

A COMPARATIVE ANALYSIS FOR THE ADMINISTRATION OF UNDISTRIBUTED FUNDS IN THE ESTATES DISTRIBUTION FOR PERSON LACKS LEGAL CAPACITY

Rahmawati Mohd Yusoff¹
Rosnani Mohd Salleh²
Norintan Wahab³

¹ Senior Lecturer, Department of Law, Universiti Teknologi Mara (UiTM), Cawangan Johor, Kampus Segamat, 85000 Segamat, Johor, Malaysia. (E-mail: rahmawatimy@uitm.edu.my)

² Senior Lecturer, Department of Law, Universiti Teknologi Mara (UiTM), Cawangan Johor, Kampus Segamat, 85000 Segamat, Johor, Malaysia. (Email: rosna243@uitm.edu.my) (Corresponding Author)

³ Senior Lecturer, Department of Law, Universiti Teknologi Mara (UiTM), Cawangan Johor, Kampus Segamat, 85000 Segamat, Johor, Malaysia. (Email: norin210@uitm.edu.my).

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Abstract: *A person of unsound mind means a person which is found incapable of managing himself and his affairs. Upon the conclusion of estates distribution, the law provides that undistributed funds for person lacks legal capacity, for example in cases of minor, insane or senile may be passed to the Public Trust Corporation that will act as a trustee for such funds. The purpose of this paper is to examine the governing law relating to the administration of the undistributed funds in the estates distribution and the issues relating to it. The analysis is based on a qualitative and descriptive cross-sectional analysis of the governing statutes, reported cases, and data gathered from the respective administrative authorities. For the comparative analysis, the research also provides the reference of the system for the administration of undistributed funds in Singapore and the United Kingdom. The research found that the administration of undistributed funds in Malaysia is governed by the Probate and Administration Act 1959 (Act 97), Public Trust Corporation Act 1995 (Act 532), and Small Estates (Distribution) Act 1955 (Act 98). It can be inferred that, as the provision only uses the word (may) instead of (shall) there is no mandatory requirement for the personal representative to deposit the undistributed funds with the Public Trust Corporation. It is mainly due to the fact that the personal representative also assumed the duties of trustee as provided under the Trustee Act 1949.*

Keywords: *Undistributed Funds, Unsound Mind, Lacks of Legal Capacity, Public Trust Corporation*

Introduction

A person of unsound mind means a person which is found incapable of managing himself and his affairs. However, this person still entitled as beneficiaries of the estates upon the death of the owner of property. Upon the conclusion of estates distribution, the law provides that undistributed funds for person lacks legal capacity, for example in cases of minor, insane or senile may be passed to the Public Trust Corporation in Malaysia and Public Trustee in Singapore and United Kingdom that will act as a trustee for such funds. In pursuant thereto, this paper aims to analyse the governing law relating to the administration of the undistributed funds in the estates distribution and the issues relating to it. For the comparative analysis, the research also provides the reference of the system for the administration of undistributed funds in Singapore and the United Kingdom for person lacks of legal capacity.

Research Methodology

The study employs qualitative methods of research in term of content and doctrinal analysis. The content analysis entails reviewing relevant literature on all the primary and secondary materials on issues of the administration of the undistributed funds in the estates distribution for person lacks of legal capacity. Meanwhile, doctrinal analysis involves examining materials such as statutory provisions, treaties, and other legal and non-legal literature. From the comparative analysis, the research also provides the reference of the system for the administration of undistributed funds in Singapore and the United Kingdom.

The Governing Law of Undistributed Funds in Malaysia

Upon the conclusion of administration by the personal representative or Land Administrator, the law provides that undistributed funds, if any, may be passed to the Corporation that will act as a trustee for such funds. The administration of undistributed funds is governed by the Probate and Administration Act 1959 (Act 97), Public Trust Corporation Act 1995 (Act 532), and Small Estates (Distribution) Act 1955 (Act 98). By virtue of Section 86 of the Probate And Administration Act 1959, where upon the conclusion of the administration of the estate of a person dying testate or intestate, there remain in the hands of any personal representative funds of which he is unable to dispose immediately by distribution in accordance with law by reason of the inability of the person entitled to give a discharge, through lack of legal capacity or otherwise, or by reason of any other cause which to the Corporation shall appear sufficient, the personal representative may, if the Corporation consents to accept the same, pay the funds to the Corporation which shall not be required to make any inquiry whether the administration has been conducted in accordance with law, but may accept the same for the benefit of that person and may for the purpose exercise all the powers conferred on the Corporation under section 19 of the Public Trust Corporation Act 1995. The receipt of the Corporation may be accepted by the personal representative and shall constitute a full and sufficient discharge in respect of those funds.

A similar provision relating to undistributed funds can also be found in Section 20 of the Public Trust Corporation Act 1995.

In this relation, Section 16(3) of the Small Estates (Distribution) Act 1955 also provides that where a sum of money in the possession of the Administrator is payable to any person under or by virtue of a distribution order, the Administrator shall deposit such sum of money with the Corporation if:

- a) the whereabouts of such person are not known, for example in cases where the beneficiaries cannot be traced due to incomplete details in terms of telephone number, address and so on, or in cases of a missing person;
- b) such person refuses to accept payment of such sum of money;
- c) such person lacks legal capacity, for example in cases of minor, insane or senile.

The minor person means the person that below the age of majority as stated in the Section 2 of the Age of Majority Act 1971 (Act 21) while an insane person or person of unsound mind has been described in Section 2 of Probate and Administration Act 1959 as:

“person of unsound mind” means--

- (a) a person found under Section 10 of the Mental Disorders Ordinance 1952 [Ord. No. 31 of 1952], to be of unsound mind and incapable of managing himself and his affairs;
- (b) a person certified insane by a medical practitioner and by an Asylum Medical Officer under Section 4 of the Lunatics Ordinance of Sabah [Cap. 74]; and
- (c) a person found under Section 5 of the Mental Health Ordinance 1961 of Sarawak [Ord. No. 16 of 1961] to be of unsound mind and incapable of managing himself or his affairs, and includes any other person of unsound mind incapable of managing himself or his affairs.
- d) for any other reason it is not practicable to pay such sum of money to such person.

Once the money has been deposited with the Corporation, it shall hold such sum as a trustee for the person entitled to it and may apply the same for the benefit of that person, or may pay the said sum to that person if he makes a claim thereto in writing and the Corporation is satisfied as to his identity, entitlement, and legal capacity to receive it.

The Administration of Undistributed Fund in Malaysia

The administration of undistributed funds is governed by Section 19 of the Public Trust Corporation Act 1995. Although Section 19 only deals with the payment of maintenance of a minor, its application has been extended to any other cases by virtue of the powers conferred on the Corporation by the Act itself, the Probate and Administration Act 1959, and also the Small Estates (Distribution) Act 1955 as mention hereinbefore. The Section provides:

- (1) *Where any property not exceeding twenty thousand ringgit in value is held by the Corporation, whether by virtue of a grant of letters of administration to the Corporation or by virtue of the powers conferred on the Corporation by this Act, and the property is held by the Corporation upon trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interest or charges affecting that property, the Corporation may, at its sole discretion during the minority of any such person, make payments of the whole or such part of the income and capital money of the property as may in all the circumstances be reasonable for that person’s maintenance, education or benefit.*
- (2) *Where the property so held exceeds forty thousand ringgit in value, the Corporation may make payments of capital money to the extent of twenty thousand ringgit.*
- (3) *Payments under Subsection (1) and (2) may be made to the parent or guardian of such person or otherwise as the Corporation may, in its discretion, determine and whether or not there is—*
 - (a) *any other fund applicable for the same purpose; or*
 - (b) *any person bound by law to provide for the person’s maintenance or education.*

The Issues of the Undistributed Funds in Malaysia

Firstly, for the issue of ownership, the law provides that the undistributed funds, if any, may be passed to the Corporation that will act as a trustee for such funds. The administration of undistributed funds are governed by the Probate and Administration Act 1959, Public Trust Corporation Act 1995, and Small Estates (Distribution) Act 1955.

Secondly, by virtue of Section 86 of Probate and Administration Act 1959, Section 16(4) of Small Estates (Distribution) Act 1955, and Section 20 of Public Trust Corporation Act 1995, the undistributed fund categorized as the fund that upon the conclusion of the administration of the estate of a person dying testate or intestate, there remains with the Corporation funds of which it is unable to dispose immediately by distribution in accordance with law by reason of the inability of the person entitled to give a discharge, through lack of legal capacity or otherwise, or by reason of any other cause to the Corporation appears sufficient. Therefore, the undistributed fund is the estates that have already been administered, but the estate cannot be distributed due to reasons as stated in Section 16(3) of the Small Estates (Distribution) Act 1955.

Thirdly, in the issue of utilization, by virtue of Section 16(4), Small Estates (Distribution) Act 1955, the undistributed funds are an individual property and the law provides that the Corporation shall hold such sum as trustee for the person entitled to it. However, Section 24 of the Public Trust Corporation Act 1995 provided that the Corporation may invest any money either:

- (a) on the separate account of the estate, trust, property or person to which or to whom the money belongs;
- (b) in the Common Fund; or
- (c) in any Group Investment Fund.

Fourthly, there is no separation of fund for the undistributed funds, as the funds are put altogether in the pending fund. The fund is not separated between the estates of Muslims and non-Muslims. It is settled law that the fund consists of the property of the living person such as the minor and insane person. It can be said also that the funds comprise of the estates of the deceased, namely for the missing and non-traceable person. Therefore, it is established that the fund is mixed between the property for the deceased and the living person. Rahmawati (2019) also stated that the fund is not separated between the movable and immovable property.

Fifthly, regarding the limitation to claim the funds, it has been legally settled that Corporation will hold the undistributed funds, which are stipulated in Section 16(3) of the Small Estates (Distribution) Act 1955. However, there is no time limit for the Corporation to hold such funds and it causes a loss to country. The funds can be claimed together with the payment of interest as provided in Section 27 of the Public Trust Corporation Act 1995. The Section provides that the interest payable in respect of the capital moneys which form part of the Common Fund shall be at such reasonable rate as the Corporation may, prescribe having regard to the distributable income of the Common Fund and the ability of the Common Fund and General Reserve Fund to meet all payments required to be paid, and the interest payable from the Common Fund shall be credited half yearly to the respective estates.

Sixthly, for the amount of undistributed funds, it has been reported that the estate which were administered by Public Trust Corporation worth RM696 million and when including undistributed fund, it is amounted to RM727 million in 2009 (Utusan Malaysia, 2009). Based

on Account General's Department annual report in 2015, the total amount of undistributed funds held by Public Trust Corporation in 2014 stand up to RM250 million (Tan, 2017). Furthermore, it was reported that since the establishment of the Public Trust Corporation until January 2016, there had been RM233 millions of money that was waiting to be administered (Ishak, 2018). According to the Managing Director of Public Trust Corporation, Adenan Md Yusof, he affirmed that until 30th June 2017, there were about 29 000 cases of undistributed funds, which amounted to RM315 million. This amount increased from RM292 million which was reported during October 2016 (Free Malaysia Today, 2017). Rahmawati (2019) reported that the latest amount of the undistributed fund up to December 2018 was RM331,648,517.77 consisted of 31,446 of actives files.

The Undistributed Funds in Singapore

By virtue of Section 68 of Probate and Administration Act (Cap. 251), undistributed funds may be passed to the Public Trustee. The Section provides as follows:

- 1) *Where, upon the conclusion of the administration of the estate of a person dying testate or intestate, there remain in the hands of the personal representative funds of which he is unable to dispose immediately by distribution in accordance with law by reason of the inability of the person entitled to give a discharge, through lack of legal capacity or otherwise, or for any other cause which to the Public Trustee appears sufficient, the personal representative may, if the Public Trustee consents to accept the same, pay those funds to the Public Trustee who —*
 - a) *shall not be required to make any enquiry whether the administration has been conducted in accordance with law;*
 - b) *may accept those funds as a trustee for the person entitled, and apply the same for the benefit of such person; and*
 - c) *may for such purpose exercise all the powers conferred on him under section 63.*
- 2) *The receipt of the Public Trustee may be accepted by the personal representative and shall constitute a full and sufficient discharge in respect of such funds.*

The provision for undistributed funds can also be found in Section 21 of Public Trustee Act (Cap. 260) which provides that after seven years, the funds shall be paid into the Consolidated Fund. The Section reads as follows:

- 1) *Where, upon the conclusion of the administration of the estate of a person dying testate or intestate, there remain in the hands of the Public Trustee funds of which he is unable to dispose by distribution in accordance with law by reason of the untraceability of the person entitled to give a discharge, or for any other cause, or where the Public Trustee is unable to conclude the administration of any trust as there is remaining in his hands funds of which he is unable to dispose by distribution in accordance with law by reason of the untraceability of the beneficiaries under the trust or for any other cause, the Public Trustee shall credit those funds to an account to be called the Unclaimed Estates Account and those funds shall be kept in the account for 7 years, and if they remain unclaimed at the expiration of that period the funds together with any interest earned thereon shall be paid into the Consolidated Fund.*
- 2) *If any claim is made to any part of the funds so transferred to the Consolidated Fund and if the claim is established to the satisfaction of the Public Trustee, the amount certified by the Public Trustee to be due to the claimant shall be paid to him, without interest, from the Consolidated Fund.*

Apart from that, to encourage the public to claim the estates, the Public Trustee's Office (PTO) has its own website which enables the public to search the estates held by the Public Trustee. It is pertinent to note that, the undistributed funds hold by Public Trustee under the Ministry of Law Singapore.

The Undistributed Funds in The United Kingdom

In respect of undistributed funds, there is no specific act governed the fund in the United Kingdom. However, by virtue of Section 42 of the Administration of Estates Act 1925, the law provides that the power to appoint trustees of infants' property. The trustee can be from family members of the infant or from the Public Trustee as Public Trustee acts as executor or administrator of last resort for estates, where the beneficiary is a vulnerable person. The Section reads as follows:

Where an infant is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of this Act (in this subsection called "the deceased") to a devise or legacy, or to the residue of the estate of the deceased, or any share therein, and such devise, legacy, residue or share is not under the will, if any, of the deceased, devised or bequeathed to trustees for the infant, the personal representatives of the deceased may appoint a trust corporation or two or more individuals not exceeding four (whether or not including the personal representatives or one or more of the personal representatives), to be the trustee or trustees of such devise, legacy, residue or share for the infant, and to be trustees of any land devised or any land being or forming part of such residue or share for the purposes of the MIssettled Land Act, 1925, and of the statutory provisions relating to the management of land during a minority, and may execute or do any assurance or thing requisite for vesting such devise, legacy, residue or share in the trustee or trustees so appointed. On such appointment the personal representatives, as such, shall be discharged from all further liability in respect of such devise, legacy, residue, or share, and the same may be retained in its existing condition or state of investment, or may be converted into money, and such money may be invested in any authorised investment.

Meanwhile, in relation to a person who lacks mental capacity, Section 16 of Mental Capacity Act 2005 provides that in relation to personal welfare, or property and affairs of a person who lacks of mental capacity, the court may, by making an order, make the decision or appoint a person (a "deputy") to make decisions on his behalf in relation to the matters. This means the property of a person who lacks mental capacity will be held by a person appointed as deputy for him by the Court of Protection.

Result and Discussion

It is pertinent to note that while the Small Estates (Distribution) Act 1955 provides that the Administrator shall deposit the undistributed funds with the Corporation, the personal representative under the Probate and Administration Act 1959 is not under any obligation to pay the funds to the Corporation as the provision only uses the word (*may*) instead of (*shall*). It can be inferred that there is no mandatory requirement for the personal representative to deposit the undistributed funds with the Corporation. It is mainly due to the fact that the personal representative also assumed the duties of trustee as provided under the Trustee Act 1949.

However, there is no provision that states that the investment made by the Corporation subjected to the Trustee Act 1949. Nevertheless, Section 28 of the Public Trust Corporation Act 1995 provided for the Corporation's liability whereby the Corporation shall be liable to make

good any lawful claims on the Common Fund, which cannot be met therefrom or from the General Reserve Fund whether such claims relate to capital moneys or income. Apart from that, Section 29(3) of the Public Trust Corporation Act 1995 has clearly stated that the General Reserve Fund shall be used for including meeting losses arising on the disposal of the investment of the Common Fund. Hence, the undistributed funds are the unclaimed estates but is not left freeze, even though the fund still manage to gain the profit to the owner, as well as to the Corporation.

Regarding the limitation time for public claims and the Corporation hold the funds, it has been legally settled that there is no time limit for the Corporation to hold the undistributed funds. Hence, it suggested that the Corporation will only be a permanent Public Trustee only in a situation if such person lacks legal capacity, but for any other reason for undistributed fund, such as a person refuses to accept payment of such sum of money, or for any other reasons, it is not practicable to pay such sum of money to such person, or non-traceable person, or above the waiting period for missing person, it is suggested the person who has rights to the fund can still make a claim within 12 years from the date of death of the deceased. Besides, interest will be paid on the money as practised in the United Kingdom. After a period of 12 years and above runs out, the Corporation can still admit the claims up to 30 years with no interest paid on the money. Nevertheless, a claim received outside the 30 years' time limit will not be considered. After the 30 years period elapses, the movable property from the fund will be credited into the Consolidated Revenue Account. For the immovable property, the property will be transferred to State Authority.

Conclusion

The undistributed funds are held by the Corporation whereby the estates have already been administered, but the estate cannot be distributed due to reasons as stated in Section 16(3) of the Small Estates (Distribution) Act 1955. The undistributed funds in Malaysia are deposited with the Public Trust Corporation and governed by the Probate and Administration Act 1959, Small Estates (Distribution) Act 1955, and Public Trust Corporation Act 1995. There is no time limit for the Corporation to hold such funds and the funds can be claimed together with the payment of interest. Meanwhile, the undistributed funds in Singapore are held by the Public Trustee and governed by Probate and Administration Act (Cap. 251) and Public Trustee Act (Cap. 260). However, the Public Trustee will only be held for seven years, and then the funds shall be paid into the Consolidated Fund. There is also no specific act governing the undistributed funds in the United Kingdom. Hence, the Administration of Estates Act 1925 provides the power to appoint trustees of infants' property, which is subjected to Trustee Act 2000. However, the trustee can also be appointed from Public Trustee under office of Official Solicitor and Public Trustee in the United Kingdom. Meanwhile, the Mental Capacity Act 2005 provides the property and affairs of a person who lacks of mental capacity will be dealt with by the court or by the appointed "deputy".

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