 of the principal Act is amended—

(a) in subsection (2), by substituting for the word “district” wherever appearing the word “State”;

(b) in the proviso to subsection (2)—

(i) by deleting the words “the Director of Lands and Mines where all the property is situated in one State or the Director General of Lands and Mines”;

- (ii) by inserting after the words “in another,” the words “the President”; and
 - (iii) by substituting for the words “district, notwithstanding that the property in that district consists solely of movable property” the word “State”;
- (c) in subsection (3), by substituting for the words “the Director of Lands and Mines or the Director General of Lands and Mines” the words “the President”;
- (d) in subsection (4), by substituting for the words “the Director of Lands and Mines or the Director General of Lands and Mines, as the case may be,” the words “the President”; and
- (e) in subsection (5)—
- (i) by substituting for the word “district” the word “State”; and
 - (ii) by deleting the word “immovable”.

Amendment of section 7

7. Subsection 7(2) of the principal Act is amended by substituting for the words “the Director General of Lands and Mines” wherever appearing the words “the President”.

Amendment of section 8

8. Section 8 of the principal Act is amended—

- (a) in subsection (1)—
- (i) by substituting for the words “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” the words “the Corporation, or Majlis, or guardian, or next friend”;

- (ii) by substituting for the word “district” the word “State”; and
 - (iii) by deleting the word “immovable”;
- (b) in subsection (2)—
- (i) by deleting the word “immovable”; and
 - (ii) by inserting after the word “power” the words “or other supporting documents evidencing the statements claimed in the petition”;
- (c) in subsection (5), by deleting the word “movable”;
- (d) in subsection (6), by deleting the word “movable”;
- (e) by inserting after subsection (6) the following subsection:
- “(6A) Notwithstanding subsection (6), where the valuation of the property for petition for distribution is more than one, the Estate Distribution Officer shall examine each valuation and decide which valuation to be applied in determining whether any estate is or is not a small estate and his decision shall be final and the valuation shall be conclusive for the purposes of this Act.”;
- (f) in subsection (8), by substituting for the words “the Director of Lands and Mines or the Director General of Lands and Mines, as the case may require,” the words “the President”;
- (g) in subsection (9)—
- (i) by substituting for the words “the Director of Lands and Mines or the Director General of Lands and Mines” the words “the President”; and

(ii) by substituting for the words “he shall forthwith stay all proceedings upon the petition before him until either, as the case may be, 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” the words “he shall strike out the petition before him and inform the petitioner accordingly”; and

(h) by inserting after subsection (9) the following subsection:

“(10) The Minister may, with the approval of the State Authority, by notification in the *Gazette*, appoint a date for the coming into operation of this section in relation to the Majlis.”.

Amendment of section 8A

9. Section 8A of the principal Act is amended by substituting for the words “the Corporation shall deliver” the words “the Estate Distribution Officer shall notify the Corporation or petitioner of such case and it shall be the duty of the Corporation or petitioner to deliver”.

New sections 8B and 8C

10. The principal Act is amended by inserting after section 8A the following sections:

“Summary distribution

8B. (1) Where a petition for distribution is lodged or any subsequent application is filed under this Act, the petitioner or applicant may apply to the Estate Distribution Officer for a summary distribution order if the petition or application falls under the following cases:

(a) in the case of the petition, it consists only of movable property and does not exceed six hundred thousand ringgit in total value; or

(b) in the case of any subsequent application—

- (i) it consists only of movable property which has not been declared in the petition and does not exceed six hundred thousand ringgit in total value; or
- (ii) it is filed for the purpose of removing a trustee when a minor has attained age of majority.

(2) The application for an order under subsection (1) may be made as may be prescribed.

(3) Where the Estate Distribution Officer makes an order under subsection (1), the petition or subsequent application shall not be heard.

(4) A copy of an order under subsection (1) shall be served on a petitioner or applicant who shall cause such copy of the order to be served on the beneficiaries.

(5) For the purposes of this section, section 10 and subsection 13(4) shall apply.

Letters of administration *pendente lite*

8c. Pending any distribution order, letters of administration may be granted to a petitioner or any beneficiary as the Estate Distribution Officer may appoint, limited so that the administrator shall not be empowered to distribute the estate, and shall be subject to such control by, and direction of, the Estate Distribution Officer as the Estate Distribution Officer deems fit, and subject to that limitation the administrator so appointed shall have all the rights and powers of a general administrator.”.

Amendment of section 9

11. Section 9 of the principal Act is amended—

(a) in subsection (1)—

- (i) by inserting after the words “to be served” the words “on the petitioner”; and
- (ii) by substituting for the words “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 Land Administrator to be interested in the distribution of the estate” the words “and upon receiving such notice, the petitioner shall serve a copy of the notice on all persons who are named and addressed in the petition as beneficiaries of or claimants to the estate or any interest in the estate”; and

(b) by deleting subsection (2).

Amendment of section 10

12. Section 10 of the principal Act is amended—

(a) in the shoulder note, by inserting after the words “**or persons of unsound mind**” the words “**or patient**”;

(b) in subsection (1)—

- (i) by inserting after the words “to be a minor or a person of unsound mind” the words “or a patient”;
- (ii) by inserting after the words “the guardian of the minor or person of unsound mind” the words “or the next friend of the patient”; and
- (iii) by inserting after the words “person of unsound mind” at the end of the subsection the words “or a patient”;

(c) by substituting for subsection (2) the following subsection:

“(2) For the purposes of subsection (1)—

(a) in relation to the appointment of a guardian, the Estate Distribution Officer shall have regard to any personal law or custom affecting the minor or person of unsound mind; and

(b) in relation to the appointment of a next friend, the Estate Distribution Officer shall have regard to any personal law or custom, and any circumstances or medical reason rendering a patient unable to represent himself.”; and

(d) by inserting after subsection (2) the following subsection:

“(3) The next friend appointed under this section shall assist the patient in any matter relating to proceedings for the distribution of the estate so far as not detrimental to the interest of the patient.”.

Amendment of section 11

13. Section 11 of the principal Act is amended—

(a) in subsection (1), by deleting the words “in his district”;

(b) by inserting after subsection (2) the following subsection:

“(2A) Notwithstanding subsection (2), the Estate Distribution Officer shall have power to restrict public access to the hearing of any petition or any part of the petition if he is satisfied that it is expedient in the interests of public safety, public security or propriety, or for other sufficient reason to do so.”; and

(c) in subsection (3)—

(i) by substituting for the words “lot of land” the word “property”; and

(ii) by substituting for the word “land” the word “property”.

Amendment of section 12

14. Section 12 of the principal Act is amended—

(a) in subsection (1), by inserting after the word “guardian” the words “or next friend”;

(b) in subsection (2), by inserting after the word “guardian” the words “or next friend”;

(c) in subsection (3), by substituting for the words “penghulu or a Settlement Officer” the word “person”;

(d) in subsection (6)—

(i) by substituting for the words “occupation of any land claimed by an alleged purchaser, the date, as nearly as the evidence admits, when he went into occupation” the words “occupation or possession of any property claimed by an alleged purchaser, the date, as nearly as the evidence admits, when he went into occupation or possession”; and

(ii) by inserting after the words “document of title” the words “or other supporting documents relating to the purchase of the property”;

(e) in subsection (9), by substituting for the words “the Director of Lands and Mines” the words “the President”; and

(f) by inserting after subsection (10) the following subsections:

“(11) Where any beneficiary whose name stated in the petition is unable to attend the hearing, the Estate Distribution Officer may direct the petitioner to submit a letter of consent in a prescribed form from the beneficiary within such time as determined by the Estate Distribution Officer.

(12) Where the letter of consent referred to in subsection (11) is not submitted, the Estate Distribution Officer may, as he thinks fit, proceed to conclude the hearing.”.

Amendment of section 13

15. Section 13 of the principal Act is amended—

(a) by substituting for subsection (2) the following subsection:

“(2) Where a petition involves a beneficiary who is a minor or a person of unsound mind, the Estate Distribution Officer shall make the following order:

(a) the share of any minor or person of unsound mind in any immovable property to be registered in the name of a suitable person as a trustee; and

(b) the Land Administrator or the Registrar of Titles to enter a caveat to protect the interest of the minor or person of unsound mind.”;

(b) in subsection (4)—

(i) by substituting for the words “such person” the words “such number of persons”; and

(ii) by deleting the words “, subject to such security as he may require and may in his discretion dispense with security”;

(c) in subsection (5)—

- (i) by deleting the words “of any land registered in the name of the deceased”; and
- (ii) by substituting for the words “the land” the words “or transfer the property”; and

(d) in subsection (6), by substituting for the words “land registered in the name of the deceased” the word “property”.

Amendment of section 14

16. Subsection 14(2) of the principal Act is amended by deleting the words “movable or immovable” wherever appearing.

Amendment of section 15

17. Section 15 of the principal Act is amended—

(a) in subsection (3)—

- (i) in paragraph (a), by inserting after the semicolon at the end of the paragraph the word “or”;
- (ii) in paragraph (b), by substituting for the words “; or” a full stop; and
- (iii) by deleting paragraph (c);

(b) in subsection (4)—

- (i) in paragraph (a), by deleting the words “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”;

- (ii) in paragraph (b), by deleting the words “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”; and
 - (iii) in proviso to paragraph (bb), by substituting for the words “has deposited with the Land Administrator” the words “has deposited with the Corporation”; and
- (c) by inserting after subsection (4) the following subsections:

“(4A) Where any beneficiary fails to agree to the sale of the land or any part of it, the Estate Distribution Officer may order the land or any part of it to be sold in such manner as may be prescribed based on the consent of the beneficiaries holding two-third majority shares on the land or any part of it.

(4B) In the exercise of the power under subsection (4A), the Estate Distribution Officer shall take into account the interest of the beneficiaries to be secured and protected.”.

Amendment of section 16

18. Section 16 of the principal Act is amended—

- (a) in subsection (1), by substituting the words “The Land Administrator 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” the words “The petitioner shall then arrange for the order so far as it relates to land to be registered as may be necessary and the Estate Distribution Officer shall act under subsection (3) where applicable”;

(b) by substituting for subsection (2) the following subsection:

“(2) The Estate Distribution Officer in making a distribution order may make an order for entry of caveat and the Land Administrator or Registrar of Title, upon receiving the distribution order, shall give effect to such order accordingly.”;

(c) in subsection (3), by inserting after the word “Corporation” the words “or Majlis”;

(d) in subsection (4), by substituting for the words “Corporation” wherever appearing the words “Corporation or Majlis”; and

(e) by inserting after subsection (4) the following subsection:

“(5) The Minister may, with the approval of the State Authority, by notification in the *Gazette*, appoint a date for the coming into operation of this section in relation to the Majlis.”.

New section 16A

19. The principal Act is amended by inserting after section 16 the following section:

“Amendment of order

16A. (1) Where the Estate Distribution Officer is satisfied that any order made under this Act contains clerical error, he may make such amendment on the order and the order shall be served on the petitioner.

(2) No amendment other than an amendment to correct a clerical error shall be made by the Estate Distribution Officer or any person affected by the order unless it is made in accordance with the regulations made by the Minister.”.

Amendment of section 17

20. Subsection 17(2) of the principal Act is amended by substituting for the words “, the Land Administrator may either” the words “or a person of unsound mind has been certified by a Government Medical Officer that the person is no longer a person of unsound mind, the Estate Distribution Officer may either request the Land Administrator or Registrar of Titles to”.

Substitution of section 18

21. The principal Act is amended by substituting for section 18 the following section:

“Duty of Corporation and Majlis

18. (1) Where a proprietor or owner of any property has died and no proceedings, to the knowledge of the Corporation or Majlis, have within six months of the date of death been taken to obtain a grant of probate or letters of administration or for distribution order under this Act of the estate of a deceased, the Corporation or Majlis may report the matter to the Estate Distribution Officer and the Estate Distribution Officer may thereupon request the Corporation or Majlis to lodge a petition for distribution of the estate subject to the Corporation or Majlis to obtain consent from a beneficiary to the estate of a deceased person, a creditor or a purchaser who has interest in the estate of a deceased person, as the case may be.

(2) Any fees payable under this section as may be prescribed and may be paid out of the estate.

(3) The Minister may, with the approval of the State Authority, by notification in the *Gazette*, appoint a date for the coming into operation of this section in relation to the Majlis.”.

Amendment of section 19

22. Section 19 of the principal Act is amended by deleting the words “in which his district is situated”.

Amendment of section 29

23. Section 29 of the principal Act is amended—

(a) in subsection (1), by inserting after the words “High Court” the words “within thirty days from the date the order, decision or act is made or done”; and

(b) by substituting for subsection (2) the following subsection:

“(2) For the purposes of subsection (1), the procedure in relation to such appeal shall be subject to the rules of court applicable in the High Court.”.

Substitution of First Schedule

24. The principal Act is amended by substituting for the First Schedule the following schedule:

“FIRST SCHEDULE

[Subsection 15(5)]

MATTERS TO BE TAKEN INTO CONSIDERATION BY ESTATE DISTRIBUTION OFFICER
IN DISTRIBUTING ESTATE

In the exercise of any discretion of the Estate Distribution Officer to determine 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 property, the Estate Distribution Officer shall have regard to the following considerations:

(a) in relation to immovable property—

- (i) dividing the land into several lots in several names may seriously diminish the value of the estate as a whole;
- (ii) the real value of small shares, especially when represented by complicated fractions, is less than their proportionate values;
- (iii) 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;

- (iv) it is greatly to the advantage of a minor or a person of unsound mind that his co-proprietors should be those most nearly related to him; and
- (v) valuations are necessarily estimates and are only approximately correct; it is unnecessary that the estimated value of a lot should be precise amount of a beneficiary's mathematical share; it is sufficient if the estimated value of a lot substantially corresponds to a beneficiary's calculated share; and

(b) in relation to movable property—

- (i) type of movable property whether can be divided or not; and
- (ii) the rights to which any beneficiary or interested party is entitled to may consist in terms of the physical share of the actual movable property or its value.”.

25. Saving

(1) Any petition, application, investigation, hearing and proceedings in relation to the distribution of a small estate pending before the date of coming into operation of this Act shall be dealt with in accordance with the principal Act as amended by this Act.

(2) Any order, letter of administration, decision, determination, direction, certification, appointment, reference, action and notice in relation to the distribution of a small estate made, done or issued by the Land Administrator under the principal Act before the date of coming into operation of this Act, shall be deemed to be made, done or issued by the Estate Distribution Officer and continue to be in force.

(3) Any appeal to any order, decision or act made or done under section 29 of the principal Act before the date of coming into operation of this Act shall, after the date of coming into operation of this Act, be continued as if section 29 of the principal Act has not been amended by this Act.