

No. 68 of 1966.

Wills, Probate and Administration Act 1966.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 68 of 1966.

Wills, Probate and Administration Act 1966.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Wills, Probate and Administration Act 1966,

Being an Act relating to—

- (a) wills; and
- (b) the devolution and administration of the estates of deceased persons; and
- (c) death duties,

and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“administration”, in relation to the estate of a deceased person, means letters of administration whether—

- (a) general, special or limited; or
 - (b) with the will annexed,
- or otherwise;

“administrator” means a person to whom administration is granted;

“the commencement date” means 14 May 1970 (being the date of commencement of the pre-Independence *Wills, Probate and Administration Act 1966*);

“the Commissioner” means the Commissioner of Probate Duties appointed under Section 133;

“court of summary jurisdiction” means a District Court;

“grant” means a grant of representation;

“personal estate” means all property other than real estate;

“personal representative” means the executor, whether original or by representation, or administrator of a deceased person;

“real estate” means—

- (a) messuages, lands or hereditaments of any tenure whether corporeal, incorporeal or personal; or
- (b) any undivided share in any such messuages, lands or hereditaments; or
- (c) an estate, right or interest (other than a chattel interest) in any such messuages, lands or hereditaments,

but does not include land held under a lease for a term of less than 21 years whether or not there is a right to renew the lease;

“the Registrar” means the Registrar of the National Court;

“the regulations” means any regulations made under this Act;

“representation” means probate or administration;

“will” includes—

- (a) a testament; and
- (b) a codicil; and
- (c) an appointment by will or by writing in the nature of a will in exercise of a power; and
- (d) a disposition by will; and
- (e) a testament or devise of the custody and tuition of a child; and
- (f) any other testamentary disposition.

2. APPLICATION OF CUSTOM.

Nothing in this Act applies to or in relation to customary land.

PART II. – WILLS.

Division 1.

Preliminary.

3. APPLICATION OF PART II.

This Part–

- (a) applies to and in relation to the will of a person who dies or died after the commencement date, whether the will was executed before or after that date; and
- (b) does not apply to or in relation to the will of a person who died before the commencement date.

Division 2.

Formal Validity of Wills.

4. INTERPRETATION OF DIVISION 2.

(1) In this Division–

“**internal law**”, in relation to a country or place, means the law that would apply in a case where no question of the law in force in any other country or place arose;

“**country**” means any place or group of places having its own law of nationality.

(2) Where, under this Division–

- (a) the internal law in force in any country or place is to be applied in the case of a will; and
- (b) there are in force in that country or place two or more systems of internal law relating to the formal validity of wills,

then if–

- (c) there is in force throughout the country or place a rule indicating which of those systems can properly be applied in the case in question—that rule shall be applied; and
- (d) if there is no such rule—the system to be applied is the system with which the testator was most closely connected at the relevant time, as defined in Subsection (3).

(3) For the purposes of Subsection (2)(d), the relevant time is–

- (a) where the matter is to be determined by reference to circumstances prevailing at the death of the testator—the time of his death; and
- (b) in any other case—the time of execution of the will.

(4) In determining for the purposes of this Division whether or not the execution of a will conformed to a particular law, regard shall be had to the formal requirements of that law at the time of execution, but this does not prevent account being taken of an alteration of the law affecting wills that were executed at that time if the alteration enables the will to be treated as having been properly executed.

5. EFFECT OF CERTAIN FOREIGN REQUIREMENTS.

Where, whether or not under this Division, a law of a place outside Papua New Guinea is to be applied in relation to a will, any requirement of that law by which—

(a) special formalities are to be observed by testators answering a particular description; or

(b) witnesses to the execution of a will are to possess certain qualifications, shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

6. GENERAL RULE AS TO FORMAL VALIDITY.

A will shall be treated as having been properly executed if its execution conformed to the internal law in force—

(a) in the place where it was executed; or

(b) in the place where, at the time of its execution or of his death, the testator was domiciled or had his habitual residence; or

(c) in a country of which, at either of those times, the testator was a national.

7. ADDITIONAL RULES.

(1) Without prejudice to Section 6, the following wills shall be treated as having been properly executed:—

(a) a will executed on board a vessel or aircraft, if the execution of the will conformed to the internal law in force in the place with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;

(b) any will, so far as it disposes of immovable property, if its execution conformed to the internal law in force in the country or place where the property was situated;

(c) any will, so far as it—

(i) revokes a will that would be treated under this Act as properly executed; or

(ii) revokes a provision that would be treated under this Act as comprised in a properly executed will,

if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated;

- (d) any will, so far as it exercises a power of appointment, if the execution of the will conformed to the law governing the essential validity of the power.

(2) So far as it exercises a power of appointment, a will shall not be treated as having been improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

8. EFFECT OF CHANGE OF DOMICILE.

A will shall not be deemed to be revoked or to have become invalid, and the construction of a will shall not be altered, by reason of any change in the testator's domicile after the execution of the will.

Division 3.

General.

9. INTERPRETATION OF DIVISION 3.

(1) In this Division, unless the contrary intention appears—

“**authorized witness**” means a Judge, Magistrate of a District Court or Magistrate of a Local Court, or some other person authorized by the Head of State, acting on advice, by notice in the National Gazette.

(2) For the purposes of this Division, a will re-executed, re-published or revived by a codicil shall be deemed to have been made at the time when the will or codicil was re-executed, re-published or revived.

10. APPLICATION OF DIVISION 3.

(1) This Division shall be read subject to Division 2.

(2) This Division extends to and in relation to any property the rights to or in which are regulated by custom but only so far as those rights may, by custom, devolve or pass by will or in an analogous manner.

11. DISPOSITION OF PROPERTY BY WILL.

(1) By his will executed in accordance with this Division, a person may devise, bequeath or dispose of all property to which he is entitled either at law or in equity at the time of his death, and that, if not so devised, bequeathed or disposed of, would devolve on his executor or administrator.

(2) The power given by this section extends to—

- (a) an estate for the life of another—
 - (i) whether or not there is a special occupant; and

- (ii) whether the estate is freehold or of any other tenure; and
 - (iii) whether the estate is a corporeal or incorporeal hereditament; and
- (b) a contingent, executory or other future interest in any property—
 - (i) whether or not the testator is ascertained as the person, or one of the persons, in whom the interest may become vested; and
 - (ii) whether he is entitled to the interest under the instrument by which it was created or under a disposition of the interest by deed or will; and
- (c) a right of entry for condition broken and every other right of entry; and
- (d) an estate, interest, right or other real or personal estate mentioned in this section to which the testator is entitled at the time of his death, notwithstanding that he became entitled subsequently to the execution of his will.

12. WILL OF MINOR.

Subject to Section 16, a will made by a person under the age of 21 years is not valid.

13. EXECUTION OF WILL.

(1) Subject to this Part, a will is not valid unless it is written and executed in the following manner:—

- (a) subject to Subsection (3), it is signed at the foot or end by the testator or by some other person in his presence and by his direction;
- (b) subject to Subsection (3), the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time;
- (c) the witnesses attest and subscribe the will in the presence of the testator.

(2) A form of attestation is not necessary.

(3) Notwithstanding Subsection (1)(a) and (b), a will may be signed or acknowledged in the presence of, and may be attested and subscribed by, an authorized witness.

(4) A will—

- (a) made by a person who by reason of infirmity of body or illiteracy or otherwise is unable to execute it without assistance; or
- (b) signed by a person other than the testator,

is not valid unless there is contained in, or annexed to, the will a certificate by the witness or witnesses, or it is otherwise proved, that at the time of the making of the will—

- (c) the provisions of the will were read to the testator by or in the presence and hearing of the witness or witnesses; and
- (d) the testator acknowledged the will, as so read, to be his intended last will.

(5) A will made by a person in a language other than a language that he habitually uses is not valid unless there is in, or annexed to, the will a certificate by an authorized witness, or it is otherwise proved, that at the time of the making of the will—

- (a) the provisions of the will were properly translated, or were apparently properly translated, into a language understood, or apparently understood, by the testator by or in the presence of the authorized witness; and
- (b) the testator acknowledged the will, as so translated, to be his intended last will.

14. VALIDITY OF SIGNATURE TO WILL.

(1) So far only as regards the position of the signature of the testator or of the person signing for him under Section 13, a will is valid within the meaning of this Division if the signature is so placed at, after, following, under, beside or opposite the end of the will that it is apparent on the face of the will that the testator intended to give effect by his signature to the writing signed as his will.

(2) A will referred to in Subsection (1) is not affected by the circumstances that—

- (a) the signature does not follow, or is not immediately after, the foot or end of the will; or
- (b) a blank space intervenes between the concluding word of the will and the signature; or
- (c) the signature is placed among the words of the testimonium clause, or of the clause of attestation, or follows, is after or is under the clause of attestation, with or without a blank space intervening, or follows, or is after, under or beside the names, or one of the names, of the subscribing witnesses; or
- (d) the signature is on a side or page or other portion of the paper or papers containing the will on which no clause, paragraph or disposing part of the will is written above the signature; or
- (e) there appears to be sufficient space on or at the bottom of the preceding side or page, or other portion, of the same paper on which the will is written to contain the signature.

(3) Subsection (2) does not restrict the generality of Subsection (1), but a signature under this Division is not operative to give effect to a disposition or direction that—

- (a) is underneath or follows it; or
- (b) is inserted after the signature is made.

15. EXECUTION OF APPOINTMENT BY WILL.

(1) An appointment made by will in exercise of a power is not valid unless the will is executed in accordance with this Division.

(2) A will executed in accordance with this Division is, in respect of its execution and attestation, a valid execution of a power of appointment by will, notwithstanding that it has been expressly required that a will made in exercise of the power should be executed with some additional or other form of execution or solemnity.

16. SOLDIERS' AND SAILORS' WILLS.

(1) In this section, “**soldier**” includes—

- (a) any member of the Defence Force; and
- (b) any member of Her Majesty's Air Forces.

(2) A soldier in actual military service, or a mariner or seaman at sea, may dispose of his personal estate as he might have done before the commencement date.

(3) Subsection (2) authorizes a soldier in actual military service, or a mariner or seaman at sea, even if he is under the age of 21 years, to dispose of his personal estate as he might have done before the commencement date.

(4) A testamentary disposition of real estate in the country made by a person to whom this section applies who died or dies after the commencement date is valid, notwithstanding that—

- (a) the person making the disposition was, at the time of making it, under 21 years of age; or
- (b) the disposition was not made in such manner or form as was required by law immediately before the commencement date,

if—

- (c) the person making the disposition was under 21 years of age; and
- (d) the disposition was made in such manner and form that, if the disposition had been a disposition of personal estate made by such a person domiciled in the country, it would have been valid.

(5) Where a person dies after the commencement date having made a will that—

- (a) is; or

(b) would, if it had been a disposition of property, have been, validated by this section, an appointment in the will of a person as guardian of the infant children of the testator has the same force and effect as a similar appointment contained in a will that would have been valid without the aid of this section.

(6) A person who—

(a) being then under the age of 21 years, has made a will that is validated by this section; and

(b) afterwards ceases to be a person to whom this section applies,

may revoke the will in any manner in which this Division provides that a will may be revoked, even if at the time of the revocation he is still under the age of 21 years.

17. NEED FOR PUBLICATION.

A will executed in the prescribed manner is valid without any other publication of the will.

18. EFFECT OF INCOMPETENCY OF WITNESS.

Where a person who attests the execution of a will is at the time of, or at any time after, the execution of the will incompetent to be admitted a witness to prove the execution, the will is not on that account invalid.

19. GIFT TO ATTESTING WITNESS.

(1) Where a person to whom or to whose spouse a beneficial devise, legacy, estate, interest, gift or appointment of or affecting any property (other than a charge or direction for the payment of debts) is given or made by a will attests the execution of the will, the devise, legacy, estate, interest, gift or appointment is void, but only so far as concerns—

(a) the person so attesting the execution of the will; or

(b) his spouse; or

(c) any person claiming under him or his spouse.

(2) Notwithstanding a devise, legacy, estate, interest, gift or appointment referred to in Subsection (1), the person attesting the execution of the will is not incompetent to be admitted a witness to prove the execution or the validity or invalidity of the will.

20. ATTESTATION BY CREDITOR.

Where by a will any property is charged with a debt and—

(a) a creditor whose debt is so charged; or

(b) his spouse,

attests the execution of the will, the creditor shall, notwithstanding the charge, be admitted a witness to prove the execution of the will or the validity or invalidity of the will.

21. ATTESTATION BY EXECUTOR.

An executor of a will is not incompetent to be admitted a witness to prove the execution of the will, or the validity or invalidity of the will.

22. EXECUTION OF ALTERATIONS IN WILL.

(1) Except so far as the words or effect of the will before the alteration are not apparent, an obliteration, interlineation or other alteration made in a will after the execution of the will has no effect unless the alteration is executed in the manner in which a will is required by this Division to be executed.

(2) The will, and the alteration as part of the will, are duly executed if the signature of the testator and the subscription of witnesses are made—

- (a) in the margin or on some other part of the will opposite or near to the alteration; or
- (b) at the foot or end of, or opposite to, a memorandum—
 - (i) referring to the alteration; and
 - (ii) written at the end or some other part of the will.

23. REVOCATION OF WILL.

(1) A will or part of a will is not revoked otherwise than—

- (a) by marriage, as provided by Subsection (3); or
- (b) by another will or codicil executed in the prescribed manner; or
- (c) by a writing declaring an intention to revoke the will or part and executed in the manner in which a will is required by this Division to be executed; or
- (d) by the testator, or some person in his presence and by his direction, burning, tearing or otherwise destroying the will or part, with the intention of revoking it.

(2) A will is not revoked by a presumption of an intention on the ground of an alteration in circumstances.

(3) Subject to Subsections (4) and (5), a will is revoked by the marriage of the testator.

(4) Subsection (3) does not apply to a will made by a testator in exercise of a power of appointment when the property appointed by the will would not pass to his executor or administrator in default of the appointment.

(5) A will expressed to be made in contemplation of a marriage is not revoked by the solemnization of the marriage.

24. REVIVAL OF REVOKED WILL.

(1) A will or a part of a will that has been revoked is revived only—

- (a) by re-execution; or
- (b) by a codicil executed in the prescribed manner and showing an intention to revive the will or part.

(2) Unless the contrary intention appears by the will, where a will that has been partly revoked and afterwards wholly revoked is revived, the revivor does not extend to so much of the will as was revoked before it was wholly revoked.

25. GENERAL CONSTRUCTION OF WILL.

Unless the contrary intention appears by the will, a will shall be construed, with reference to the property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator.

26. SAVING OF CERTAIN GIFTS.

A conveyance or other act (other than an act by which the will is revoked in accordance with this Division) made or done subsequently to the execution of a will of, or relating to, property comprised in the conveyance or act does not prevent the operation of the will with respect to any estate or interest in the property that the testator had power to dispose of by will at the time of his death.

27. FAILURE OF SPECIFIC DEVISE.

Where a devise of real estate or of an interest in real estate fails or is void by reason of—

- (a) the death of the devisee in the lifetime of the testator; or
- (b) the devise being contrary to law or otherwise incapable of taking effect,

then unless the contrary intention appears by the will the devise shall be included in the residuary devise (if any) contained in the will.

28. INCLUSION OF LEASE IN GENERAL DEVISE.

A devise of the land of the testator, or of the land of the testator in a place or in the occupation of a person mentioned in his will or otherwise described in a general manner, and any other general devise that would describe a leasehold estate if the testator had no freehold estate that could be described by it, shall, unless the contrary intention appears by the will, be construed to include the leasehold estates of the testator or his leasehold estates or any of them to which the description extends, as the case may be, as well as freehold estates.

29. GENERAL DEVISE, ETC., OF PROPERTY SUBJECT TO POWER OF APPOINTMENT.

(1) Unless the contrary intention appears by the will, a general devise of the real estate of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner—

- (a) shall be construed to include real estate or real estate to which the description extends, as the case may be, that he has power to appoint in any manner that he thinks proper; and
- (b) operates as an execution of that power.

(2) Unless the contrary intention appears by the will, a bequest of the personal estate of the testator or of personal property described in a general manner—

- (a) shall be construed to include personal estate or personal estate to which the description extends, as the case may be, that he has power to appoint in any manner that he thinks proper; and
- (b) operates as an execution of that power.

30. DEVISES WITHOUT WORDS OF LIMITATION.

Unless the contrary intention appears by the will, where real estate is devised to a person without words of limitation, that devise shall be construed to pass the whole estate or interest, whether the fee simple or other estate or interest, that the testator had power to dispose of by will, in that real estate.

31. MEANING OF “DIE WITHOUT ISSUE”, ETC.

(1) In a devise or bequest of real or personal estate, the expression “die without issue”, “die without leaving issue” or “have no issue”, or any other expression that may import either—

- (a) a want or failure of issue of a person in his lifetime or at the time of his death; or
- (b) an indefinite failure of his issue,

refers to a want or failure of issue in the lifetime or at the time of the death of that person and not an indefinite failure of his issue.

(2) This section does not extend to a case where an expression referred to in Subsection (1) imports “if no issue described in a preceding gift is born” or “if there is no issue who lives to attain the age, or otherwise answer the description, required, by a preceding gift to that issue, for obtaining a vested estate”.

32. DEVISES TO TRUSTEES, ETC.

Where any real estate is devised to a trustee or executor, unless the estate passing to the trustee or executor is limited expressly or by necessary implication by

the terms of the devise the devise passes the whole estate or interest in that real estate that the testator had power to dispose of by will.

33. GIFTS TO CHILDREN, ETC., WHO LEAVE ISSUE LIVING AT TESTATOR'S DEATH.

Unless the contrary intention appears by the will, where a person, being a child or other issue of the testator, to whom any property is devised or bequeathed for an estate or interest not determinable at or before his death, dies in the lifetime of the testator leaving issue, and issue of that person is living at the time of the death of the testator, the devise or bequest does not lapse but takes effect as if the death of that person had happened immediately after the death of the testator.

Division 4.

Saving of Validity in Certain Cases.

34. WILLS MADE BEFORE COMMENCEMENT DATE.

(1) The preceding provisions of this Part do not invalidate a will made before the commencement date that would have been valid if this Part had not been enacted, except so far as the will may be revoked or altered by a subsequent will validated by one of those provisions.

(2) Notwithstanding any other law, but subject to Subsection (3), a will or purported will made before the commencement date that would have been valid had it been made after that date is as valid and effectual as if this Act had been in force at the time when it was made.

(3) Subsection (2) does not apply to or in relation to the will of a person who died before the commencement date.

35. DEFECTIVE AND INFORMAL WILLS.

(1) Notwithstanding anything in this Division or in any other law but subject to Subsections (3) and (4), a will, whenever made, is not invalid, and a gift, devise, bequest, appointment or thing in or under any such will is not invalid and does not fail, solely by reason of—

- (a) any defect or want of formality; or
- (b) any failure to comply with this Act or of any such law,

if it is proved that the testator intended the will to be his last will and that intention is clear.

(2) Subject to Subsection (3), a gift, devise, appointment or thing to which Subsection (1) applies shall be given effect to, and has effect, according to the intention of the testator so far as that intention is clear and can be given effect to.

(3) Subsection (1) does not affect the operation of Section 19.

(4) Subsection (1) does not apply to or in relation to the will of a person who died before the commencement date.

Division 5.¹

Distribution in accordance with custom.

Subdivision A.² – General Provisions.

35A. INTERPRETATION.

³In this Division “**Distributor**” means—

- (a) the Public Curator; and
- (b) a person appointed by the Public Curator under Section 35G.

35B. APPLICATION.

⁴The provisions of this Division shall have effect notwithstanding any other provision in this Act or in any other law to the contrary.

35C. INDEMNITY.

⁵(1) No civil action or proceeding lies against any person employed to give effect to this Division in respect of anything done by him honestly and in good faith and in the belief that in doing the thing he was acting lawfully under the powers conferred on him by this Division.

(2) Subsection (1) shall have effect—

- (a) in respect of a person permanently or temporarily employed; and
- (b) whether or not a provision of this Division authorizes or justifies the doing of the thing.

Subdivision B.⁶ – Distribution.

35D. DISTRIBUTION ON INTESTACY.

⁷Where—

- (a) a person dies intestate; and
- (b) the estate of that person is dealt with under this Division,

¹ Division II.5 inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

² Subdivision II.5.A inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

³ Section 35A inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

⁴ Section 35B inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

⁵ Section 35C inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

⁶ Subdivision II.5.B inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

⁷ Section 35D inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

the estate of that person shall be distributed in accordance with the custom applicable to that person and in accordance with Section 35E.

35E. CERTIFICATION OF PERSONS ENTITLED TO ESTATE.

⁸(1) The persons entitled to the estate of a person who dies intestate are the persons certified under Subsection (2) as being so entitled.

(2) A District Officer or other person who, in the opinion of the Public Curator is competent to certify customary entitlements where a person dies intestate, shall certify the persons entitled to the estate of that deceased person.

35F. DISTRIBUTION BY WILL.

⁹(1) Where a person dies testate, that person's estate shall be distributed in accordance with his will.

(2) Nothing contained in Subsection (1) shall be construed as authorizing the disposition of customary land by will, and that subsection shall be read and construed accordingly.

35G. DISTRIBUTORS.

¹⁰(1) For the purposes of this Division, the Public Curator is a Distributor.

(2) The Public Curator may appoint to be Distributors such persons as he considers necessary to give effect to this Division.

(3) A Distributor appointed under Subsection (2) shall, within the area specified by the Public Curator, administer the estate of a deceased person to whom this Division applies.

(4) Nothing contained in this section shall be construed as authorizing a Distributor to deal with customary land, and the provisions of this section shall be read and construed accordingly.

35H. PAYMENT OF DEBTS.

¹¹(1) A Distributor may, if in his opinion it is necessary so to do, by notice published in a newspaper circulating in the area in which a person dies—

- (a) publicize that person's death; and
- (b) invite creditors to claim, within 14 days of the date of publication of the notice, payment of debts due from the deceased person out of his estate.

(2) Where a deceased person's debts exceed the value of his estate, the Public Curator or the Distributor administering the deceased person's estate shall, to the

⁸ Section 35E inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

⁹ Section 35F inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

¹⁰ Section 35G inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

¹¹ Section 35H inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

extent that the deceased person's estate allows, pay to each creditor an amount, as nearly as possible, proportionate to the amount which that creditor's debt bears to the combined debt of all creditors.

(3) A Distributor may sell or barter personal property for the purpose of paying debts due from a deceased person.

35I. UNDISTRIBUTED MONEYS TO BE PAID INTO CONSOLIDATED REVENUE FUND.

¹²Where—

- (a) a person dies intestate; and
- (b) after the expiration of six years commencing on the date of that person's death, moneys or personal property remain to the credit of that person's estate; and
- (c) no person entitled to the deceased person's estate claims the moneys or the personal property,

the Public Curator or the Distributor administering that person's estate shall—

- (d) in the case of moneys, pay such moneys into; and
- (e) in the case of personal property, sell the personal property by public auction and pay the proceeds of such sale into,

the Consolidated Revenue Fund.

Subdivision C.¹³ – Miscellaneous.

35J. CHARGES FOR DISTRIBUTION AND ADMINISTRATION.

¹⁴(1) Subject to Subsection (2), a Distributor shall, before distributing the estate of a deceased person, deduct from the estate all costs connected with such distribution.

(2) Notwithstanding Subsection (1), where, before the payment of debts under Section 35H, the value of the estate of the deceased person does not exceed K5,000.00 no costs connected with distribution shall be deducted under that subsection.

(3) Where, before the payment of debts under Section 35H, the value of the estate of the deceased person exceeds K5,000.00, the Distributor administering the estate of that deceased person shall—

- (a) for the purposes of administration, deduct from the estate an amount not exceeding 5% of the value of the estate; and
- (b) pay into the Consolidated Revenue Fund the amount so deducted.

¹² Section 35I inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

¹³ Subdivision II.5.C inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

¹⁴ Section 35J inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

35K. DISPUTES.

¹⁵(1) Where there is a dispute in respect of entitlement to the estate of a person who dies intestate, that dispute shall be dealt with under the *Village Courts Act 1989*.

(2) If there is no Village Court in the area in which the deceased person lived immediately before his death, the dispute shall be dealt with by a District Court Magistrate.

35L. REPORTS.

¹⁶(1) As soon as practicable after 31 December in each year, a Distributor shall, in respect of that year, send to the Public Curator a report on the estates that he has administered.

(2) A report under Subsection (1) shall be in the form set out in Schedule 4.

¹⁵ Section 35K inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

¹⁶ Section 35L inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s1.

PART III. – PROBATE AND ADMINISTRATION GENERALLY.***Division 1.******Preliminary.*****36. INTERPRETATION OF PART III.**

(1) In this Part, unless the contrary intention appears—

“conveyance” includes a mortgage, lease, assent, vesting declaration, disclaimer, release and every other assurance of property or of an interest in property by an instrument other than a will;

“disposition” includes a conveyance, devise, bequest and appointment of property contained in a will;

“estate” means real and personal estate;

“income” includes rents and profits;

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

“pecuniary legacy” includes—

- (a) an annuity; and
- (b) a general legacy; and
- (c) a demonstrative legacy so far as it is not discharged out of the designated property; and
- (d) any other general direction by a testator for the payment of money,

including all duties relating to the property of a deceased person free from which the devise, bequest or payment is made to take effect;

“personal chattels” means carriages, 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 does not include—

- (a) chattels used at the death of the intestate for business purposes;
or
- (b) money or securities for money;

“person of unsound mind” means a person of unsound mind as that expression is used in the *Public Health Act 1973*;

“possession” includes the receipt of rents and profits, or the right to receive rents and profits (if any);

“power to postpone sale” means power to postpone in the exercise of a discretion;

“property” includes a thing in action and an interest in property;

“purchaser” means a lessee, mortgagee or other person who in good faith acquires an interest in property for valuable consideration, or an intending purchaser;

“rent” includes a rent service or a rent charge or other rent, toll, duty or annual or periodical payment in money or money’s worth issuing out of or charged on land, other than mortgage interest as such;

“rent charge” includes a fee farm rent;

“the Rules” means any Rules of Court made under Section 184 (*rules of court*) of the *Constitution* for the purposes of this Part;

“securities” includes stocks, funds or shares;

“trustee company” means a trustee company within the meaning of the *Trustee Companies Act 1966*;

“trust for sale”, in relation to land, means an immediate binding trust for sale—

- (a) whether or not exercisable at the request or with the consent of any person; and
- (b) whether with or without a power to postpone the sale;

“valuable consideration” includes marriage but does not include a nominal consideration in money.

(2) In this Part—

- (a) a reference to a child or issue living at the death of any person includes a reference to a child or issue *en ventre sa mere* at the death; and
- (b) a reference to the estate of a deceased person includes a reference to property over which the deceased exercised a general power of appointment by his will.

37. SAVING OF CERTAIN OTHER LAWS.

This Part does not—

- (a) derogate any powers of the National Court that exist independently of this Act; or
- (b) affect any law dispensing with probate or administration; or
- (c) affect any law expressly regulating the distribution of money or other property of a deceased person.

Division 2.***Grants of Probate and Administration.*****38. GENERAL JURISDICTION.**

The National Court has jurisdiction to grant probate of the will or administration of the estate of a deceased person leaving property within the country.

39. GRANT ON EVIDENCE OR PRESUMPTION OF DEATH.

(1) Where the National Court is satisfied, whether by direct evidence or on presumption of death, that a person has died leaving property in the country, the Court has jurisdiction to grant probate of his will or administration of his estate as if he were a deceased person, notwithstanding that after the grant it may appear that he was living at the date of the grant.

(2) Subject to this Act, where a grant is or has been made of probate of the will or administration of the estate of a person who the National Court is satisfied is dead, notwithstanding that it subsequently appears that the person was living at the date of the grant the person administering the estate by virtue of the grant has the same rights, powers, privileges, duties and liabilities as the personal representative of a deceased person, and in any Act the expression “personal representative” includes the person administering the estate for the time being by virtue of the grant.

40. SPECIAL PROVISION IN RESPECT OF PRESUMPTION OF DEATH.

(1) If a grant is made on presumption of death—

- (a) the grant shall be expressed to be made on presumption of death only; and
- (b) the estate shall not be distributed without the leave of the National Court, which may be given—
 - (i) in the grant or by a separate order; and
 - (ii) unconditionally or subject to such conditions as the Court thinks reasonable; and
 - (iii) in particular, subject to an undertaking being entered into, or security being given, by any person who takes under the distribution that in the event of the grant being revoked he will restore any money or property received by him, or the amount or value of the money or property.

(2) The National Court may direct the personal representative, before distributing the estate, to give such notices as the Court thinks proper in the circumstances in order that—

- (a) if the person whose death has been presumed is still living—that person; or

- (b) if he has died since the date of the grant—any person interested in the estate,

may lodge with the Registrar, within such time as is specified by the Court, a caveat against the distribution.

(3) If the National Court directs notice to be given under Subsection (2), the personal representative does not have the benefit of Section 41(3) or (4) or Section 61(2) unless he complies with the direction.

(4) If a caveat is duly lodged within the time specified under Subsection (2), the personal representative shall not distribute the estate until the caveat is withdrawn or removed.

(5) An application for leave to distribute the estate and for directions may be made, and a caveat may be lodged, withdrawn or removed, in accordance with the Rules, and the National Court may make such order in respect of costs and otherwise as it thinks proper.

41. REVOCATION OF GRANT WHERE PERSON LIVING.

(1) Where the National Court grants representation of the estate of a person, and it subsequently appears that he was living at the date of the grant, the Court shall revoke the grant on such terms (if any) with respect to any proceedings commenced by or against the personal representative, and in respect of costs or otherwise, as the Court thinks proper.

(2) Proceedings for the revocation of the grant may be taken by—

- (a) the person himself; or
- (b) if the person has died since the date of the grant—any person who is—
 - (i) entitled to apply for representation; or
 - (ii) interested in the estate of the deceased person,

and the proceedings may be by motion or otherwise in accordance with the Rules.

(3) If a grant is revoked under Subsection (1), the personal representative under the revoked grant shall duly account for, and pay and transfer, all money and property received by or vested in him as the personal representative, and then remaining in his hands, as the National Court directs, but is not liable for any money or property paid or transferred by him in good faith under the representation before the revocation.

(4) Subsection (3) does not affect any commission, protection, indemnity, reimbursement or right to which the personal representative is entitled under this Act.

(5) Subject to Subsection (6), the revocation of a grant under Subsection (1) does not invalidate any payment or transfer lawfully made by or to the personal representative in the course of the administration of the estate before the revocation.

(6) Subsection (5) does not prejudice the right of—

- (a) the person supposed to be dead; or
- (b) if he has died since the date of the grant—the personal representative to whom a grant is made after the revocation; or
- (c) any other person,

to follow assets into the hands of the persons—

- (d) among whom the assets have been distributed; or
- (e) who have received the assets,

other than purchasers for value without notice that the person supposed to be dead was actually alive at the date of the grant.

(7) The person supposed to be dead, or if he has died since the date of the grant the personal representative to whom a grant is made after the revocation, is entitled to receive from the Consolidated Revenue Fund (which is, to the necessary extent, appropriated accordingly) the amount of any duty paid in respect of the revoked grant.

(8) On the revocation of a grant under Subsection (1), the National Court may make such vesting order as it thinks proper.

42. GRANT BY REGISTRAR.

(1) On application made to him supported by affidavits on which in his opinion the National Court would grant probate or administration, the Registrar may, subject to this section, make a grant of representation by signing his order for the grant and sealing it with the seal of the National Court.

(2) The Registrar shall not grant representation without an order of the National Court—

- (a) where a caveat has been lodged, and has not expired or been withdrawn; or
- (b) where it appears to him to be doubtful whether the probate or administration ought to be granted.

43. DATE OF AND ISSUE OF GRANT.

Representation shall be deemed to be granted—

- (a) in the case of a grant by the National Court—when the order for the grant has been taken out and filed in the office of the Registrar; and
- (b) in the case of a grant by the Registrar—when the order for the grant has been signed by him and sealed with the seal of the National Court,

and a grant of representation, whether made by the Court or by the Registrar, shall, subject to Section 136, be issued by the Registrar in the name and under the seal of the Court.

Division 3.

Devolution of Property, etc.

44. INITIAL VESTING IN PUBLIC CURATOR.

Until probate or administration is granted, the property of a deceased person vests in the Public Curator, in the same manner and to the same extent as formerly personal estate in England vested in the Ordinary.

45. VESTING ON GRANT.

(1) For the purposes of this section, the real property of a deceased person shall be deemed to include—

- (a) all his estate passing under any gift contained in his will that operates as an appointment under a general power to appoint by will; and
- (b) every estate for the life of another that that person could, if of full age and capacity, have disposed of by his will.

(2) Subject to any limitations expressed in the grant, on the National Court granting representation of a deceased person all the property, or all the property then unadministered, of that person, whether held by him beneficially or in trust, vests as from his death in the personal representative to whom representation is granted for all the estate or interest of the deceased person in that property.

(3) If there is more than one representative, the property referred to in Subsection (2) vests in them as joint tenants.

46. RIGHTS AND DUTIES OF EXECUTOR, ETC.

Subject to this Act and any other Act, the personal representative of a deceased person has the same rights and is subject to the same duties with respect to the property of that person as executors and administrators had or were subject to with respect to personal estate before 1 January 1873.

Division 4.

Executors and Administrators.

Subdivision A. – General Provisions.

47. NEGLECT TO PROVE.

(1) The National Court may summon any person appointed as executor in a will to prove or renounce probate.

(2) Without limiting the generality of Subsection (1), where—

- (a) the executor appointed in a will or a person having possession of a will refuses or fails to bring the will into the National Court; or

- (b) the executor appointed in a will refuses or fails to prove or to renounce probate,

within three months after the death of the testator—

- (c) a party interested under the will or in the estate; or
- (d) the Public Curator; or
- (e) a creditor of the testator,

may apply to a Judge in Chambers for a summons calling on the executor or person having possession of the will to show cause why—

- (f) he should not bring the will into Court; or
- (g) the executor should not prove or renounce probate; or
- (h) administration with the will annexed should not be granted to the applicant.

(3) If the executor or other person does not appear and show sufficient cause in accordance with a summons under this section, a Judge may, on proof of service of the summons—

- (a) make an order on the executor or person, as the case may be, to bring the will into the National Court; and
- (b) make such further or other order in the premises and as to costs as to him seems just,

and the Court may grant administration of the estate to the applicant.

48. CESSER OF RIGHT OF EXECUTOR TO PROVE.

(1) Subject to Subsection (2), where a person appointed as executor in a will—

- (a) survives the testator but dies without having taken out probate; or
- (b) is summoned to take out probate and does not appear to the summons; or
- (c) renounces probate,

his rights in respect of the executorship cease, and the representation of the testator and the administration of his estate devolve and shall be committed as though that person had not been appointed as executor in the will.

(2) Notwithstanding Subsection (1), an executor who has renounced probate may be permitted by the National Court to withdraw the renunciation and prove the will, and where an executor who has renounced probate has been so permitted—

- (a) the probate takes effect and shall be deemed always to have taken effect without prejudice to the previous acts and dealings of, and previous notices to, any other personal representative who has previously proved the will or taken out letters of administration; and

- (b) a memorandum of the subsequent probate shall be endorsed on the original probate or letters of administration.

49. DEATH OF PROVING EXECUTOR.

(1) Subject to Subsection (2), an executor of a sole or last surviving proving executor of a testator is the executor of that testator.

(2) Subsection (1) does not apply to an executor who does not prove the will of his testator, and in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator it ceases to apply on that probate being granted.

(3) So long as the chain of representation is unbroken, the last executor in the chain is the executor of every preceding testator.

(4) The chain of representation is broken by—

- (a) an intestacy; or
- (b) the failure of a testator to appoint an executor; or
- (c) a failure to obtain probate of a will,

but is not broken by a temporary grant of administration if probate is subsequently granted.

(5) A person in the chain of representation of a testator—

- (a) has the same rights in respect of the estate of the testator as the original executor would have had if living; and
- (b) is, to the extent which the estate of the testator has come to his hands, answerable as if he were an original executor.

50. POWERS OF PROVING EXECUTOR.

Where probate is granted to one or some of two or more persons appointed as executors in a will, whether or not power is reserved to the others or other to prove, all the powers that by law are conferred on the personal representative may be exercised by the proving executor or executors and are as effectual as if all the persons named as executors had concurred.

51. GRANTS IN RESPECT OF REAL AND PERSONAL ESTATE.

(1) Subject to Subsection (3), representation in respect of the real estate or any part of the real estate of a deceased person may be granted—

- (a) separately or together with representation in respect of his personal estate or any part of his personal estate; or
- (b) in respect of real estate only, where there is no personal estate; or
- (c) in respect of a trust estate only.

(2) Subject to Subsection (3), a grant of administration in respect of real or personal estate or both may be limited in any way that the National Court thinks proper.

(3) Where the estate of the deceased is known to be insolvent, the grant of representation in respect of the real and personal estate shall not be severed except as regards a trust estate.

52. EXECUTOR ACTING WHILE ADMINISTRATION IN FORCE.

Where administration has been granted in respect of any real or personal estate of a deceased person, no person may bring an action or otherwise act as executor of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked.

53. ADMINISTRATION PENDING LITIGATION.

(1) Where legal proceedings—

- (a) concerning the validity of the will of a deceased person; or
- (b) for obtaining, recalling or revoking a grant,

are pending, the National Court may grant administration of the estate of the deceased to an administrator.

(2) An administrator appointed under Subsection (1)—

- (a) has all the rights and powers of a general administrator other than the right of distributing the residue of the estate; and
- (b) is subject to the immediate control of the National Court; and
- (c) shall act under the direction of the Court.

(3) The National Court may assign, out of the estate of the deceased, to an administrator appointed under Subsection (1) such reasonable remuneration as the Court thinks proper.

54. LEGAL PROCEEDINGS AFTER TEMPORARY ADMINISTRATION.

If, while any legal proceedings are pending in a court by or against an administrator to whom a temporary administration has been granted, that administration is revoked or otherwise terminates, the National Court may order that the proceedings be continued by or against the new personal representative as if it had been originally commenced by or against him, but subject to such conditions and variations (if any) as the Court directs.

55. SPECIAL GRANT WHERE PERSONAL REPRESENTATIVE ABSENT.

(1) If, at the expiration of 12 months after the death of a person, a personal representative of the deceased to whom a grant has been made is residing out of the country, the National Court may, on the application of a creditor or person interested

in the estate of the deceased, grant to him special administration of the estate of the deceased in such form as is prescribed by the Rules, or as is directed by the Court.

(2) For the purpose of any legal proceedings to which the administrator under the special administration is a party, the National Court may order the transfer into court of any money or securities belonging to the estate of the deceased person, and all persons must obey the order.

(3) If the personal representative capable of acting as such returns to and resides within the country while any legal proceedings to which a special administrator is a party are pending in a court—

- (a) the personal representative shall be made a party to the proceedings; and
- (b) the costs of and incidental to the special administration and the legal proceedings shall be paid by such person and out of such fund as the National Court directs.

56. ADMINISTRATION WITH WILL ANNEXED.

Administration with the will annexed may be granted—

- (a) where a person dies—
 - (i) leaving a will but without having appointed an executor; or
 - (ii) leaving a will and having appointed an executor who—
 - (A) is not both willing and competent to take probate; or
 - (B) is resident out of the country; or
- (b) in any case provided for by or under this Act; or
- (c) where the making of such a grant has been customary before the commencement date,

and the will of the deceased shall be performed and observed as if probate had been granted to an executor.

57. ADMINISTRATION DURING MINORITY OF EXECUTOR.

(1) Where an infant is sole executor of a will, administration with the will annexed shall be granted to his guardian, or to such other person as the National Court thinks proper, until the infant attains the age of 21 years, and on his attaining that age probate may be granted to him.

(2) The appointment in a will of an infant to be an executor does not operate to transfer any interest in the property of the deceased to the infant or to constitute him a personal representative for any purpose until probate is granted to him under this section.

58. RIGHTS AND LIABILITIES OF ADMINISTRATOR.

Subject to any limitations in the grant, a person to whom administration of the estate of a deceased person is granted has the same rights and liabilities and is accountable in the same manner as if he were the executor of the deceased.

Subdivision B. – Duties, Rights and Obligations.**59. INVENTORIES.**

(1) When lawfully required to do so, the personal representative of a deceased person shall exhibit on oath in the National Court a correct inventory and account of the property of the deceased, and the National Court has the same power as the former Supreme Court had before the commencement date to require personal representatives to bring in inventories.

(2) Without limiting the generality or effect of Subsection (1), a creditor to whom a grant is made in his capacity as creditor shall—

- (a) within 15 months after the date of the grant, deposit or cause to be deposited in the office of the Registrar a correct account, verified by him by affidavit—
 - (i) of the administration of the estate; and
 - (ii) as to receipts and disbursements; and
 - (iii) as to what portion is retained by him and what portion remains uncollected; and
- (b) whenever ordered to do so by the National Court or a Judge, on the application of the Registrar made after the expiration of the period referred to in Paragraph (a), deposit in the office of the Registrar such accounts verified by him by affidavit, as the Court or Judge thinks proper.

60. CLAIMS AGAINST ESTATES.

(1) A personal representative who has notice that a claim has been or may be made against the estate of which he is the personal representative may serve on a person making or possibly entitled to make such a claim a notice requiring him—

- (a) to take, within a period of three months after the date of service of the notice, all proceedings proper to enforce or to establish the claim; and
- (b) duly to prosecute the claim.

(2) After the expiration of the period referred to in Subsection (1), the personal representative may, by notice of motion or summons served on the person on whom notice was served under that subsection or on any person claiming through him, apply to the National Court or to a Judge for an order under Subsection (3).

(3) On the hearing of an application under Subsection (2), if the National Court or Judge is not satisfied that proceedings have been taken and are being duly prosecuted, it or he, as the case may be, may—

- (a) order that the period referred to in Subsection (1) be extended; or
- (b) order that the claim of any person served with notice of the application be barred for all purposes,

and may—

- (c) make any further or other order enabling the estate to be distributed or dealt with without regard to the claim; and
- (d) impose such conditions and give such directions (including directions as to the payment of the costs of or incidental to the application) as to the Court or Judge seem just.

61. PROTECTION OF PERSONS ACTING ON GRANT.

(1) A person making a payment or disposition in good faith under a representation, or permitting any such payment or disposition to be made, is indemnified and protected in so doing, notwithstanding any defect in, or circumstance affecting the validity of, the representation.

(2) Where a representation is revoked—

- (a) a payment or disposition made in good faith to a personal representative under the representation before the revocation is a valid discharge to the person making it; and
- (b) the personal representative who acted under the revoked representation may retain and reimburse himself in respect of any payments or dispositions made by him that the person to whom representation is afterwards granted might properly have made.

62. PAYMENT OVER OF MONEYS OF DECEASED EMPLOYEE.

(1) Where—

- (a) an employee has died and his employer holds money or other personal property on account of the employee; and
- (b) the employer is satisfied by statutory declaration that the value of the estate of the employee after payment of debts and testamentary expenses (if any) will not exceed K1,000.00,

the employer may, without requiring the production of probate or letters of administration, pay or transfer—

- (c) to the spouse or child of the deceased employee; or
- (d) to any other person appearing to be entitled to the property of the deceased employee,

the money or personal property to an amount not exceeding in the aggregate K500.00.

(2) A receipt signed by a person above or apparently above the age of 16 years to whom money or property is paid or transferred by an employer in the *bona fide* exercise of the powers conferred by Subsection (1) is a discharge to the employer from all liability in respect of money or property so paid or transferred.

(3) This section does not prejudice or affect any right or remedy of a person entitled under the will of the deceased employee or under the law relating to the disposition of estates of deceased persons to recover from the person to whom it was paid or transferred any money or property paid or transferred by the employer under the powers conferred by Subsection (1).

63. FRAUDULENTLY OBTAINING OR RETAINING OF ESTATE.

If, to the defrauding of creditors or without full valuable consideration, a person—

(a) obtains, receives or holds the property or any part of the property of a deceased person; or

(b) effects the release of a debt or liability due to the estate of the deceased, he is charged as executor in his own wrong to the extent of—

(c) the property received or coming into his hands; or

(d) the debt or liability released,

as the case may be, less the amount of any payment made by him that might properly be made by a personal representative.

64. LIABILITY OF ESTATE OF PERSONAL REPRESENTATIVE FOR WASTE, ETC.

Where a person as personal representative of a deceased person (including an executor in his own wrong) wastes or converts to his own use any part of the estate of the deceased, and dies, his personal representative is, to the extent of the available assets of the defaulter, liable and chargeable in respect of the waste or conversion in the same way as the defaulter would have been if he were still alive.

Subdivision C. – Discharge and Removal of Executors and Administrators and New Appointments.

65. DISCHARGE OR REMOVAL OF PERSONAL REPRESENTATIVE.

(1) Notwithstanding anything in any other law, where an executor or administrator to whom probate or administration has been granted, or an administrator who has been appointed under this section—

(a) remains out of the country for more than two years; or

- (b) desires to be discharged from his office of executor or administrator; or
- (c) after the grant or appointment
 - (i) refuses to act, or is unfit to act, in that office; or
 - (ii) is incapable of acting in that office,

a Judge may, on application in a summary way by summons in Chambers, order—

- (d) his discharge or removal; and
- (e) if the Judge thinks fit, the appointment of some proper person as administrator in his place,

on such terms and conditions as the Judge thinks proper and may make—

- (f) all necessary orders—
 - (i) for vesting the estate in the new administrator; and
 - (ii) as to accounts; and
- (g) such order as to costs as the Judge thinks proper.

(2) Notice of an application under Subsection (1) shall be served on such persons (if any) as the Judge directs.

(3) From the date of the order, an executor or administrator removed or discharged under Subsection (1) ceases to be liable as such for acts and things done after that date.

(4) On an appointment under this section, the property and rights vested in, and the liabilities properly incurred in the due administration of the estate by, the personal representative discharged or removed are vested in and transferred to the administrator appointed by the order, who, as such, has the same privileges, rights, powers, duties, discretions and liabilities as he would have if probate or administration had been granted to him originally.

66. REMOVAL OF ADMINISTRATOR, ETC., IN CREDITORS' ADMINISTRATION.

(1) On being satisfied that—

- (a) there has been negligence or maladministration in the affairs of an estate of which a person has obtained administration in the capacity of a creditor; or
- (b) a condition of an administration bond executed by a person who has obtained administration in that capacity has been broken in any substantial particular,

the National Court or a Judge may—

- (c) order the Registrar to assign the administration bond to the Public Curator or to a person named in the order; and
- (d) if the Court or Judge thinks fit—

- (i) remove the creditor from the position of administrator and appoint the Public Curator or another person named in the order to be administrator in place of the administrator so removed, on such terms and conditions as the Court or Judge thinks proper; and
- (ii) make all necessary orders for vesting the estate in the new administrator and as to accounts, and such order as to costs as the Court or Judge thinks proper.

(2) Where an order is made under Subsection (1)(c), the provisions of Section 89(i)(i) apply to the bond concerned.

(3) On an appointment under Subsection (1)(d), Section 65(3) and (4) apply, as far as they are appropriate, as if the appointment had been made under Section 65.

Division 5.

Administration of Assets.

67. PRIORITIES OF DEBTS.

(1) Subject to Subsection (2) and to the *Insolvency Act 1951*, in the administration of the estate of a deceased person no debt or liability of the person is entitled to a priority or preference by reason only of the fact that the debt or liability is secured by or arises under a bond, deed or other instrument under seal or is otherwise made or constituted a specialty debt, but all the creditors, both specialty and simple contract creditors, of the person stand in equal degree and shall be paid accordingly out of the assets, legal and equitable, of the deceased person, notwithstanding any law to the contrary.

(2) Subsection (1) does not prejudice or affect any lien, charge or other security that a creditor holds or to which he is entitled for payment of his debt.

(3) In the administration of the estate of a deceased person, debts of record, whether of record in his lifetime or obtained against his executor or administrator for debts incurred by the deceased, rank in the same degree as if they were specialty or simple contract debts.

(4) A person who has obtained or obtains representation of a deceased person shall pay, in due course of administration, all the debts of the person rateably and proportionably and according to the priority required by law, and without preferring his own debt by reason of his having obtained the representation.

68. ASSETS FOR PAYMENT OF DEBTS.

(1) The property, whether legal or equitable, of a deceased person to the extent of his beneficial interest, and the property of which a deceased person under a general power disposes by his will, are assets for payment of the duties and fees payable under Part VII. and of his debts (whether by specialty or simple contract) and liabilities.

(2) A disposition by will inconsistent with Subsection (1) is void as against the creditors, and if necessary the National Court shall administer the property for the purpose of the payment of the debts and liabilities.

(3) This section takes effect without prejudice to the rights of encumbrancers.

69. TRUST FOR SALE ON INTESTACY.

(1) In this section, “property” means every beneficial interest, including rights of entry and reverter, of the intestate in property that he could, if of full age and capacity, have disposed of by his will, otherwise than in right of a power of appointment.

(2) On the death of a person intestate as to any property, the property shall be held by his personal representative

- (a) as to the real estate (including chattels real)—on trust to sell it; and
- (b) as to the personal estate—on trust to call in, sell and convert into money such part of it as does not consist of money,

with power to postpone the sale and conversion for such period as the personal representative, without being liable to account, thinks proper, and so that—

- (c) any reversionary interest shall not be sold until it falls into possession, unless the personal representative sees special reason for sale; and
- (d) unless required for purposes of administration owing to want of other assets, personal chattels shall not be sold except for some special reason.

(3) Out of the net money arising from the sale and conversion of the property (after payment of costs), and out of the ready money of the deceased (so far as it is not disposed of by his will (if any)), the personal representative shall pay all such funeral, testamentary and administration expenses, debts and other liabilities as are properly payable out of it having regard to the rules of administration contained in this Division, and out of the residue of the money the personal representatives shall set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will (if any) of the deceased.

(4) Pending the distribution of the whole or any part of the property of the deceased, the personal representative may invest the residue of the money, or so much of the money as has not been distributed, in investments authorized by any Act for the investment of trust money, with power, at the discretion of the personal representative, to change the investments for others of a similar nature.

(5) After payment of rates, taxes, rents, costs of insurance or repairs and other outgoings properly attributable to income, the income, including net rents and profits of estate (including chattels real) of so much of the estate of the deceased as is not disposed of by his will (if any) or is not required for the administration purposes referred to in this section may, however the property is invested, be treated and applied as from the death of the deceased as income.

(6) This section does not affect the rights of any creditor of the deceased or the rights of the State in respect of duties.

(7) Where the deceased leaves a will, this section has effect subject to the provisions of the will.

70. ADMINISTRATION OF ASSETS.

(1) Where the estate of a deceased person is not solvent, his property shall be administered in accordance with the rules set out in Part I. of Schedule 1.

(2) Where the estate of a deceased person is solvent, his property is, subject to the Rules and the provisions of this Act as to charges on property of the deceased and to the provisions (if any) of his will, applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable out of it, in the order specified in Part II. of Schedule 1.

(3) This Part does not affect Sections 152 and 153 relating to the payment of duty under Part VII.

71. PAYMENT OF CHARGES.

(1) Where a person—

- (a) dies possessed of or entitled to, or entitled under a general power of appointment to, an interest in property that at the time of his death is charged with the payment of money by way of mortgage, charge or otherwise (including a lien for unpaid purchase money); and
- (b) disposes of that property by his will; and
- (c) has not by will, deed or other instrument signified a contrary or other intention,

the interest so charged is, as between the different persons claiming through the deceased primarily liable for the payment of the charge, and every part of the interest according to its value shall bear a proportionate part of the charge on the whole.

(2) A contrary or other intention referred to in Subsection (1) shall not be deemed to be signified—

- (a) by a general direction for the payment of debts, or of all the debts, of the testator out of his personal estate, his residuary real and personal estate or his residuary real estate; or
- (b) by a charge of debts on that estate,

unless the intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) This section does not affect the right of a person entitled to a charge referred to in Subsection (1) to obtain payment or satisfaction out of the other assets of the deceased or otherwise.

72. ASSENT, ETC., BY PERSONAL REPRESENTATIVE.

(1) In this section, “purchaser” means a purchaser for money or money’s worth.

(2) A personal representative may assent to the vesting of an estate or interest in real estate (including chattels real)—

(a) to which the testator or intestate was entitled or over which he exercised a general power of appointment by his will; and

(b) which devolved on the personal representative,

in a person who (whether by devise, bequest, devolution, appropriation or otherwise) is entitled to that estate or interest—

(c) beneficially; or

(d) as a trustee or personal representative.

(3) An assent under Subsection (2)—

(a) vests in the person entitled the estate or interest to which it relates; and

(b) unless a contrary intention appears, relates back to the death of the deceased.

(4) The statutory covenants implied by a person expressed to convey as personal representative may be implied in an assent in the same way as in a conveyance by deed.

(5) An assent to the vesting of a legal estate—

(a) shall be written and signed by the personal representative; and

(b) shall name the person in whose favour it is given; and

(c) vests in that person the legal estate to which it relates,

and an assent not written or not in favour of a named person does not pass a legal estate.

(6) A conveyance of a legal estate to a purchaser by a personal representative is not invalidated by reason only of the fact that the purchaser has notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties and legacies of the deceased have been discharged or provided for.

(7) An assent or conveyance given or made by a personal representative does not, except in favour of a purchaser of a legal estate, prejudice the right of the personal representative or any other person to recover the estate or interest to which the assent or conveyance relates, or to be indemnified out of the estate or interest against any duties, debts or liabilities to which it would have been subject if there had not been an assent or conveyance.

(8) As a condition of giving an assent or of making a conveyance, a personal representative may require security for the discharge of any duties, debts or liabilities referred to in Subsection (7), but he is not entitled to postpone giving an assent merely by reason of the existence of any such duties, debts or liabilities if reasonable arrangements have been made for discharging them.

(9) An assent may be given subject to an estate by way of mortgage.

73. CONVEYANCE AFTER REVOCATION OF GRANT.

A conveyance of an interest in property made to a purchaser by a person to whom representation has been granted is valid notwithstanding a subsequent revocation or variation of the representation.

74. FOLLOWING OF PROPERTY, ETC.

(1) An assent or conveyance by a personal representative to a person other than a purchaser does not prejudice any right of a person to follow the property to which the assent or conveyance relates, or property representing that property, into the hands of—

- (a) the person in whom it is vested by the assent or conveyance; or
- (b) any other person (other than a purchaser) who has received the property or in whom it is vested.

(2) Notwithstanding any assent or conveyance referred to in Subsection (1), on the application of a creditor or other person interested the National Court may—

- (a) order that any sale, exchange, mortgage, charge, lease, payment, transfer or other transaction be carried out that the Court thinks requisite for the purpose of giving effect to the rights of the persons interested; or
- (b) declare that a person, other than a purchaser in whom the property is vested, is a trustee for those purposes; or
- (c) give directions respecting the preparation and execution of a conveyance or other instrument or as to any other matter required for giving effect to the order; or
- (d) make a vesting order, or appoint a person to convey, in accordance with the *Trustees and Executors Act 1961*.

(3) This section does not prejudice the rights of a purchaser or a person deriving title under a purchaser.

75. MANAGEMENT.

(1) In dealing with the property of the deceased the personal representative has, for the purposes of administration—

- (a) the same powers and discretions, including power to raise money by mortgage with or without a power of sale or charge (whether or not by deposit of documents), as a personal representative had, before 1 January 1873, with respect to personal estate vested in him; and
- (b) all the powers, discretions and duties conferred or imposed by law on trustees holding land on an effectual trust for sale; and

(c) all the powers conferred by statute on trustees for sale, and so that every contract entered into by a personal representative is binding on, and enforceable by and against, the personal representative of the deceased, and may be carried into effect, varied or rescinded by him and in the case of a contract entered into by a predecessor, as if it has been entered into by himself.

(2) This section does not affect the right of a person to require an assent or conveyance to be made.

76. RAISING OF MONEY, ETC.

For the purpose of giving effect to beneficial interests, the personal representative may—

- (a) limit or demise land to trustees for a term of years absolute, with or without impeachment for waste, on usual trusts for raising or securing a principal sum for which the land or any part of the land is liable, and interest on that sum; or
- (b) limit or grant a rent charge for giving effect to an annual or periodical sum for which the land or the income from the land, or any part of that land or income, is liable.

77. POWERS AS TO APPROPRIATION.

(1) In this section—

“purchaser” means a purchaser for money or money’s worth;

“settled legacy, share or interest” includes—

- (a) a legacy, share or interest to which a person is not absolutely entitled in possession at the date of the appropriation; and
- (b) an annuity.

(2) This section—

- (a) applies whether or not the deceased died intestate; and
- (b) extends to property over which a testator exercises a general power of appointment; and
- (c) authorizes the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

(3) Subject to this section, the personal representative may appropriate any part of the property (including things in action) of the deceased, in its actual condition or state of investment at the time of appropriation, in or towards satisfaction of a legacy left by the deceased or of any other interest or share in his property, whether settled or not, in such manner as to the personal representative seems just and reasonable according to the respective rights of the person interested in the property of the deceased.

(4) An appropriation shall not be made under this section in such a way as to affect prejudicially a specific devise or bequest.

(5) Subject to the succeeding provisions of this section, an appropriation of property, whether or not it is an investment authorized by law or by the will of the deceased for the investment of money subject to the trust, shall not be made under this section except—

- (a) where it is made for the benefit of a person absolutely and beneficially entitled in possession—with his consent; or
- (b) where it is made in respect of a settled legacy, share or interest—with the consent of the trustee (if any) (not being also the personal representative) or the person who is for the time being entitled to the income of the legacy, share or interest.

(6) If the person whose consent is required under Subsection (5) is an infant or a person of unsound mind, the consent shall be given on his behalf by his parents or parent, testamentary or other guardian, committee or receiver or if, in the case of an infant, there is no such parent or guardian, by the National Court on the application of his next friend.

(7) A consent is not required on behalf of a person who comes into existence after the time of appropriation or who cannot be found or ascertained at that time.

(8) If there is no trustee (other than the personal representative) of a settled legacy, share or interest and no person of full age and capacity entitled to the income of it, no consent is required to an appropriation in respect of the legacy, share or interest if the appropriation is of an investment authorized by law or by the will (if any) of the deceased for the investment of money subject to the trust.

(9) For the purpose of an appropriation under this section, the personal representative—

- (a) may ascertain and fix the value of the respective parts of the property and the liabilities of the deceased in such manner as he thinks proper; and
- (b) shall, for the purpose of Paragraph (a), employ a duly qualified valuer where such employment is necessary; and
- (c) may make any conveyance (including an assent) that is necessary for giving effect to the appropriation.

(10) In making the appropriation, the personal representative shall have regard to the rights of—

- (a) any person who—
 - (i) may come into existence afterwards; or
 - (ii) cannot be found or ascertained at the time of the appropriation; and
- (b) any other person whose consent is not required by this section.

(11) Property that has been duly appropriated under this section shall be treated as an authorized investment, and may be retained or dealt with accordingly.

(12) An appropriation made under this section binds all persons interested in the property of the deceased whose consent is not required by this section.

(13) This section—

- (a) does not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased; and
- (b) takes effect with any extended powers conferred by the will of the deceased.

(14) Where an appropriation is made under this section in respect of a settled legacy, share or interest, the property appropriated remains subject to all trusts for sale and powers of leasing, disposition and management, or of varying investments, that would have been applicable to the property or the legacy, share or interest in respect of which the appropriation is made if no such appropriation had been made.

(15) If, after any real estate (including chattels real) has been appropriated in purported exercise of the powers conferred by this section, the person to whom it was conveyed disposes of it or an interest in it, then, in favour of a purchaser, the appropriation shall be deemed to have been made in accordance with the requirements of this section and after all necessary consents had been given.

78. APPOINTMENT OF TRUSTEES OF INFANT'S PROPERTY.

(1) Where—

- (a) an infant is absolutely entitled under the will or on the intestacy of a deceased person to—
 - (i) a devise or legacy; or
 - (ii) the residue of the estate of a deceased person; or
 - (iii) a share of the estate of the deceased; and
- (b) the devise, legacy, residue or share is not devised or bequeathed under the will of the deceased to trustees for the infant,

the personal representative of the deceased may—

- (c) appoint—
 - (i) the Public Curator; or
 - (ii) a trustee company; or
 - (iii) two or more, but not more than four, individuals (who may include the personal representative, or if there are more than one, any of them),
to be the trustee or trustees of—
 - (iv) the devise, legacy, residue or share for the infant; and

- (v) any land devised or any land being, or forming part of, the residue or share, for the purposes of any statutory provisions relating to settled land and the management of land during a minority; and
- (d) execute or do any assurance or thing necessary for vesting the devise, legacy, residue or share in the trustee or trustees so appointed.
- (2) On an appointment under Subsection (1)–
 - (a) the personal representative, as such, is discharged from all further liability in respect of the devise, legacy, residue or share; and
 - (b) the devise, legacy, residue or share may be retained in its existing condition or state of investment, or may be converted into money and the money invested in any authorized investment.

79. GIVING OF POSSESSION OF LAND.

(1) Before giving an assent or making a conveyance in favour of a person entitled, the personal representative may permit him to take possession of the land, but possession under any such permission does not prejudicially affect–

- (a) the right of the personal representative to take or resume possession; or
- (b) his power to convey the land as if he were in possession of the land,

subject to the interest of any lessee, tenant or occupier in possession or in actual occupation of the land.

(2) A person who, as against the personal representative, claims–

- (a) possession of; or
- (b) the appointment of a receiver for; or
- (c) a conveyance of; or
- (d) an assent to the vesting of,

any real estate (including chattels real) may apply to the National Court for directions with reference to the matter.

(3) On an application under Subsection (2), the National Court may make such vesting or other order as it thinks proper, and the provisions of the *Trustees and Executors Act 1961* relating to vesting orders and to the appointment of a person to convey apply.

80. POSTPONEMENT OF DISTRIBUTION.

Subject to this Part, a personal representative is not bound to distribute the estate of the deceased before the expiration of the period of one year from the death.

Division 6.

Distribution of intestate's Residuary Estate.

81. INTERPRETATION OF DIVISION 6.

(1) In this Division—

“**child**”, in relation to an intestate, includes an illegitimate child of the intestate;

“**issue**”, in relation to an intestate, includes an illegitimate child of the intestate;

“**residuary estate**”, in relation to an intestate, means—

- (a) the residue of—
 - (i) the net money arising from the sale and conversion of the property, after payment of costs; and
 - (ii) the ready money of the deceased (so far as it is not disposed of by the will (if any)); and
- (b) any investments for the time being representing that residue, including (but without prejudice to the trust for sale) any part of the estate of the deceased that may be retained unsold and is not required for purposes of administration after making the payments and setting aside the fund specified in Section 69.

(2) In the application of this Division to the estate of a person who dies leaving more than one wife by valid customary marriages surviving him, any residuary estate or share in an estate to which a single wife would, under this Division, be entitled shall be divided between those wives.

(3) Where by virtue of the operation of Subsection (2) the residuary estate of an intestate would be divisible between the wives of the intestate and some other person in such a way that the share of the other person would be greater than the share of a wife, then, notwithstanding this Division, the share of the other person shall be reduced, and the share of the wife shall be increased, so that the shares are equal.

82. SURVIVING SPOUSE BUT NO ISSUE.

(1) Where a person dies intestate in respect of his residuary estate, leaving a surviving spouse but no issue—

- (a) where the residuary estate does not exceed in value K20,000.00 the spouse is entitled to it; and
- (b) where the residuary estate exceeds in value K20,000.00 the spouse is entitled to K20,000.00 and has a charge on the whole estate for that sum with interest at the rate of 4% per annum from the date of the death of the intestate until payment.

(2) Where by the operation of Subsection (1)(a) a spouse is entitled to K20,000.00 or a lesser sum being the proceeds of a policy or policies of insurance on the life of the intestate, it is not necessary for the spouse, in order to obtain administration of the estate of the intestate, to enter into a bond with respect to the proceeds of the policy or policies to which he is so entitled.

(3) The provision made by Subsection (1)(b) for the spouse is in addition to, and without prejudice to, the interest and share of the spouse in the residue of the estate remaining after giving effect to that paragraph in the same way as if the residue had been the whole estate of the intestate, but that subsection shall not be applied more than once in respect of any estate.

83. SURVIVING MOTHER BUT NO SPOUSE, ISSUE OR FATHER.

(1) Where a person dies intestate in respect of his residuary estate, leaving a mother but no spouse, issue or father—

- (a) where the residuary estate does not exceed in value K1,000.00 the mother is entitled to the estate; and
- (b) where the estate exceeds in value K1,000.00 the mother is entitled to K1,000.00 and has a charge on the whole estate for that sum with interest at the rate of 4% per annum from the date of the death of the intestate until payment.

(2) Where by the operation of Subsection (1)(a) a mother is entitled to K1,000.00 or a lesser sum being the proceeds of a policy or policies of insurance on the life of the intestate, it is not necessary for the mother, in order to obtain administration of the estate, to enter into a bond with respect to the proceeds of the policy or policies to which she is so entitled.

(3) The provision made by Subsection (1)(b) for the mother is in addition to, and without prejudice to, the interest and share of the mother in the residue of the estate remaining after giving effect to that paragraph in the same way as if the residue had been the whole estate of the intestate, but that subsection shall not be applied more than once in respect of any estate.

84. DISTRIBUTION ON INTESTACY GENERALLY.

(1) Subject to this section and to Sections 82 and 83, where a person dies intestate—

- (a) if the intestate leaves a widow or widower—she or he is entitled, if the intestate leaves issue, to one-third or, if the intestate leaves no issue, to one-half of the estate; and
- (b) if the intestate leaves a father and a mother but no widow or widower or issue—the estate shall be distributed equally between the father and the mother, and in the case of the latter for her own use; and

- (c) if the intestate leaves a widow or widower a father and a mother but no issue—one-half of the estate shall be distributed equally between the father and the mother, and in the case of the latter for her own use; and
- (d) if the intestate leaves a widow or widower and a father but no issue or mother—the father is entitled to one-half of the estate; and
- (e) if the intestate leaves a widow or widower and a mother but no issue or father—the mother is entitled to one-half of the estate; and
- (f) if the intestate leaves a father but no widow or widower, issue or mother—the father is entitled to the estate; and
- (g) if the intestate leaves a mother but no widow or widower, issue or father—the mother is entitled to the estate; and
- (h) if the intestate leaves a widow or widower but no issue, father or mother—the widow or widower is entitled to the estate; and
- (i) subject to Paragraphs (a) to (h), the estate or the portion of the estate to which those paragraphs do not apply shall be distributed in equal shares among the children of the intestate living at his decease and the representatives then living of any children who predeceased the intestate, or, if there are no such children or representatives, among the next of kin of the intestate who are in equal degree and their representatives.

(2) In the application of Subsection (1)(i)–

(a) where a child–

- (i) has any property, or any estate or interest in any property, by settlement of the intestate; or
- (ii) was advanced by the intestate during his lifetime,

the child or his representative shall bring that property, estate, interest or advance into account in estimating the share (if any) to be taken by him in the distribution; and

- (b) except as otherwise provided in this Division, the children of a person who died before the intestate take only the share that the person would have taken if living at the death of the intestate, and if more than one shall take in equal shares; and
- (c) no representation shall be admitted amongst collaterals after brothers' and sisters' children; and
- (d) brothers or sisters or, when they take as representatives, brothers' or sisters' children take in priority to grandparents; and
- (e) where brothers' or sisters' children are entitled and all the brothers or sisters of the intestate have died before him–
 - (i) they do not take as representatives; and

- (ii) all those children take in equal shares; and
- (f) no distinction shall be drawn between males and females or between relationship of the whole blood and relationship of the half blood; and
- (g) for all purposes of distribution and division a husband and his wife shall be treated as two persons.

(3) The father of a deceased illegitimate child shall not take under Subsection (1) as such unless, in the opinion of the National Court, he has, during the lifetime of the child recognised the child as his own and acted towards it as though it were his legitimate child.

85. PARTIAL INTESTACY.

Where a person dies leaving a will effectively disposing of part of his property, this Division has effect, as respects the part of his property not so disposed of, subject to the provisions of the will and to the following modifications:—

- (a) in cases referred to in Section 84, the requirements as to bringing property into account apply to any beneficial interests acquired by any issue of the deceased under the will of the deceased;
- (b) subject to his rights and powers for the purposes of administration, the personal representative is a trustee for the persons entitled under this Division in respect of the part of the estate not expressly disposed of, unless it appears by the will that the personal representative is intended to take that part beneficially.

86. PAYMENT OF SHARES OF INFANTS IN CERTAIN CASES.

Where—

- (a) the estate of an intestate in respect of which administration has been granted does not exceed K1,000.00 after payment of his or her debts; and
- (b) the intestate has left a child under age,

the administrator may pay the distributive share to which the child is entitled in the estate, or cause it to be paid, after payment of the debts of the intestate, to his or her widow or widower, or to a person having the care or custody of the child, without seeing to the application of the share and without incurring liability in respect of the payment.

87. FAILURE OF NEXT OF KIN, ETC.

With regard to the estate of a person, escheat for want of heirs is abolished, and in default of any person taking under the preceding provisions of this Act the residuary estate belongs to the State as *bona vacantia* in lieu of any right of escheat that might formerly have existed.

88. REFERENCES TO STATUTES OF DISTRIBUTIONS.

Unless the contrary intention appears—

- (a) references to the Statutes of Distributions or to the provisions relating to distribution, or references to that effect, in an instrument *inter vivos* or in a will shall be read as references to this Division; and
- (b) references in any such instrument or will to the statutory next of kin, or references to that effect, shall be read as references to the persons who would take beneficially under this Division on an intestacy.

Division 7.

Practice, Procedure, Offences, etc.

Subdivision A. – Administration Bonds.

89. EXECUTION OF ADMINISTRATION BONDS.

(1) Unless the contrary intention expressly appears in this Act, and subject to Section 10 of the *Trustee Companies Act 1966*—

- (a) a person who applies for a grant of administration shall file with his application a bond to the Registrar with two sureties conditioned for duly collecting, getting in and administering the property of the deceased if that person is granted administration; and
- (b) subject to Paragraph (c), the bond shall be in a penalty equal to the amount at which the property of the deceased is sworn or the sum of K10,000.00, whichever is the less; and
- (c) the National Court or a Judge, or where the amount at which the property of the deceased is sworn does not exceed K1,000.00 the Registrar, may—
 - (i) dispense with either or both of the sureties required by Paragraph (a); or
 - (ii) direct that the penalty, as regards the sureties, be reduced; or
 - (iii) direct that more bonds than one be given so as to limit the liability of any surety to such amount as the Court, Judge or Registrar, as the case may be, thinks reasonable; and
- (d) whether or not the amount at which the property of the deceased is sworn exceeds K1,000.00, the Registrar may accept, in place of the usual administration bond with two sureties, the bond of a trustee company, or of a corporation or guarantee society approved by the Head of State, acting on advice; and
- (e) where—
 - (i) the Registrar is in doubt respecting the exercise of any power under Paragraph (c) or (d); or

- (ii) a person interested in the estate or a creditor of the deceased lodges with the Registrar a written notice objecting to the exercise of any such power,

the Registrar shall not exercise the power without an order of the Court; and

- (f) a bond under Paragraph (a) or (d) shall be in the form prescribed by the Rules; and
 - (g) the Registrar may—
 - (i) enforce a bond under Paragraph (a) or (d); or
 - (ii) assign it in accordance with this section to some other person; and
 - (h) where it appears to the satisfaction of the Court or a Judge that a condition of a bond under this subsection has been broken, the Court or Judge may, on application for that purpose, order that the bond be assigned to a person named in the order; and
 - (i) the person to whom a bond is assigned under Paragraph (h) may—
 - (i) sue on the bond in his own name as if it had been originally given to him instead of to the Registrar; and
 - (ii) recover on the bond, as trustee for all persons interested, the full amount recoverable in respect of any breach of a condition of the bond.
- (2) Subsection (1) does not make it necessary for—
- (a) a person obtaining administration to the use or for the benefit of the State; or
 - (b) the Public Curator; or
 - (c) a person specially exempted by a law or by Rules of Court from the obligation to give or execute a bond under Paragraph (a) or (d),

to give or execute any such bond.

Subdivision B. – Caveats.

90. LODGEMENT OF CAVEAT.

A person may lodge with the Registrar a caveat against an application for representation at any time before the grant, and every such caveat shall set out the name of the person lodging it and an address in Port Moresby, or some other town in which there is an office of the Registrar, at which notices may be served on him.

91. ORDER NISI FOR GRANT WHERE CAVEAT LODGED.

(1) Where a caveat is lodged, the National Court may, on motion on behalf of a person applying for representation, supported by affidavits on which, if there had

been no caveat, administration would have been granted, make an order nisi for the grant of probate or administration to the person applying.

(2) An order under Subsection (1) shall name a time for showing cause against it, and the National Court may enlarge the order from time to time.

(3) An order under Subsection (1), and an order enlarging any such order, shall be served on the caveator by delivering a copy of it at the address specified in his caveat.

92. EVIDENCE ON HEARING OF ORDER NISI.

(1) Subject to the Rules, on the hearing of an order nisi the parties may verify their respective cases in whole or in part by affidavit.

(2) On the application of the opposite party, the deponent of an affidavit under Subsection (1) is subject to being cross-examined by or on behalf of that party orally in open court, and after the cross-examination may be re-examined orally in open court by or on behalf of the party by whom the affidavit was filed.

93. ORDER ABSOLUTE.

(1) If on the day named in the order nisi or on the day to which the order has been enlarged the caveator does not appear, the order nisi may, on an affidavit of service, be made absolute.

(2) If the caveator appears—

- (a) the hearing shall be conducted in the same manner, as nearly as may be, as on a trial; and
- (b) the order nisi may be made absolute or discharged with or without costs as the National Court thinks just; and
- (c) if the Court directs, the costs shall be paid out of the estate.

94. ORDER FOR COSTS TO PUBLIC CURATOR.

Where a caveat is lodged by the Public Curator, the National Court may order costs to be paid to him out of the estate whether or not the order nisi is discharged.

Subdivision C. – Commission to Personal Representatives.

95. ALLOWANCE OF COMMISSION.

(1) In this section, “executor” includes the executor of an executor becoming by representation the executor of the original estate.

(2) The National Court or the Registrar may allow, out of the assets of a deceased person, to his executor, administrator or trustee for the time being such commission or percentage, not exceeding 5%, for his pains and trouble as the Court or Registrar thinks just.

PART IV. – ADMINISTRATION OF SMALL ESTATES.***Division 1.******Preliminary.*****96. INTERPRETATION OF PART IV.**

In this Part–

“court of summary jurisdiction” means a District Court;

“Distributor” means a person appointed to be a Distributor of Small Estates under Section 98;

“personal property” means any property other than real property;

“real property” means any estate, right, title or interest in or in connection with land, other than customary land;

“small estate” means an estate consisting of–

(a) if the only person or persons entitled to take the property of the deceased person under the will or to share in the distribution of the surplus of the estate of the deceased person is the widow, widower, child, grandchild or direct ancestor or any of them–

(i) personal property not exceeding in value K1,000.00; or

(ii) real property not exceeding in value K10,000.00,

or both; and

(b) in any other case–property not exceeding in value K2,000.00.

97. SAVING OF PROCEEDINGS UNDER PART III.

(1) This Part does not prevent the administration in accordance with Part III. of a small estate.

(2) A Distributor–

(a) may if he thinks fit; and

(b) shall, if directed by the National Court, a court of summary jurisdiction or the Public Curator,

cease to exercise and perform his powers and functions under this Part in relation to a small estate, and in that case shall account to the National Court for the estate in such manner, and shall take such other action, as is directed by the Court.

Division 2.
Distributors.

98. APPOINTMENT OF DISTRIBUTORS.

The Public Curator may appoint persons to be Distributors of Small Estates for the purposes of this Part.

99. OATH AND AFFIRMATION BY DISTRIBUTORS.

Before entering on the duties of his office a Distributor shall take an oath or make an affirmation in the form in Schedule 2.

100. POWERS AND FUNCTIONS OF DISTRIBUTORS.

(1) A Distributor has and shall exercise and perform all the powers, functions, duties and responsibilities conferred or imposed on him by this Part.

(2) Subject to this Part, a Distributor shall exercise and perform his powers and functions under this Part in accordance with such directions as are from time to time given by the Public Curator.

(3) The Public Curator has all the powers and functions of a Distributor under this Part.

Division 3.
Administration Generally.

101. ASSISTANCE TO APPLICANT FOR REPRESENTATION.

(1) Subject to this Part, if a person dies leaving a small estate a person entitled to representation of the deceased person may apply to a Distributor for his help in procuring a grant of representation.

(2) The Distributor shall—

- (a) fill up the advertisement, affidavits and documents required by the National Court in its probate jurisdiction to lead to the grant; and
- (b) prepare any statements or affidavits required under Part VII. before the issue of the grant; and
- (c) swear the applicant and every other deponent; and
- (d) attest the execution of the administration bond according to the practice of the Court in its probate jurisdiction; and
- (e) transmit to the office of the Registrar all the affidavits and documents, together with the proper fees, and any further materials or fees that are required from and furnished by the applicant under this Act.

102. GRANT TO DISTRIBUTOR.

(1) No affidavit as to caveats or searches in the office of the Registrar is required on an application under this Division, and if the Registrar is satisfied that—

- (a) the affidavits are sufficient; and
- (b) no caveat exists against the application; and
- (c) no will is deposited in the office of the Registrar,

he shall grant and issue representation to the applicant under Section 42.

(2) If the Commissioner is satisfied that—

- (a) no duty is payable; or
- (b) the proper duty has been paid,

in respect of the grant, and has so certified by endorsement on the grant of representation, the grant of representation shall be forwarded to the Distributor, who shall, on receipt of the fee payable by the applicant, deliver the grant to the applicant.

103. PROOF OF IDENTITY, ETC.

The Distributor may require such proof as he thinks sufficient to establish the identity and right or relationship of the applicant.

104. ADMINISTRATION OF OATHS, ETC., BY DISTRIBUTOR.

(1) For the purposes of this Division, a Distributor may—

- (a) administer oaths and take declarations and affirmations; and
- (b) exercise any other powers that may be exercised by a commissioner for affidavits or a commissioner for declarations.

(2) In the absence of a Distributor, applicants under this Division may be sworn and execute any necessary documents before a commissioner for affidavits or a justice.

105. APPLICATION DIRECT TO REGISTRAR IN CERTAIN CASES.

(1) Where at the time of his death the deceased person had his fixed place of abode within 32.19 km of Port Moresby or any other town in which there is an office of the Registrar, an applicant under this Part may apply direct to the office of the Registrar.

(2) Where an application is made in accordance with Subsection (1), the Registrar shall, on payment of the proper fees—

- (a) cause to be prepared all proper materials required before the issue of the grant of representation applied for; and

- (b) for that purpose, in addition to any other powers or duties conferred or imposed on him, exercise and perform the powers and duties conferred or imposed by this Division on a Distributor, so far as they are applicable, in order to enable the making and issue of the grant.

106. FURTHER INFORMATION.

Where the Registrar or the Commissioner is not satisfied with the materials placed before him or the amount of the fee paid under this Division, he shall state, to the applicant or to the Distributor transmitting the application, the matters on which he is not satisfied and shall—

- (a) inform the applicant accordingly; and
- (b) take such further steps as are proper to enable the applicant to satisfy the Registrar or Commissioner, as the case may be, in respect of those matters.

107. DEALING WITH DIFFICULT CASES.

The Registrar is not bound, by reason of this Division, to consider further an application that he thinks proper to be considered by the National Court or to be placed in the hands of a lawyer.

108. RULES.

(1) In addition to the rules of court that may be made under Section 184 (*rules of court*) of the *Constitution*, the Judges may make rules—

- (a) for regulating the duties of Distributors under this Division; and
- (b) generally for carrying into effect the provisions of this Division.

(2) Copies of all rules made under this section shall, within 21 days after the date of publication, be forwarded by the Chief Justice to the Head of State.

(3) The Head of State, acting on advice, may, by notice in the National Gazette, disallow any rule, and the rule so disallowed ceases to have effect.

109. FEES.

The rules made under Section 108 may fix the fees payable to a Distributor acting under them, but the total amount of the fees to be charged to an applicant under this Division, exclusive of any sums payable as duty, shall not exceed—

- (a) where the whole estate does not exceed K100.00—the sum of K0.50; and
- (b) where the whole estate exceeds K100.00—the sum of K0.50 and the further sum of K0.25 for every K100.00 or part of K100.00 by which the whole estate exceeds K100.00.

Division 4.***Administration in Certain Cases.*****110. SUMMARY PROCEEDINGS FOR ADMINISTRATION.**

(1) This Division applies to a small estate—

- (a) that consists wholly of personal property; or
- (b) in the case of an estate that consists wholly or partly of real property, if all persons interested in the real property agree to the application of this Division,

and in respect of which a court of summary jurisdiction consents to its application.

(2) In the case of a small estate to which this Division applies, a Distributor may apply to a court of summary jurisdiction for an order under this section.

(3) If the court to which application is made under Subsection (2) is satisfied—

- (a) as to the amount of any debts due by the estate, and the persons to whom those debts are due; and
- (b) as to the persons who are entitled to share in the distribution of the surplus of the estate (if any); and
- (c) that no reason exists why the estate should not be administered under this Division,

the court may make an order directing the Distributor—

- (d) to pay the debts referred to in Paragraph (a); and
- (e) to distribute the surplus of the estate in such manner as is specified in the order; and
- (f) to take such action as is necessary or expedient, or as is specified in the order, to carry into effect the directions given under Paragraphs (d) and (e).

111. APPLICATION FOR DIRECTIONS.

In the case of an estate being administered under this Division, the Distributor may apply to a court of summary jurisdiction for a declaration as to the persons entitled to the estate and to the proportions or manner in which they are entitled, and shall, subject to any order made by the National Court or the Supreme Court on appeal or otherwise, act in conformity with any such declaration.

112. POWERS, ETC., OF DISTRIBUTOR.

For the purposes of this Division, a Distributor has the same powers, privileges, protections and immunities, and is liable to the same penalties, as an administrator or an administrator with the will annexed, as the case may be.

113. RELEASE OF DISTRIBUTOR.

On being satisfied that an estate has been administered in accordance with an order under Section 110, the court that made the order may make a further order releasing the Distributor from all liability for or in connection with the estate.

Division 5.

General.

114. CERTIFICATE AS TO OWNERSHIP OF LAND.

(1) In this section, “the Land Registration Authority” means—

- (a) where the land is subject to the *Land Registration Act 1981*—the Registrar of Titles; and
- (b) in any other case—the Departmental Head of the Department responsible for land and physical planning matters.

(2) On being satisfied that a person is entitled to have any real property forming part of a small estate transmitted into his name, the Registrar, or in a case administered under Division 4 a magistrate, may, if he thinks fit, grant a certificate in the prescribed form that the person is so entitled.

(3) Notwithstanding anything to the contrary in the *Land Registration Act 1981*, on the production of a certificate under Subsection (2) the Land Registration Authority shall, without fee or contribution, make all such entries in the register or record, relevant to the land, kept by him and do all such other acts and things as are necessary to give effect to the certificate.

115. DISTRIBUTOR TO BE SATISFIED AS TO VALUE OF ESTATE, ETC.

(1) If a Distributor is not satisfied, in relation to an estate sought to be dealt with under this Part, as to any matter referred to in the definition of “small estate” in Section 96 or, in the case of a small estate sought to be dealt with under Division 4, as to any matter referred to in Section 110, he may apply to a court of summary jurisdiction for a declaration as to that matter.

(2) Subject to any order made by the National Court or the Supreme Court on appeal or otherwise, the Distributor shall act in conformity with a declaration under Subsection (1).

PART V. – RECOGNITION OF FOREIGN GRANTS.**116. INTERPRETATION OF PART V.**

(1) In this Part, unless the contrary intention appears—

“Australasian State” means a State or Territory of Australia, the Dominion of New Zealand, Fiji or any part of Her Majesty’s dominions in Australasia that the Head of State, acting on advice, declares to be an Australasian State within the meaning of this Part;

“letters of administration” includes an exemplification of letters of administration;

“probate” includes an exemplification of probate;

“the United Kingdom” includes the Channel Islands.

(2) A reference in this Part to probate or letters of administration shall be deemed to include a reference to a confirmation of the executor of a person granted in a sheriff court in Scotland.

(3) A reference in this Part to an executor named in any probate or letters of administration includes a reference to the executor so named becoming by representation the executor of the original estate.

117. APPLICATION OF PART V. TO CERTAIN BRITISH POSSESSIONS.

(1) On being satisfied that the legislature of a part of Her Majesty’s dominions has made adequate provision for the recognition there of probates and letters of administration granted by the National Court, the Head of State, acting on advice, may, by notice in the National Gazette, declare that this Part, subject to the exceptions and modifications (if any) specified in the notice, applies to that part of Her Majesty’s dominions.

(2) Subject to the exceptions and modifications (if any) specified in the relevant notice under Subsection (1), this Part applies to probates and letters of administration granted, whether before or after the commencement date, in a part of Her Majesty’s dominions the subject of a notice under Subsection (1).

118. RESEALING OF GRANTS MADE IN UNITED KINGDOM, ETC.

(1) Where probate or administration of the estate of a deceased person who has left any property within Papua New Guinea has been granted by a court of competent jurisdiction in the United Kingdom or in an Australasian State, or, subject to Section 117, in a part of Her Majesty’s dominions specified in a notice under that section—

- (a) the executor or administrator named in the probate or administration, whether or not he is within the jurisdiction of the National Court, may, personally or by a lawyer, produce the probate or administration (together with, in the case of an executor, any later probate) to the

Registrar and file a verified copy or verified copies in the office of the Registrar; or

- (b) a person duly authorized by power of attorney under the hand and seal of the executor or administrator may, personally or by a lawyer—
 - (i) produce to the Registrar the probate or probates or letters of administration and the power of attorney, accompanied by an affidavit that the power of attorney has not been revoked; and
 - (ii) file verified copies in the office of the Registrar.

(2) When the documents referred to in Subsection (1) have been produced, and verified copies of them deposited, by or on behalf of the executor, administrator or attorney, the probate or the letters of administration of the deceased person shall be sealed with the seal of the National Court, and have the same force and effect and the same operation in Papua New Guinea as if it or they had been originally granted in Papua New Guinea.

(3) An executor, administrator or attorney referred to in this section shall perform the same duties and has the same rights, and every such executor, administrator or attorney and the estate of the deceased person is subject to the same liabilities and obligations, as if the probate or letters of administration had been originally granted by the National Court.

119. ADVERTISEMENTS, PAYMENT OF DUTY, ETC., BEFORE RESEAL.

(1) The seal of the National Court shall not be affixed to any probate or letters of administration under this Part until—

- (a) the publication of an advertisement by the executor, administrator or attorney, as the case may be, or by a lawyer on his behalf, in a newspaper circulating throughout Papua New Guinea, of the intention of the executor, administrator or attorney to apply for the seal to be duly affixed; and
- (b) an affidavit has been filed stating that—
 - (i) the advertisement was duly published at least 14 days before the making of the affidavit; and
 - (ii) no caveat has been lodged up to the morning of the application; and
- (c) statements of the estate of the deceased person are filed in the office of the Commissioner in accordance with Part VII.; and
- (d) all such probate, stamp and other duties and fees (if any) have been paid as would have been payable if the probate or letters of administration had been originally granted by the National Court.

(2) Letters of administration shall not be sealed under this Part until such affidavits have been filed and such bond has been entered into as would have been required if the letters had been originally granted by the National Court.

(3) Notwithstanding any law to the contrary—

- (a) a statement may be made and verified by the executor or administrator, as the case may be, or by a person on his behalf; or
- (b) a bond may be entered into by the administrator,

outside Papua New Guinea before a commissioner for affidavits or otherwise in the manner provided for the attestation of documents outside Papua New Guinea.

120. CAVEATS.

A person may lodge with the Registrar a caveat against the sealing of a probate or letters of administration under this Part, and the caveat has the same effect and shall be dealt with in the same manner as if it were a caveat against the granting of probate or of letters of administration under Part III.

121. EXECUTOR, ETC., OF ESTATE UNDER RESEAL.

On the sealing of any probate or letters of administration under this Part, the executor or administrator named in the grant or a person authorized by the executor or administrator by power of attorney under his hand and seal, as the case may be, shall be deemed to be for all purposes the executor of the will or administrator of the estate of the deceased person within the jurisdiction of the National Court.

122. ADMINISTRATION UNDER POWER OF ATTORNEY.

Notwithstanding anything in this Act, a person duly authorized by power of attorney under this Part who—

- (a) has obtained the seal of the National Court to a probate or letters of administration; and
- (b) has realized the property of the testator or intestate within the country; and
- (c) has paid all charges, duties and fees under Part VII.; and
- (d) has satisfied or provided for the debts and claims of all persons resident in Papua New Guinea of whose debts or claims he has had notice (whether before or after notice given by him as required by the *Trustees and Executors Act 1961*),

may pay over to—

- (e) the executor or administrator of the estate in the country in which the deceased was domiciled at the date of his death; or
- (f) the donor of the power of attorney,

the balance of the estate without seeing to its application and without incurring liability in regard to the payment, and shall duly account to the executor, administrator or donor, as the case may be, for his administration.

PART VI. – TESTATOR’S FAMILY MAINTENANCE.

Division 1.

General.

123. INTERPRETATION OF PART VI.

In this Part, unless the contrary intention appears, “child” includes an illegitimate child.

124. ORDER FOR PROPER MAINTENANCE, ETC.

If a person dies leaving a will and without making adequate provision in it for the proper maintenance and support of his spouse or children, the National Court may, in its discretion, on application by or on behalf of the spouse or children, order that such provision as the Court thinks just be made out of the estate of the testator for the spouse or children.

125. APPLICATION FOR ORDER.

(1) An application under Section 124 shall be made in Chambers, entitled “In the matter of the *Wills, Probate and Administration Act*, Part VI, and in the matter of the will and estate of (*the testator*)”.

(2) A summons under Subsection (1) shall be taken out by the applicant and served on the personal representative of the testator.

(3) The Judge may adjourn the summons into Court.

126. TIME FOR APPLICATION.

(1) Subject to Subsection (2), an application under Section 124 shall not be heard by the National Court at the instance of a party claiming the benefit of this Division unless the application is made within nine months after the date of the grant of probate or of letters of administration with the will annexed, as the case may be.

(2) The time for making an application under Section 124 may be extended for a further period by the National Court, after hearing such of the parties affected as the Court thinks necessary.

(3) Subject to Subsection (4), the power conferred by Subsection (2) extends to cases where the time limited by Subsection (1) for an application has expired, whether before or after the commencement date.

(4) Subsection (3) does not apply where the application for extension is made after the final distribution of the estate, and no such application or order made affects a distribution of a part of the estate made before that application.

127. SERVICE OF NOTICE OF APPLICATION.

The National Court may order such persons, other than the executor or administrator, as it thinks proper to be served with notice of an application under Section 124.

128. INQUIRY BY COURT.

(1) At the hearing of an application under Section 124, the National Court shall inquire fully into the testator's estate, and for that purpose may—

- (a) summon and examine such witnesses as in its opinion are necessary; and
- (b) require the executor or administrator to furnish full particulars of the testator's estate.

(2) In granting or refusing an application under Section 124 and in fixing the amount of the provision to be made under this Division for the spouse or children or any of them, the National Court shall have regard, among other things, to—

- (a) the net value only of the estate of the testator, as ascertained by deducting from the gross value all debts, testamentary and funeral expenses and all other liabilities and charges to which the estate is subject; and
- (b) whether the spouse or children or any of them are entitled to independent means, whether secured by any covenant, settlement, transfer, gift or other provision made by the testator during his or her life or derived from any other source.

(3) The National Court may refuse an application under Section 124 if the character or conduct of the applicant is such as, in the opinion of the Court, to disentitle him to the benefit of any provision under this Division.

(4) In making an order under this Division, the National Court may impose such conditions, restrictions and limitations, whether to prevent, restrict or defeat any alienation or charge of or on the benefit of any provision made under the order, or otherwise, as it thinks proper.

(5) In making an order under this Division, the National Court may order that the provision consist of a lump sum or a periodical or other payment.

129. FORM AND EFFECT OF ORDER.

(1) An order under this Division making provision for a spouse or child shall specify, among other things—

- (a) the amount and nature of the provision; and
- (b) the manner in which the provision shall be raised or paid out of the estate of the testator; and

(c) any conditions, restrictions or limitations that in the opinion of the National Court should be imposed.

(2) Subject to Subsection (3), unless the National Court otherwise orders the burden of a provision under this Division shall, as between the persons otherwise beneficially entitled to the estate of the testator, be borne by those persons in proportion to the values of their respective estates and interests in the estate.

(3) For the purposes of Subsection (2), the estates and interests of persons successively entitled to any property that is settled by a will shall not be separately valued, but the proportion of the provision made under this Division to be borne by the property shall be raised out of or charged against the corpus of the property.

(4) In every case in which provision is made under this Division, the National Court shall direct that a certified copy of the order be made on the probate of the will, or the letters of administration with the will annexed of the estate, of the testator, and for that purpose shall retain in its custody the probate or letters of administration until the copy is made.

(5) Subject to this Division, a provision made under this Division takes effect as if it had been made by a codicil to the will of the testator executed immediately before his death.

(6) On the motion of the executor or administrator of the testator's estate or of a person beneficially entitled to or interested in any part of the estate, the National Court may rescind or alter an order making provision for a spouse or child.

(7) Notice of a motion under Subsection (6) shall be served on all persons taking any benefit under the order sought to be rescinded or altered.

(8) The National Court may make such order as to the costs of any proceedings under this Division as it thinks just.

130. ADJUSTMENT OF PROBATE DUTY.

For the purpose of apportioning the duty payable on the estate of a testator, any provision made under this Division shall be deemed to be a bequest made by the testator by a codicil executed immediately before his death, and is payable in the manner provided by this Division.

Division 2.

Small Estates.

131. APPLICATION OF DIVISION 1 TO SMALL ESTATES.

(1) In this section, "small estate" has the same meaning as in Section 96.

(2) Subject to any directions of the National Court, a court of summary jurisdiction may exercise in relation to a small estate the jurisdiction conferred by Division 1 on the National Court.

(3) For the purposes of Division 1 in its application to a small estate—

- (a) a reference in that Division to the grant of probate or of letters of administration shall be deemed to include a reference to an order under Section 110(3); and
- (b) a reference to an executor or administrator shall be deemed to include a reference to a Distributor acting under Division IV.3.

PART VII. – DUTIES ON DECEASED PERSONS' ESTATES.

Division 1.

Preliminary.

132. INTERPRETATION OF PART VII.

(1) In this Part, unless the contrary intention appears—

“administrator” does not include the Public Curator;

“disposition”, in relation to property, means—

- (a) a conveyance, transfer, assignment, delivery, creation of a power of appointment, payment or other alienation of property (whether by way of renunciation, disclaimer, declaration or creation of trust, mortgage, charge, encumbrance or creation of an estate or interest in property, or by any other means) and whether or not subject to a limitation; or
- (b) the exercise (not being in favour of the donee of the power) of a general power of appointment, other than a power exercisable by a deceased person as a trustee under a disposition not made by himself; or
- (c) the release, discharge, surrender, forfeiture or abandonment of a debt, contract or thing in action, or of a right, power, estate or interest in or over property; or
- (d) an agreement, contract, obligation, engagement or transaction entered into or act done by a person by which the value of his estate may be directly or indirectly diminished and the value of the estate of any other person increased,

and whether in any of the cases referred to in Paragraphs (a) to (d) the disposition was effected—

- (e) with or without an instrument; or
- (f) by a person alone or jointly with any other person;

“final balance”, in relation to an estate, means the total value, as certified by the Commissioner, of all property that is or is deemed to form part of the estate less the total value of all items that are allowed as deductions for the purposes of duty under this Part;

“gift inter vivos” includes a non-testamentary disposition of property (other than a settlement) made (whether to a living person or to a company or body corporate or unincorporate)—

- (a) without consideration; or
- (b) on a consideration other than full consideration in money or money's worth based on the value of the property at the date of the disposition;

“property” includes–

- (a) real property and personal property of any kind; and
- (b) any estate or interest in any such property; and
- (c) a debt or thing in action; and
- (d) any other right or interest;

“settlement” includes a non-testamentary disposition of property made by a person to take effect, or that may take effect, on or after the death of the person, and made–

- (a) without consideration; or
- (b) on a consideration other than full consideration in money or money’s worth based on the value of the property at the date of death of the person.

(2) Where a disposition referred to in the definition “gift inter vivos” in Subsection (1) is made for a consideration in money or money’s worth that is less than the value of the property, the disposition shall be deemed to be a gift inter vivos to the extent only to which the value exceeds the consideration.

(3) Where a disposition referred to in the definition “settlement” in Subsection (1) is made for a consideration in money or money’s worth that is less than the value of the property, the disposition shall be deemed to be a settlement to the extent only to which the value exceeds the consideration.

132A. APPLICATION OF PART VII.

¹⁷This Part does not apply to the estate of a person whose death occurs on or after 4 March 1986.

133. COMMISSIONER OF PROBATE DUTIES.

(1) The Head of State, acting on advice, may, by notice in the National Gazette, appoint an officer to be the Commissioner of Probate Duties.

(2) The Commissioner is responsible for the assessment, collection and payment of duty under this Part, and generally shall carry out the duties, powers and functions imposed or conferred on him by this Part.

Division 2.

Liability to Duty.

134. DUTIABLE PROPERTY.

(1) For the purposes of this Part, the estate of a deceased person consists, subject to Subsection (8), of–

¹⁷ Section 132A inserted by *Wills, Probate and Administration (Amendment) Act 1986* (No. 16 of 1986).

- (a) his real property in the country; and
- (b) if he was domiciled in the country at the time of his death—his personal property wherever situate; and
- (c) if he was not domiciled in the country at the time of his death—his personal property in the country; and
- (d) subject to Subsections (2), (3), (4) and (5), any property the subject matter of a gift inter vivos made by him at any time if—
 - (i) the gift was made within three years immediately before his death; or
 - (ii) in relation to the property bona fide possession and enjoyment was not assumed by the donee more than three years before the death of the deceased and afterwards retained to the entire exclusion of the donor or of any benefit to the donor by contract or otherwise; or
 - (iii) within the period of three years immediately preceding his death the donor retained or had—
 - (A) any interest in the property; or
 - (B) any right, whether enforceable or not, to payments or to any beneficial interest or benefit in any way connected with the property; or
 - (C) any power that might affect the enjoyment of the gift by the donee,

wherever the property was situate at the time of the death of the donor and whether or not at the time of the death of the donor it was still the property of the donee or was still in existence; and
- (e) subject to Subsection (6), any beneficial interest held by the deceased immediately before his death in any property (other than the house and curtilage of the matrimonial home of the deceased) as a joint tenant or joint owner with any other person or persons; and
- (f) any property over which the deceased had at the time of his death a general power enabling him to dispose of it by will or deed, other than a power exercisable by him as trustee under a disposition not made by him; and
- (g) any property the subject-matter of a *donatio mortis causa* made by the deceased at any time; and
- (h) subject to Subsection (7), any property the subject-matter of a settlement made by the deceased at any time; and
- (i) to the extent to which a benefit accrues or arises for any other person by the cesser of the interest—any beneficial interest in any property that

the deceased had at the time of his death, which beneficial interest, by virtue of a settlement made by him at any time, passed or accrued on or after his death to, or devolved on or after his death on, any other person, including any beneficial interest in any property ceasing on the death of the deceased; and

- (j) any property of which at the time of his death the deceased was competent to dispose otherwise than in a purely fiduciary capacity; and
- (k) any property the subject-matter of a settlement under which the deceased retained an interest, which interest has been surrendered or terminated within three years immediately before the death of the deceased; and
- (l) to the extent of the beneficial interest accruing or arising by survivorship or otherwise on his death, less any consideration in money or money's worth paid or given for the beneficial interest by the person to whom the beneficial interest accrues or arises—any annuity or other interest purchased or provided by him at any time within three years immediately before his death by himself alone or in concert or by arrangement with any other person.

(2) In Subsection (1)(d)(ii) and (iii), the property the subject-matter of the gift inter vivos shall be deemed to include any beneficial interest in property that ultimately accrues to, devolves on or passes to the donee, including a beneficial interest that ceased on or within three years immediately before the death of the deceased, to the extent to which a corresponding benefit accrues or arises for the donee.

(3) Where property referred to in Subsection (1)(d) is not in existence at the time of the death of the donor, the property shall not be deemed to form part of the estate of the donor except where any amount or consideration in money or money's worth has been received or is receivable by the donee as compensation for its extinction or as consideration for its surrender, redemption, discharge, sale or conversion, in which case the property no longer in existence shall be deemed to form part of the estate of the donor but its value shall be deemed to be the amount of the money or the value of the money's worth, as the case may be.

(4) For the purposes of Subsection (1)(d)(ii), it is irrelevant how a benefit referred to in that subparagraph arose, or whether it was enforceable.

(5) Where the value of any property the subject-matter of a gift or gifts inter vivos to an individual donee is less than K200.00 in the aggregate, the property shall not be deemed to form part of the estate of the donor.

(6) For the purposes of Subsection (1)(e), where the matrimonial home of the deceased person is comprised in any property that is also used for other purposes—

- (a) a separate valuation shall be made of the portion of the property used principally as a matrimonial home and the portion used for the other purposes; and

- (b) only the beneficial interest of the deceased person in the part of the property that was used principally for the purpose of his matrimonial home is excluded from the operation of that paragraph.

(7) For the purposes of Subsection (1)(h), the property comprised in a settlement shall be deemed to include—

- (a) the proceeds of the sale or conversion of, and all investments for the time being representing, any such property; and
- (b) all property that has been substituted in any way for property originally comprised in the settlement.

(8) Notwithstanding this section, the estate of a deceased person does not include an amount paid under a *bona fide* scheme of superannuation or pension to the widow of, or to a person wholly dependent on, the deceased.

135. DUTY PAYABLE ON FINAL BALANCE.

Subject to this Part, a person who has been granted representation of a deceased person shall pay to the Commissioner duty calculated on and in relation to the final balance of the estate in accordance with Schedule 3.

136. ISSUE OF REPRESENTATION.

(1) A grant of representation shall not issue from the office of the Registrar until the duty or fee (if any) payable under this Part has been paid, and the Commissioner shall certify by endorsement on every grant issued that the duty or fee has been paid and the amount of the duty or fee, or that no duty or fee is payable, as the case may be.

(2) A grant of representation is not receivable in evidence in any court unless it bears the endorsement required by this section.

Division 3.

Lodgement of Statements, etc.

137. STATEMENT OF ASSETS AND LIABILITIES, ETC.

(1) The personal representative of a deceased person shall file in the office of the Commissioner a statement in the prescribed form specifying particulars of—

- (a) all property that is, or is deemed to be, part of the estate of the deceased; and
- (b) the value of the property at the date of the death of the deceased; and
- (c) the debts and liabilities of the deceased; and
- (d) the relationship (if any) to the deceased of the person or persons entitled to the property.

(2) In the case of representation limited to any particular property of a testator or intestate, the statement shall be limited to that particular property.

(3) The statement shall be verified in the prescribed manner, and shall be filed within the prescribed time or within such further time as the Commissioner allows.

(4) A statement under this section—

- (a) may be altered or varied with the permission of the Commissioner or as he directs; and
- (b) when finally approved by the Commissioner shall be certified by his signature, and subject to this Part the certificate of the Commissioner is final.

138. LATE STATEMENTS AND FAILURE TO FILE.

(1) Where a statement is not filed under Section 137 within 12 months after the death of the deceased, the personal representative is liable to pay additional duty at the rate of 6% per annum on the duty assessed on the final balance.

(2) Additional duty payable under Subsection (1) is payable as from—

- (a) the end of the period of six months after the date of the death of the deceased; or
- (b) the last day allowed for furnishing the statement,

whichever last happens, and until the statement is filed or an assessment is made, whichever first happens.

(3) The Commissioner may remit all or any of the additional duty payable under Subsection (1).

(4) Where an executor or administrator fails to file a statement as required by Section 137, on the application of the Commissioner the National Court may—

- (a) order that the personal representative file a statement within a time specified in the order; and
- (b) enforce the order in the same way as other orders are enforced by the Court; and
- (c) make such order as to costs as to the Court seems just.

139. CASE STATED BY COMMISSIONER.

(1) Where a question arises with regard to the statement or any of the particulars of the statement, the Commissioner may state a case for the opinion of the National Court, and the Court may give its judgement on the case.

(2) A judgement under Subsection (1) is binding on the Commissioner.

140. STATEMENTS WHERE PROBATE, ETC., HAS NOT BEEN GRANTED OR SEALED.

(1) Where, after the expiration of the period of three months after the death, representation of a deceased person has not been granted or sealed and the Commissioner has reason to believe that duty would be payable in respect of the estate of the deceased person, the Commissioner may apply to a Judge in Chambers for a summons calling on—

- (a) the executor or any person having possession of a will of the deceased person; or
- (b) any one of the next of kin who would be entitled to a grant of letters of administration of the estate of the deceased person; or
- (c) the donee or other person in possession of property conveyed, assigned or given by the deceased person,

to show cause why—

- (d) the executor, next of kin, donee or other person should not file the statement required by Section 137 as though representation had been duly granted to him; or
- (e) the Commissioner should not be authorized to certify the final balance of the estate immediately in such sum as in his judgement ought to be fixed and the executor, next of kin, donee or other person should not pay the duty calculated on that balance.

(2) Where cause is shown under Subsection (1), or on proof of service of the summons if the person summoned under that subsection does not appear, a Judge may—

- (a) order that the person summoned file the statement; and
- (b) make such other order in the premises and as to costs as appears just.

141. INSPECTION, ETC., OF STATEMENT.

(1) On payment of the prescribed fee, a person may inspect and take copies of or extracts from a statement filed for the purposes of this Part in the office of the Commissioner by an executor, administrator, next of kin, donee or other person.

(2) On payment of the prescribed fee, a copy of or extract from any statement referred to in Subsection (1) may be certified by the Commissioner to be a true copy or extract, and when so certified is, on production alone and without any further evidence, *prima facie* evidence before all courts, Judges and persons acting judicially of the facts stated in the statement.

Division 4.**Deductions, etc.****142. DEBTS OF DECEASED.**

(1) Subject to this section, in computing the final balance for the purposes of this Part there shall be allowed as deductions from the estate of a deceased person—

- (a) if he was domiciled in the country at the time of his death—all debts due and owing by him at the time of his death other than debts charged on real property situate outside the country; or
- (b) if he was not domiciled in the country at the time of his death—all debts due and owing by him—
 - (i) at the time of his death to persons resident in the country; or
 - (ii) contracted to be paid in the country; or
 - (iii) charged on property situate in the country.

(2) The debts of a deceased person shall be deemed to include—

- (a) the amount incurred for his funeral and burial or cremation expenses, not exceeding the sum of K100.00; and
- (b) any amount of income tax that is assessed under Section 119 of the *Income Tax Act 1959* on property that is included in the estate for the purposes of this Part.

(3) Where a debt has been allowed as a deduction and the debt is waived or forgiven, wholly or in part, by the creditor—

- (a) notice of the waiver or forgiveness shall be given by the executor or administrator to the Commissioner within 14 days after the debt is so waived or forgiven; and
- (b) the amount of the debt or the part of it so waived or forgiven, as the case may be, shall not (whether notice is given or not) be allowed as a deduction.

(4) No allowance as a deduction shall be made for a debt—

- (a) the amount of which is incapable of being ascertained; or
- (b) in respect of which there is a right of reimbursement, except where the Commissioner is satisfied that the exercise of the right would not result in the recovery of the amount of the debt; or
- (c) that was incurred or created by the deceased, unless the debt was incurred or created *bona fide* for an adequate consideration in money or money's worth; or
- (d) that is irrecoverable by action through the lapse of time, except where the debt is proved to have been paid in due course of administration.

(5) If, within six years after the date on which the duty in respect of an estate became due and payable under Section 152—

- (a) the amount of a debt referred to in Subsection (4)(a), in respect of which, in accordance with that paragraph, no allowance has been made, becomes capable of being ascertained; and
- (b) the debt has been paid,

the Commissioner shall allow the amount of the debt as a deduction.

143. CHARITABLE BEQUESTS, ETC.

(1) In this section—

“approved research institute” means—

- (a) the Commonwealth Scientific and Industrial Research Organization; or
- (b) any university, college, institute, association or organisation that is approved in writing for the purposes of this section by the Commonwealth Scientific and Industrial Research Organization or by the Head of State, acting on advice, as an institution, association or organisation for undertaking scientific research that is or may prove to be of value to Papua New Guinea or Australia;

“scientific research” means any activities in the fields of natural or applied science for the extension of knowledge.

(2) In computing the final balance for the purposes of this Part, there shall be allowed as deductions from the estate of a deceased person any part of the estate that is devised or bequeathed, or passes by gift inter vivos or under a settlement, to or for the purposes of—

- (a) a public benevolent institution in the country; or
- (b) a public fund established and maintained in the country for the purpose of providing money—
 - (i) for, or from the establishment of, a public benevolent institution in the country; or
 - (ii) for the relief of persons in the country who are in necessitous circumstances; or
- (c) a university, college, institution, association or organisation that is an approved research institute, where the gift is for purposes of scientific research; or
- (d) a public fund established and maintained in the country exclusively for providing money for the acquisition, construction or maintenance of a building in the country used or to be used as a school or college by the State or a public authority, or by a society or association that is carried

- on otherwise than for the purposes of profit or gain to the individual members of the society or association; or
- (e) the State or the Government of Australia, where the gift is for the purposes of research in the country; or
 - (f) a public library, public museum or public art gallery in the country, or an institution in the country consisting of a public library, public museum and public art gallery or of any two of them; or
 - (g) the United Nations Appeal for Children; or
 - (h) a public fund established and maintained in the country for providing money for the construction or maintenance of a public memorial in the country relating to the war that commenced on 4 August 1914, or the war that commenced on 3 September 1939; or
 - (i) the National Heart Foundation of Australia; or
 - (j) the Winston Churchill Memorial Trust.

144. IMPROVEMENTS ON CERTAIN LAND.

Where any land, or any estate or interest in any land, is deemed to form part of the estate of a deceased person under Section 134(1)(d)(i), and has been improved by the donee between the date of the gift and the date of the death of the donor, the Commissioner shall allow as a deduction the value of the improvements.

145. REBATES ON QUICK SUCCESSION.

(1) For the purposes of this section—

“**deceased successor**” means a deceased person—

- (a) who has become entitled, as a successor to another person who died within the period of five years before the death of the first-mentioned person, to any property that formed or was deemed to form part of the estate of that other person; and
- (b) who was—
 - (i) the spouse, parent, child, grandchild, brother or sister; or
 - (ii) the spouse of a child,

of that other person;

“**predecessor**”, in relation to a deceased successor, means the person referred to in the definition of “deceased successor” in this subsection to whose property he succeeded.

(2) Subject to Subsection (3), where the Commissioner is satisfied that—

- (a) any property that is or is deemed to form part of the estate of a deceased successor is identifiable with or derived from property that formed or was deemed to form part of the estate of a predecessor; and

- (b) the property passed or was deemed to pass from the predecessor directly to the deceased successor; and
- (c) the property passes or is deemed to pass from the deceased successor for the use and benefit of—
 - (i) the widow, widower, parent, child, grandchild, brother or sister; or
 - (ii) a spouse of a child,

of the deceased successor,

the Commissioner shall reduce the net amount of the duty payable in the estate of the deceased successor in respect of that property—

- (d) if the deceased successor has died within one year after the death of the predecessor—by 50%; or
- (e) if the deceased successor has died within two years after the death of the predecessor—by 40%; or
- (f) if the deceased successor has died within three years after the death of the predecessor—by 30%; or
- (g) if the deceased successor has died within four years after the death of the predecessor—by 20%; or
- (h) if the deceased successor has died within five years after the death of the predecessor—by 10%.

(3) Where the net amount of the duty payable, without any reduction under this section, in respect of the estate of the deceased successor in respect of property referred to in Subsection (2) exceeds the net amount of the duty actually paid or payable in the estate of the predecessor in respect of that property or the property that it represents, the reduction to be made under this section shall be the appropriate percentage of the last-mentioned amount.

(4) The duty payable in respect of any property for the purposes of this section shall be calculated by proportional calculation in accordance with Schedule 3.

146. DEATH AS RESULT OF WAR SERVICE, ETC.

(1) Where a member of the Defence Force or of the defence force of a part of the Queen's dominions, or of an ally of Papua New Guinea, dies on active service or as a result of injuries received or disease contracted on active service in any war, warlike operations or hostilities to which this section applies, the duty otherwise payable under this Part on the share of the final balance to which all or any of—

- (a) the spouse; or
- (b) the lineal descendants; or
- (c) the lineal ancestors; or
- (d) the brothers and sisters,

of the deceased is entitled, whether under a will or on an intestacy, shall be reduced (by proportional calculation in accordance with Schedule 3) by such proportion as the total value of the shares of all those persons or K15,000.00 (whichever is the less) bears to the share of the final balance of all those persons.

(2) This section applies with respect to a person who—

- (a) has served in any capacity in a Papua New Guinea ship or a British ship; and
- (b) dies during any war, warlike operations or hostilities to which this section applies, while serving in a theatre of war in the ship or as the result of injuries received or disease contracted while so serving.

(3) For the purposes of Subsection (2), “serving in a theatre of war” means serving in a ship at a time when danger from hostile forces of the enemy was incurred on the ship by the person so serving.

(4) This section applies to—

- (a) the war that commenced on 4 August 1914, and any other war in which Australia became engaged after that date and before 11 November 1918; and
- (b) the war that commenced on 3 September 1939, and any other war in which Australia became engaged after that date and before 27 August 1945; and
- (c) the warlike operations in Korea after 26 June 1950; and
- (d) the warlike operations in Malaya after 28 June 1950; and
- (e) any other war, warlike operations or hostilities in which Papua New Guinea is engaged that is proclaimed to be a war or hostilities for the purposes of this section by the Head of State, acting on advice, by notice in the National Gazette.

Division 5.

Valuations, etc.

147. CURRENCY.

For the purposes of this Part, the value of any property or debts of a deceased person and the value of an amount of duty required to be paid or refunded shall be calculated and expressed in Papua New Guinea currency.

148. SHARES IN PROPRIETARY COMPANIES, ETC.

For the purposes of this Part—

- (a) the valuation of—
 - (i) stocks or shares in a proprietary company (whether incorporated in or out of the country); and

- (ii) stocks or shares in any other company (whether incorporated in or out of the country) the market sale price of which is not quoted on the current official list of a Stock Exchange in Papua New Guinea or Australia on the date of death of the deceased stockholder or shareholder,
 - shall, subject to the succeeding provisions of this subsection, be made on the basis that the memorandum and articles of association satisfy the requirements prescribed by the committee or governing authority of any Stock Exchange at the place where the share or stock register is situate for the purpose of enabling the company to be placed on the current official list of the Stock Exchange; and
- (b) notwithstanding anything in Paragraph (a), in the valuation of the stocks or shares of a company whose stocks or shares are not quoted on the official list of a Stock Exchange in Papua New Guinea or Australia, the Commissioner may, in his discretion, adopt as the value of any such stocks or shares such sum as the holder would have received if the company had been voluntarily wound up as at the date of death; and
- (c) where the Commissioner is satisfied that the rights attaching to any shares in a proprietary company have been varied—
 - (i) at a time when the shares were owned or controlled by the deceased; and
 - (ii) within a period of three years immediately before the death of the deceased, or at any time if the variation took effect or may take effect on or after the death of the deceased,
 - so as to decrease the value of the shares and to increase the value of other shares in the company, the Commissioner may value those shares as if the variation had not been made; and
- (d) the rights attaching to shares in a proprietary company shall be deemed to be varied whether the variation is made in accordance with the original provisions of the memorandum or articles of association or by means of an alteration to them; and
- (e) where shares are valued in accordance with Paragraphs (c) and (d), the difference between the amount at which they are valued and the amount at which they would, apart from those paragraphs, have been valued shall be deemed to be notional estate for the purpose of this Part; and
- (f) no provision in the memorandum or articles of association of a company by or under which the value of the shares of the deceased or any other

member is to be determined is applicable in determining the value of the shares for the purposes of this Part.

149. FURNISHING OF STATEMENTS, ETC., BY COMPANIES.

Where it is necessary for the purposes of this Part to ascertain the value of any shares, stock or debentures in, or of a debt due by or to, a corporation, company or society, a director or member of the governing body of the corporation, company or society, or its manager, secretary or public officer, must, at the request of the Commissioner, deliver to him such balance sheets and accounts and such other documents and information as the Commissioner requires, for the purpose of ascertaining the value of the shares, stock, debentures or debt.

Penalty: A fine not exceeding K200.00.

150. VALUATION BY COMMISSIONER.

(1) If the Commissioner is dissatisfied with the value placed on any property, he may—

- (a) value the property, and may agree with the personal representative on the value to be adopted; or
- (b) if agreement cannot be reached, and he thinks it necessary or desirable—appoint a valuer to advise him as to the value of the property.

(2) The Commissioner is not bound to adopt a valuation given under Subsection (1)(b).

(3) If there is a difference between the value set out in the statement filed under Section 137 and the value proposed by the Commissioner, he may—

- (a) agree with the personal representative on the value to be adopted; or
- (b) if agreement cannot be reached, and he thinks it necessary or desirable—summon before him—
 - (i) the personal representative; and
 - (ii) his valuer; and
 - (iii) the valuer appointed by the Commissioner; and
 - (iv) such other persons as he thinks proper.

(4) A person summoned under Subsection (3) shall attend as required by the summons and give evidence before the Commissioner in the same way as persons summoned before the Registrar are bound to attend and give evidence, and the Commissioner may—

- (a) administer oaths; and
- (b) take evidence orally or by affidavit; and
- (c) require the production of books, papers, accounts and documents.

(5) The Commissioner shall determine the value of the property on the evidence taken under Subsection (4).

(6) Within 21 days after the determination, and on payment of the duty in conformity with the determination, a personal representative who is dissatisfied with a determination under this section may appeal against the determination.

(7) Where no summons has been issued by the Commissioner, a personal representative who is dissatisfied with the valuation adopted by the Commissioner may appeal against the valuation, within 21 days after the communication of the Commissioner's decision not to issue a summons and on payment of the duty in conformity with the valuation.

(8) Where the value according to a determination or valuation under this section exceeds K2,000.00, the appeal is to the National Court, and, where the value does not exceed K2,000.00 the appeal is to a court of summary jurisdiction consisting, where the value exceeds K1,000.00, of one or more Principal Magistrates.

(9) If on an appeal under this section the value on which duty has been paid is confirmed, the court shall order the appellant to pay to the Commissioner the costs incurred by the Commissioner in relation to the appeal.

(10) If on an appeal under this section it is decided that the value on which the duty has been paid is excessive, the court before which the appeal is heard shall direct the repayment of the duty paid in respect of the excess together with such costs (if any) as the court thinks just.

151. DATE OF VALUATION.

(1) Except as otherwise expressly provided in this Part, the Commissioner shall fix the value of any property for the purposes of this Act at the price that the property would fetch if sold in the open market at the date of the death of the deceased.

(2) Where it is proved that the value of the property has been depreciated by reason of the death of the deceased, the Commissioner shall take the depreciation into account in fixing the price.

(3) In the case of property in which the deceased held a share or a proportionate interest only and to which he was not entitled as sole owner, the value shall be arrived at by estimating the value of the whole property as if he were the sole owner and then calculating the proportionate share of interest of the deceased in the total value.

Division 6.

Payment.

152. TIME FOR PAYMENT.

(1) The regulations may prescribe the time within which, and the notice after which, the duty payable under this Part shall be paid.

(2) If the duty is not paid within the time prescribed, the Commissioner may apply to the National Court, which may order that a sufficient part of the property of the deceased be sold and the proceeds applied in payment of the duty and of the costs of and consequent on the order and sale.

153. PAYMENT OF DUTY OUT OF ESTATE.

(1) In this section, “residue” includes any unbequeathed personality and any undevised realty.

(2) Notwithstanding anything in this Act or in any other law, duty payable under this Part is a debt of the deceased to the State and shall be paid by a personal representative out of the estate of the deceased—

- (a) after payment of the testamentary and funeral expenses; and
- (b) in priority to all debts of the deceased.

(3) Subject to this section and Section 158, unless a contrary intention appears in the will (if any), the personal representative of a deceased person shall pay any duty payable by him under this Part, other than duty payable in respect of property referred to in Section 159, out of the residue of the estate.

(4) Where there is no residue, or where the residue, after providing for the payment of funeral and testamentary expenses, is insufficient for the payment of the duty, an executor or administrator with the will annexed shall, in order to provide for the payment of the duty or the balance of the duty, as the case may be, deduct from each devise, bequest or legacy coming to a person under the will, in proportion to the value of the devise, bequest or legacy, such an amount as is necessary for that purpose, unless the testator has in his will made a different provision as to the payment of the duty.

(5) The estates and interests of persons successively entitled to any property that is settled by will shall not be separately valued for the purposes of this section, but the total duty payable in respect of those estates and interests shall be borne by the settled property and shall be raised out of or charged against the corpus of the property.

154. PAYMENT OF DUTY DURING MINORITY OR ABSENCE.

An administrator or administrator with the will annexed to whom letters of administration are granted during minority or absence from the country shall file the statement required by Section 137 and pay the duty required by Schedule 3, but no further duty shall be charged on the issue of letters of administration to the person entitled on his coming of age or return to the country.

155. UNDER PAYMENTS AND OVERPAYMENTS OF DUTY.

(1) Where after duty has been paid under this Part it is discovered that too little duty has been paid, the person by whom the duty might have been paid shall

pay the additional duty to the Commissioner, and the amount so payable may be recovered by the Commissioner from him as a debt.

(2) Subject to Subsection (3), where after duty has been paid under this Part it is found that too much duty has been paid in consequence of debts of the deceased being discovered that were not included in the statement, the Commissioner shall, on being satisfied of the existence of those debts, order that the amount overpaid be returned to the person entitled to receive it.

(3) An order shall not be made by the Commissioner under Subsection (2) for the return of an amount overpaid as duty unless application for repayment of the amount overpaid is made to the Commissioner within six years after the date on which the overpayment was made.

156. REFUND OF DUTY ON PROPERTY OUTSIDE PAPUA NEW GUINEA.

(1) Where—

- (a) duty has been paid under this Part in respect of property, situate outside Papua New Guinea, of a deceased person who was at the time of his death domiciled in Papua New Guinea; and
- (b) duty has been lawfully paid outside Papua New Guinea in respect of that property in consequence of his death,

the Commissioner shall order that—

- (c) an amount that bears to the total duty paid in the other jurisdiction the same proportion as the gross value of the property in the other jurisdiction bears to the total property subject to duty in the other jurisdiction; or
- (d) an amount that bears to the total duty paid in Papua New Guinea the same proportion as the gross value of the property in the other jurisdiction that is subject to duty under this Part bears to the gross value of the total property subject to duty under this Part,

whichever amount is the less, be refunded to the person entitled to receive it.

(2) Where the Commissioner is satisfied that in a case referred to in Subsection (1) a refund will become payable, he may, instead of requiring the payment to him of the full amount of the duty, make a provisional allowance of the estimated amount of the refund subject to such conditions as he imposes or as are prescribed.

157. CREDIT ON FURTHER PAYMENT FOR DUTY PAID.

In all cases of payment of further duty, credit shall be given for any duty already paid in respect of the same estate.

158. RECOVERY OF DUTY PAID BY PERSONAL REPRESENTATIVE.

(1) In this section, “notional estate” means any property or interest in property that under this Part is deemed to form part of the estate of a deceased person and is chargeable with duty accordingly.

(2) This section applies unless there is a will in which a contrary intention appears.

(3) Where duty on a notional estate has become payable by the personal representative, he may—

- (a) recover the amount of the duty on the notional estate from the person to whom the notional estate passed; or
- (b) retain or deduct the amount out of or from any moneys in his hands belonging to that person.

(4) On the application of the personal representative, the National Court may make an order declaring that the personal representative has a charge, with a power of sale, over any notional estate for—

- (a) the amount of the duty paid or payable by him on that notional estate; and
- (b) the costs and expenses of—
 - (i) obtaining the order; and
 - (ii) any subsequent proceedings for enforcing the charge; and
 - (iii) any subsequent sale.

(5) An order under Subsection (4) is subject to the rights of any person who, in good faith and for valuable consideration, has acquired—

- (a) the notional estate; or
- (b) an interest, right, privilege or benefit in the notional estate; or
- (c) a charge over the notional estate.

(6) For the purposes of Subsection (5), an acquisition by a person shall not be deemed to have been otherwise than in good faith merely because he did not make inquiry as to whether the person to whom the notional estate passed was liable under this section to pay duty to the personal representative.

(7) Where the executor or administrator has, under Section 153(4)—

- (a) made deductions from devises, bequests or legacies to enable duty payable on any notional estate to be paid; or
- (b) paid any such duty out of the residue,

he shall apply—

- (c) the net amount that he recovers or retains in the exercise of the powers conferred by this section in or towards making good the amounts of the

deductions to the persons entitled to those devises, bequests or legacies;
and

- (d) any balance of that net amount in or towards making good the amount that he paid out of the residue.

Division 7.

Special Provision in Relation to Settlements, etc.

159. REGISTRATION OF SETTLEMENT ON DEATH OF SETTLOR.

(1) On the death of the settlor, a settlement shall be registered in the office of the Commissioner in accordance with Subsection (2), and, except for the purpose of payment of duty, no settlement has any operation or affect until it is so registered.

(2) The trustees of a settlement or some other person interested under the settlement shall, within three months after the death of the settlor or such further time as the Commissioner allows, produce every instrument containing the settlement, or, if there is no instrument, a memorandum of the settlement, in the office of the Commissioner for registration, and shall furnish the Commissioner with a certified copy.

(3) The settlement shall not be registered until the duty payable in respect of the property comprised in the settlement has been paid.

(4) The duty, or the proportion of duty, as the case may be, payable on the value of the property comprised in a settlement shall be borne by and is a charge on the property.

(5) Whether or not a statement has been filed under Section 137, the Commissioner—

- (a) may assess the duty payable on the final balance (including the property comprised in the settlement); and
- (b) may, and if so required by the personal representative or by the trustees or other persons in whom the property the subject of the settlement is vested shall, apportion (by proportional calculation in accordance with Schedule 3) the total duty payable in respect of the final balance as between the property comprised in the settlement and the remainder of the estate.

(6) The amount of the duty payable on the property comprised in the settlement, or the duty apportioned to the property comprised in the settlement, as the case may be, is payable by the trustees or some person interested under the settlement who shall be assessed accordingly, and the personal representative is relieved of liability with respect to the payment.

(7) The personal representative may recover in a court of competent jurisdiction from the trustees or other persons in whom the property the subject of the settlement is vested the proportion of duty (apportioned by the Commissioner

under this section) attributable to the settlement as a debt due and payable by the trustees or persons to the executor or administrator.

(8) If a settlement is not registered within three months after the date of the death of the settlor or such further time as the Commissioner allows, the Commissioner may assess the duty payable under this Part in respect of the property comprised in the settlement, and, if the duty is not paid within one month or such further time as the Commissioner allows, the Commissioner or any person interested may apply to the National Court for an order under Subsection (9).

(9) On an application under Subsection (8), the National Court may order that a sufficient part of the property included in the settlement be sold or realized and the proceeds of the sale or realization applied in payment of the duty and of the costs and expenses of and consequent on the order and sale or realization.

160. DEDUCTION OF STAMP DUTY ON SETTLEMENTS, ETC.

A person paying the duty payable under this Act on any property comprised in a settlement or deed of gift may deduct the amount of the ad valorem duty paid in respect of that property by virtue of the *Stamp Duties Act 1952*, notwithstanding anything to the contrary in Division III.7 of that Act.

Division 8.

Miscellaneous.

161. PROCEDURE IN APPLICATIONS TO THE NATIONAL COURT UNDER PART VII.

(1) On an application to the National Court under this Part, all persons who would be necessary or proper parties if the application were made in an action instituted by a creditor for the administration of a testator's or intestate's property are entitled to notice and may be heard.

(2) The National Court may order substituted service or dispense with service on any person referred to in Subsection (1) as it thinks fit, and for the purpose of any application under this Part the Court may appoint guardians or refer any question as it thinks expedient.

(3) Subject to this Part, the National Court shall decide an application under this Part on the same principles as if the order were to be made in an action instituted by creditors to obtain payment of their debts out of the estate of a deceased person.

(4) The National Court has, for the purpose of this Part, all the powers that it possessed at the commencement date.

162. VESTING ORDERS.

(1) Where an order has been made for the sale of any land under this Part, every person seized or possessed of the land or entitled to a contingent interest in it shall be deemed to be so seized, possessed or entitled, as the case may be, on a trust

within the meaning of the *Trustees and Executors Act 1961*, and the National Court may make an order vesting the land or any part of it, for such estate as the Court thinks proper, in a purchaser or in such other person as the Court directs.

(2) An order under Subsection (1) has the same effect as if the person seized, possessed or entitled to the land the subject of the order had been free from all disability and had duly executed all proper conveyance and assignments of the land for the estate vested by the order of the National Court.

163. UNAUTHORIZED DEALINGS IN ESTATE PROPERTY.

(1) Where—

- (a) any shares, stock, debentures, money on fixed deposit, policy of life insurance or any other property except money on current account at a bank stand or stands in the books of a person or body corporate or unincorporate in the country in the name of the deceased person, alone or jointly with any other person; or
- (b) a policy of life insurance on the life of the deceased stands in any such books in the name of any other person but has not so stood for a period of three years,

then—

- (c) no dealings with the shares, stock or debentures, or the money, policy or property, shall be registered, recorded or otherwise given effect to; and
- (d) the policy shall not be satisfied,

by the person or body, if he or it has notice (whether under this section or otherwise) of the death of the deceased, without the production of a certificate of the Commissioner to the effect that the duty in respect of it has been paid, or that the Commissioner consents to the proposed dealing or satisfaction.

(2) Where—

- (a) a safe deposit is held in the name of a deceased person, alone or jointly, at the premises in the country of a person or body corporate or unincorporate; or
- (b) property is deposited for safe custody in the name of a deceased person, alone or jointly, at the premises in the country of a person or body corporate or unincorporate,

then if that person or body has notice (whether under this section or otherwise) of the death of the deceased, he or it must not permit the removal of any property or thing from the safe deposit, or of any property deposited for the safe custody, unless the Commissioner certifies in writing in the prescribed form that the duty in respect of it has been paid, or that the Commissioner consents to the proposed removal.

(3) A person or body referred to in this section who or which acts in contravention of this section is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(4) A person who seeks to have a dealing referred to in Subsection (1) registered, recorded or otherwise given effect to, or a policy satisfied, in contravention of that subsection is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(5) A personal representative who omits to give to a person or body referred to in this section notice of the death of the deceased within two months after the date of death is guilty of an offence.

Penalty: A fine not exceeding K40.00.

(6) It is a defence to a charge of an offence against Subsection (5) if the executor or administrator shows that he gave the notice within two months after the time when he first had knowledge of the interest of the deceased in an asset by reason of which he was required to give the notice.

(7) Where—

- (a) any property, other than the house and curtilage of the matrimonial home of the deceased person is vested in a deceased person jointly with another person; and
- (b) on the death of the deceased person the property passes or accrues by survivorship to that other person,

no registration of the title of the survivor shall be made in the office of the Registrar-General, or in any other office, without the production of a certificate of the Commissioner to the effect that the duty in respect of the property has been paid, or that the Commissioner consents to the proposed registration.

(8) A certificate required by this section may be denoted by writing on the instrument of title (if any) to the shares, stock, debentures, moneys, policy or property.

(9) This section shall be read subject to Sections 62 and 86, and to any other law relating to the distribution of and dealing with deceased estates.

164. INTERMEDDLING, ETC.

(1) Subject to Subsection (2), a person who takes possession of and in any manner administers any part of the estate of a deceased person without obtaining probate or letters of administration of the estate within six months after the death of that person, or two months after the termination of any legal proceedings respecting the will or the right of administration (if any) that is not ended within four months after the decease, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) Subsection (1) does not apply in a case where—

- (a) the duty assessed in relation to the estate has been paid within the prescribed time; or

(b) the Commissioner has certified that no such duty is payable.

(3) This section shall be read as in aid, and not in derogation, of the provisions of Section 138.

165. FALSE STATEMENTS AS TO PROPERTY, ETC.

A person who, with intent to evade the payment of duty under this Part or to lessen the amount of duty, makes or assists in making a false statement or false alterations in a statement required to be made under this Part or the regulations is guilty of an offence.

Penalty: Imprisonment for a term not exceeding three years.

PART VIII. – MISCELLANEOUS.

166. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing the fees to be paid for any matter or thing under this Act.

SCHEDULE 1 – APPLICATION OF ASSETS.

Sec. 70.

PART I – RULES AS TO PAYMENT OF DEBTS WHERE THE ESTATE IS NOT SOLVENT.

1. The funeral, testamentary and administration expenses have priority.
2. Subject to Section Sch. 1.1, the same rules shall be observed as to—
 - (a) the respective rights of secured and unsecured creditors; and
 - (b) debts and liabilities provable; and
 - (c) the valuation of annuities and future and contingent liabilities; and
 - (d) the priorities of debts and liabilities,

as are in force under the *Insolvency Act 1951*.

PART II – ORDER OF APPLICATION OF ASSETS WHERE THE ESTATE IS SOLVENT.

3. Subject to Section Sch. 1.4, where the estate is solvent, assets shall be applied in the following order:—

- (a) property of the deceased not disposed of by will, subject to the retention of a fund sufficient to meet any pecuniary legacies;
- (b) property of the deceased specifically appropriated, devised or bequeathed or directed to be sold (whether by a specific or a general description) for the payment of debts;
- (c) property of the deceased charged with, or devised or bequeathed (whether by a specific or a general description) subject to a charge for, the payment of debts;
- (d) property of the deceased not specifically devised or bequeathed but included (whether by a specific or a general description) in a residuary gift, subject to the retention out of that property of a fund sufficient to meet any pecuniary legacies so far as they are not provided for in the preceding provisions of this section;
- (e) the fund (if any) retained to meet pecuniary legacies;
- (f) property specifically devised or bequeathed, rateable according to value;
- (g) property appointed by will under a general power, including the statutory power to dispose of entailed interests, rateable according to value.

4. The following provisions also apply:—

- (a) the order of application may be varied by the will of the deceased;

- (b) this Part of this Schedule does not affect the liability of any property to answer any duty imposed on it by any enactment in exoneration of other assets.

SCHEDULE 2 – OATH AND AFFIRMATION OF DISTRIBUTORS.

Sec. 99.

Oath.

“I,..., do swear that I will properly administer and account for according to law all estates committed to me as a Distributor of Small Estates under the *Wills, Probate and Administration Act*.

So help me God!”

Affirmation.

“I,..., do solemnly and sincerely affirm and declare that I will properly administer and account for according to law all estates committed to me as a Distributor of Small Estates under the *Wills, Probate and Administration Act*.”

SCHEDULE 3 – CALCULATION OF DUTY.

Sec. 135.

Subject to this Schedule, duty shall be calculated as follows:–

PART I – ON THE PROPERTY OF DECEASED PERSONS GENERALLY.

Where the total value of the property, after deducting all debts–	Duty is payable at the rate of–
Exceeds K2,000.00 and does not exceed K20,000.00	6%, increasing by 0.04% for every complete K200.00 by which the value exceeds K2,000.00.
Exceeds K20,000.00 and does not exceed K40,000.00	9.6%, increasing by 0.024% for every complete K200.00 by which the value exceeds K20,000.00.
Exceeds K40,000.00 and does not exceed K100,000.00	12%, increasing by 0.015% for every complete K200.00 by which the value exceeds K40,000.00.
Exceeds K100,000.00 and does not exceed K200,000.00	16.5%, increasing by 0.02% for every complete K200.00 by which the value exceeds K100,000.00.
Exceeds K200,000.00	27%.

PART II – ON THE PROPERTY OF DECEASED PERSONS PASSING TO CERTAIN RELATIVES.

Where the aggregate value of the property passing to the widow, widower, children, grandchildren and direct ancestors–	Duty is payable at the rate of–
Exceeds K11,000.00 and does not exceed K20,000.00	1.9%, increasing by 0.08% for every complete K200.00 by which the value exceeds K11,000.00
Exceeds K20,000.00 and does not exceed K40,000.00	5.5%, increasing by 0.035% for every complete K200.00 by which the value exceeds K20,000.00.
Exceeds K40,000.00 and does not exceed K200,000.00	9%, increasing by 0.02% for every complete K200.00 by which the value exceeds K40,000.00.
Exceeds K200,000.00	25.5%

PART III – ON SETTLEMENTS OF PROPERTY TAKEN BY CERTAIN RELATIVES.

Where the person taking the property is the widow, widower, child, grandchild or direct ancestor of the settlor and the total value of the property–	Duty is payable at the rate of–
Exceeds K11,000.00 and does not exceed K20,000.00	1.9%, increasing by 0.08% for every complete K200.00 by which the value exceeds K11,000.00.
Exceeds K20,000.00 and does not exceed K40,000.00	5.5%, increasing by 0.035% for every complete K200.00 by which the value exceeds K20,000.00.
Exceeds K40,000.00 and does not exceed K200,000.00	9%, increasing by 0.02% for every complete K200.00 by which the value exceeds K40,000.00.
Exceeds K200,000.00	25.5%

PART IV – ON SETTLEMENTS IN OTHER CASES.

1. Duty at the rate of 27% on the value of the property taken by a person other than a widow, widower, child, grandchild, or direct ancestor.
2. The duty chargeable shall not be increased by more than K1.00 for every K2.00 by which the final balance is increased.
3. Where the duty calculated under this Schedule is less than K1.00 the duty chargeable is K1.00.

(1) The duty chargeable on the final balance of the estate of a deceased person who dies domiciled outside Papua New Guinea is a sum equal to that proportion of the duty that would be chargeable on the total value of all property wherever situated that would form, or would be deemed to form, part of the estate of the deceased if it were situated in Papua New Guinea, less the total value of all debts due and owing by him at the time of his death and all other deductions that would be allowed under this Act (in this section called “the total estate”) that the final balance bears to that total estate.

(2) In calculating the duty that would be payable on the total estate for the purposes of this section, the provisions of this Act and of this Schedule apply as if the total estate were the final balance.

(3) No duty is chargeable under this section where the final balance does not exceed K200.00.

(4) For the purpose of this section, the Commissioner may require the person who files the statement in respect of the deceased persons estate to furnish the Commissioner with valuations certificates and other information (including

certificates from taxation or other public authorities outside Papua New Guinea) as he thinks necessary to allow the determination of the value of the total estate.

SCHEDULE 4 – ¹⁸REPORT BY DISTRIBUTOR.

Sec. 35L(2).

NAME OF DECEASED	VALUE OF ESTATE	DATE DISTRIBUTED	NAMES OF BENEFICIARIES.
Signature of Distributor Date			
NAME OF DECEASED	VALUE OF ESTATE	DATE DISTRIBUTED	NAMES OF BENEFICIARIES.
Signature of Distributor Date			

¹⁸ Schedule 4 inserted by *Wills, Probate and Administration (Amendment) Act 1987* (No. 15 of 1987), s2.