

Section 4 of the Intestates' Estates Ordinance (Cap. 73)

LC Paper No. CB(2)2067/01-02(01)

4. Succession to estate on intestacy

(1) The residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section.

(2) If the intestate leaves a husband or wife and leaves—

(a) no issue; and

(b) no parent, or brother or sister of the whole blood, or issue of a brother or sister of the whole blood, (*Amended 57 of 1995 s. 3*)

the residuary estate shall be held in trust for the surviving husband or wife absolutely.

(3) If the intestate leaves a husband or wife and issue, whether or not persons mentioned in subsection (2)(b) also survive, the surviving husband or wife shall take the personal chattels absolutely and, in addition, the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a net sum of \$500,000, free of death duties and costs, to the surviving husband or wife with interest on that sum from the date of the death at the rate determined from time to time by the Chief Justice for the purpose of section 49(1)(b) of the High Court Ordinance (Cap. 4) until paid or appropriated and, subject to providing for that sum and interest, the residuary estate (other than the personal chattels) shall be held— (*Amended 25 of 1998 s. 2*)

(a) as to one half, in trust for the surviving husband or wife absolutely; and

(b) as to the other half, on the statutory trusts for the issue of the intestate. (*Replaced 57 of 1995 s. 3*)

(4) If the intestate leaves no issue but does leave a husband or wife and one or more of the following, namely a parent, a brother or sister of the whole blood, or issue of a brother or sister of the whole blood, the surviving husband or wife shall take the personal chattels absolutely and, in addition, the residuary estate of the intestate shall stand charged with the payment of a net sum of \$1,000,000, free of death duties and costs, to the surviving husband or wife with interest on that sum from the date of death at the rate determined from time to time by the Chief Justice for the purpose of section 49(1)(b) of the High Court Ordinance (Cap. 4) until paid or appropriated and, subject to providing for that sum and interest, the residuary estate shall be held— (*Amended 25 of 1998 s. 2*)

(a) as to one half, in trust for the surviving husband or wife absolutely; and

(b) as to the other half—

(i) where the intestate leaves one parent or both parents (whether or not brothers or sisters of the intestate or their issue also survive), in trust for the parent absolutely or, as the case may be, for the 2 parents in equal shares absolutely; or

(ii) where the intestate leaves no parent, on the statutory trusts for the brothers and sisters of the whole blood of the intestate. (*Replaced 57 of 1995 s. 3*)

(5) If the intestate leaves issue but no husband or wife the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate.

(6) If the intestate leaves no husband or wife and no issue but both parents, then the residuary estate of the intestate shall be held in trust for the father and mother in equal shares absolutely.

(7) If the intestate leaves no husband or wife and no issue but one parent, then the residuary estate of the intestate shall be held in trust for the surviving father or mother absolutely.

(8) If the intestate leaves no husband or wife and no issue and no parent, then the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely—

firstly, on the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

secondly, on the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

thirdly, for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

fourthly, on the statutory trusts for the uncles and aunts of the intestate who are brothers or sisters of the whole blood of a parent of the intestate; but if no person takes an absolutely vested interest under such trusts; then

fifthly, on the statutory trusts for the uncles and aunts of the intestate who are brothers or sisters of the half blood of a parent of the intestate. (*Replaced 57 of 1995 s. 3*)

(9) In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall, subject to the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481), belong to the Government as bona vacantia and the Government may (without prejudice to any other powers), out of the whole or any part of the property devolving on it, provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision. (*Amended 57 of 1995 s. 3; 29 of 1998 s. 105*)

(10) A husband and wife shall for all purposes of distribution or division under the foregoing provisions of this section be treated as 2 persons.

(11) Where the intestate and the intestate's husband or wife have died in circumstances rendering it uncertain that one of them, or which of them, survived the other this section shall have effect as respects the intestate as if the husband or wife had not survived the intestate. (*Amended 62 of 1984 s. 11*)

(12) The interest payable on the net sum payable under subsection (3) or (4) to the surviving husband or wife shall be primarily payable out of income. (*Replaced 57 of 1995 s. 3*)

(13) The Legislative Council may, from time to time, by resolution vary either or both of the net sums charged by subsections (3) and (4), and any reference in this Ordinance, or in any other Ordinance, to either of such net sums shall have effect as a reference to the corresponding net sum as varied under this subsection.

(14) Any resolution under subsection (13) varying the amount of either of such net sums shall have effect in relation to the estate of any person dying after the coming into force of the resolution.

[*cf. 1925 c. 23 s. 46 U.K.*]