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## Estate Administration In Malaysia

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Estate administration essentially involves ascertaining a deceased's estate, paying off the debts and liabilities of the deceased, and to thereafter distribute the deceased's estate in accordance with the deceased's will, or in the case where there is no will, in accordance with the Distribution Act 1958.

This alert examines the nature of the Grant of Probate and the Letter of Administration, both of which are important instruments in the administration of a deceased's estate. Additionally, discussion will also touch on the formalities to be met for a will to be valid and some challenges that have been raised in respect of a will.

### 1. Grant of Probate

Where a person passes away leaving a will and has named an executor in the will, a Grant of Probate would be the instrument that the executor would have to apply for in order to administer the deceased's estate. A Grant of Probate is essentially a court order which gives the executor the authority to administer the estate of the deceased in accordance with the will.

An application for Grant of Probate shall be made to the High Court and where there are several executors named in the will, the probate may be granted to them simultaneously or at different times but is in any event, subject to a maximum of four persons with regards to the same property.

It is worth noting that if a person is named as an executor in a will, it does not mean that such executor is under a mandatory obligation to administer the deceased's estate. The executor may opt to renounce his/her right to administer the deceased's estate. However, upon such renunciation, the executor is precluded from applying for representation thereafter unless the High Court allows such executor to withdraw his/her renunciation.

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## 2. Letter of Administration

Where the deceased passed away without leaving a will, any persons interested in the deceased's estate can apply for a Letter of Administration from the High Court. Upon the making of an order for the grant of the Letter of Administration by the High Court, the assets of the deceased will vest in the Administrator, who will then distribute the assets of the deceased according to the Distribution Act 1958 which sets out the persons entitled to the estate and the manner of distribution.

However, it has to be noted that if the estate of the deceased is a small estate (i.e. consisting wholly or partly of immovable property and not exceeding RM2,000,000.00 in total value at the time of application for administration), the application for administration has to be made to the district land administrator where the deceased's immovable property is located.

## 3. Letter of Administration with Will Annexed

Where the deceased passed away with a will but there is a failure of executors, a Letter of Administration with the will annexed may be granted to such person as the High Court deems fit to administer the estate subject to the ranking order set out in Section 16 of the Probate And Administration Act 1959. The Administrator shall then administer the estate of the deceased in accordance with the will.

A failure of executors means any of the following situations:

- no executor is appointed by a will.
- the executor or all the executors appointed by will are legally incapable of acting as such, or have renounced.
- no executor survives the testator.

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- all the executors die before obtaining probate or before having administered all the estate of the deceased.
- the executors appointed by any will do not appear and extract probate.

#### 4. Wills

Before going into the formalities of a will, some of the key benefits of having a will include:

- being able to decide how your assets are distributed.
- being able to choose the executor of your will
- saving time in the administration of your estate as the process of applying for a Grant of Probate is shorter compared to a Letter of Administration.

In order for a will to be valid, the following must be met:

- the maker of the Will must be of sound mind.
- the maker of the Will must be at least 18 years old at the time of making the Will.
- the Will must be in writing.
- the Will must be signed by the maker of the Will in the presence of two or more witnesses who will then sign in the presence of each other and the maker of the Will.

Some further points to take note in relation to wills are that the beneficiary of a will cannot be a witness to the will and that a will does not have to be stamped in Malaysia in order for it to be valid.

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## About Us

We are a full-service commercial law firm with a head office in Kuala Lumpur and a branch office in Penang. Our key areas of practice are as follows:-

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## 5. Possible Challenges to a Will

In the past, various challenges have been raised by parties interested in the estate of a deceased against the will of such deceased. These challenges include:

- lack of testamentary capacity - the maker of the will was of unsound mind, memory or understanding.
- the signature of the maker of the will was fake or forged.
- the will was executed under undue influence
- there exists a newer will which voids the older one

In the event an interested party successfully challenges a will, the court may declare the will as invalid and the estate of the deceased will be distributed in accordance with the Distribution Act 1958 and no longer in accordance with the deceased's wishes. Hence, it is extremely important to avoid or minimise challenges that can be made as to the validity of one's will.

## Conclusion

The aim of this alert to provide sufficient information to assist the readers in planning for the administration of their estate or in writing a will. Although it is not a legal requirement that a will must be prepared by a solicitor, it is advisable nevertheless that legal advice is sought to avoid any non-compliance with any legal formalities which may result in the will being invalid or subject to a challenge later.

Authored by Khey Ken Lim, an associate with the firm's Dispute Resolution practice.

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