

# **Succession Probate and Administration Regulation 1972**

## **NEW HEBRIDES**

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Resident Commissioner in the New Hebrides

## **QUEEN'S REGULATION**

**TO PROVIDE** for Succession, Probate and Administration of Estates of Deceased Persons

**MADE BY** Her Britannic Majesty's Resident Commissioner in the New Hebrides in pursuance of the powers under the provisions of the New Hebrides Orders in Council 1922 to 1970. In the name of Her Majesty Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

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## **SUCCESSION, PROBATE AND ADMINISTRATION REGULATION, 1972 No.7 of 1972**

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## PART I

### **Short Title and Commencement.**

1. This Regulation may be cited as the Succession, Probate and Administration Regulation 1972 and shall come into operation on such date as the Resident Commissioner by Order may appoint.

### **Interpretation.**

2. (1) In this Regulation, unless the context otherwise requires –

"administration" includes letters of administration of the estate and effects of deceased persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes; and also exemplification of letters of administration with or without the will annexed and such other evidence of letters of administration purporting to be under the seal of a court of competent jurisdiction as in the opinion of the court is sufficient;

"administrator" includes any person to whom administration is granted;

"court" means the High Court of the Western Pacific or a Judge thereof;

"estate" means all the property of the deceased person whether movable or immovable;

"intestate" includes a person who leaves a will but dies intestate as to some beneficial interest in his estate;

"Judicial Officer" has the meaning assigned thereto in the Oaths Regulations;

"personal chattels" means livestock, vehicles and accessories, furniture, furnishings, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, jewellery and other articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but does not include any chattels used at the death of the intestate for business purposes nor money or securities for money;

"personal representative" means the executor, original or by representation, of the will, or the administrator of the estate for the time being, of a deceased person;

"probate" includes "exemplification of probate", and such other formal evidence of probate purporting to be under the seal of a court of competent jurisdiction, as in the opinion of the court is sufficient;

"Registrar" means the registrar of the court in the New Hebrides.

"trust company" has the same meaning as in the Trust Companies Regulation;

"Trustee Act" means the Trustee Act 1925 of the Parliament of the United Kingdom (15 & 16 GEO. 5C. 19).

(2) Except where otherwise expressly provided, this Regulation applies only to the wills and estates of persons dying after the commencement of this Regulation; provided, however, that where a person dies prior to the coming in to force of this Regulation but probate or letters of administration have not been granted this Regulation applies to such cases.

(3) For the purposes of this Regulation the certificate of the Attorney General shall be sufficient proof that any country or territory is or was a country or territory of the Commonwealth at the date specified in such certificate.

## **PART II – JURISDICTION OF THE COURT**

### **Jurisdiction of Court.**

3. (1) Subject to the provisions of this Regulation and to any rules made hereunder the court shall have jurisdiction in contentious and non-contentious probate matters and proceedings and in the granting or revoking of probate of wills and administration of estates of persons dying domiciled or leaving property in the New Hebrides.

(2) The jurisdiction vested in the court by the provisions of the preceding subsection shall, subject to any modifications effected by any rules made hereunder, be in conformity with the law and practice in force in England on the 1st day of January 1964.

(3) The Trustee Act shall apply in relation to all matters herein.

### **Duties of Registrar.**

4. The Registrar shall, subject to the rules made hereunder, perform such duties in reference to proceedings in the probate jurisdiction of the court, and such other duties, as may be prescribed by the rules.

## **PART III – DISTRIBUTION ON INTESTACY**

### **Distribution of estate of intestate.**

5. Notwithstanding anything to the contrary contained in any laws in force in New Hebrides at the date of commencement of this Regulation, the property of an intestate dying on or after the date of commencement of this Regulation shall be distributed in accordance with the provisions of this Regulation, and no person shall have any right, title, share, estate or interest

in such property except as provided in this Regulation.

**Succession to property on intestacy.**

**6. (1)** Subject to the provisions of the last preceding Part hereof, the administrator on intestacy or, in the case of partial intestacy, the executor or administrator with the will annexed, shall hold the property as to which a person dies intestate on or after the date of commencement of this Regulation on trust to pay the debts, funeral and testamentary expenses of the deceased and to distribute the residue as follows:-

(a) if the intestate leaves a wife, or husband, with or without issue, the surviving wife or husband shall take the personal chattels absolutely, and –

(i) if the net value of the residuary estate of the intestate, other than the personal chattels, does not exceed ten thousand dollars the residuary estate absolutely; or

(ii) if the net value of the residuary estate exceeds ten thousand dollars, the sum of ten thousand dollars absolutely;

(b) if the intestate leaves no issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a) of this subsection, take one-half of the residuary estate absolutely;

(c) if the intestate leaves issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a) of this subsection, taken one-third only of the residuary estate absolutely, and the issue shall take per stirpes and not per capita the remaining two-thirds of the residuary estate absolutely;

(d) if the intestate leaves issue, but no wife or husband, the issue of the intestate shall take per stirpes and not per capita the whole estate of the intestate absolutely;

(e) if the intestate leaves no issue but both parents, then, subject to the interests of a surviving wife or husband, the father and mother of the intestate shall take the residuary estate of the intestate absolutely in equal shares;

(f) if the intestate leaves no issue, but one parent only then, subject to the interests of a surviving wife or husband, the surviving father or mother shall take the residuary estate of the intestate absolutely;

(g) if the intestate leaves no issue or parent, the surviving husband or wife shall take the residuary estate of the intestate absolutely;

(h) if the intestate leaves no husband or wife and no issue or parents, then the brothers and sisters of the whole blood, and the children of deceased brothers and sisters of the whole blood, of the intestate shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;

(i) if the intestate leaves no husband or wife and no issue or parents or brothers or sisters of the whole blood or children of deceased brothers or sisters of the whole blood, then the brothers and sisters of the half blood and children of deceased brothers and sisters of the half blood shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;

(j) if the intestate leaves no husband or wife and no issue or parents or brothers or sisters of the whole blood or of the half blood, or children of deceased brothers or sisters of the whole blood or of the half blood, then the grandparents of the intestate shall take the whole estate of the intestate absolutely, and if more than one survives the intestate they shall take absolutely

in equal shares, but if there is no grandparent, then the uncles and aunts of the whole blood, and children of deceased uncles and aunts of the whole blood, of the intestate, being brothers and sisters of the whole blood of children of deceased brothers and sisters of the whole blood, of a parent of the intestate, shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;

(k) if the intestate leaves no husband or wife and no issue or parents or brothers or sisters of the whole blood or of the half blood or children of deceased brothers or sisters of the whole blood or of the half blood and no grand parents or uncles or aunts of the whole blood or children of deceased uncles or aunts of the whole blood of the intestate being brothers and sisters of the whole blood of children of deceased of brothers and sisters of the whole blood, of a parent of the intestate, then the uncles and aunts of the half blood and children of deceased uncles and aunts of the half blood of the half blood of the intestate shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;

(l) in default of any person taking an absolute interest under any of the foregoing provisions of this section the residuary estate of the intestate shall belong to the Crown as *bona vacantia*, and the Crown may, 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.

(2) For the purposes of the last preceding subsection –

(a) the net value of the property of a deceased person is the net value of that property at the date of the death of that person;

(b) any income derived from the property of a deceased person shall be distributed among the persons entitled on distribution to that property in the same respective proportions to which they are entitled to share on the distribution of that property.

(3) In this section –

"child" –

(a) in relation to an intestate, means any child, whether legitimate, illegitimate, or legally adopted, of the intestate;

(b) in relation to any person entitled under the provisions of this Regulation to share in the property of an intestate, means any child legitimate, illegitimate, or legally adopted of that person;

"issue" includes a child or any other issue whether legitimate or illegitimate, in any generation, of an intestate.

(4) For the purposes of this section, an illegitimate relationship between a father and his child shall not be recognised unless the court is satisfied that the father admitted paternity or that it has been established in affiliation proceedings.

#### **PART IV – GRANTS OF LETTERS OF ADMINISTRATION**

**Persons entitled to grant.**

7. The court may grant administration of the estate of a person dying intestate to the following persons (separately or conjointly) being not less than twenty-one years of age –

(a) the husband or wife of the deceased; or

(b) if there is no husband or wife to one or not more than four or the next of kin in order of priority of entitlement under this Regulation in the distribution of the estate of the deceased; or

(c) any other person, whether a creditor or not, if there is no person entitled to a grant under the preceding paragraphs of this section resident within the jurisdiction and fit to be so entrusted, or if the person entitled as aforesaid fails, when duly cited, to appear and apply for administration.

**PART V – PROBATE AND ADMINISTRATION**

**Pending grant estate to vest in the court.**

8. Pending the grant of probate of a will or administration of the estate of an intestate, the estate of a deceased person shall, without any charge being leviable therefor, vest in the court for the purpose of accepting service of notices and proceedings and acting as nominal defendant.

**Upon grant of probate or administration property to vest.**

9. Upon the grant of probate or administration, all the estate of which a deceased person dies possessed, or entitled to, in the New Hebrides shall, as from the death of such person, pass to and become vested in the personal representative for all the estate and interest of the deceased therein, in the manner following, that is to say –

(a) on testacy or on partial intestacy, in the executor or administrator with the will annexed; and

(b) on intestacy, in the administrator.

**Executor of executor represents original testator.**

10. (1) An executor of a sole or last surviving executor of a testator is the executor of that testator. This provision shall 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 shall cease to apply to such probate being granted.

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

(3) The chain of such representation is broken by –

- (a) an intestacy; or
- (b) the failure of a testator to appoint an executor; or
- (c) the failure to obtain probate of a will; but is not broken by a temporary grant of administration if probate is subsequently granted.

(4) Every person in the chain of representation to a testator –

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

### **Property to vest subject to trusts**

**11.** All property held by any person in trust shall vest as aforesaid, subject to the trusts and equities affecting the same.

### **Assets.**

**12.** (1) The estate of every deceased person shall be assets in the hands of the executor to whom probate has been granted, or administrator, for the payment of all duties and fees and of the debts funeral and testamentary expenses of the deceased in the ordinary course of administration.

(2) No personal representative shall by virtue of such office have or exercise any right of retainer in priority to the other creditors of the estate in respect of any debt due to him.

(3) An executor to whom probate has been granted, or administrator, may, for the purposes of administration, sell or lease the whole or any part of the estate, or mortgage the same, with or without a power of sale, and assure the same to a purchaser or mortgagee in as full and effectual a manner as the deceased could have done in his lifetime.

### **Estate to vest according to will.**

**13.** Subject as aforesaid, the estate of every person who dies testate shall be held by the executor to whom probate has been granted or the administrator with the will annexed according to the trusts and dispositions of the will of such deceased person.

### **Right of proving executors to exercise powers.**

**14.** (1) Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are by law conferred on the personal representative may be exercised by the proving executor or executors for the time being and shall be as effectual as if all the persons named as executors had concurred therein.

(2) It shall not be lawful for some or one only of several personal representatives to sell or



transfer any estate without the concurrence of all the others or an order of the court.

**Executor not entitled beneficially unless authorized by will.**

15. No executor, as such, shall be entitled to take beneficially any residue not expressly disposed of by the will of the testator, unless it appears by such will that he is intended so to take.

**Court may deal with interest of infants in certain cases.**

16. (1) Where a person dies either before or after the commencement of this Regulation leaving infant issue and the value of the share of the estate of the deceased person to which an infant is entitled in distribution does not exceed ten thousand dollars, the court may, on the application of any such infant, or of any person on his behalf, authorize the personal representative to expend the whole or part of the share of such infant in his maintenance, advancement or education; provided that if the estate exceeds ten thousand dollars the Trustee Act shall apply.

(2) The power or authority that the court may confer under this section on a personal representative is in addition to any other power or authority, statutory or otherwise, that the personal representative may have to pay or apply capital money or assets, or the income thereof, to or on behalf of an infant.

**Power to appoint trustees of infant's property.**

17. (1) Subject to the provisions of subsection (5), where an infant is absolutely entitled under the will or on the intestacy of a deceased person who dies before or after the commencement of this Regulation to the estate or any interest therein, or to the residue of the estate of the deceased, or any share therein, and that estate interest, residue or share is not, under the will, if any, of the deceased, given to trustees for the infant, the personal representative of the deceased may appoint a trustee corporation or two or more individuals not exceeding four (whether or not including the personal representative or one or more of them) to be the trustee or trustees of that estate or interest, residue or share for the infant, and may execute or do any assurance, act or thing requisite for vesting that estate or interest residue or share in the trustee or trustees so appointed.

(2) On the vesting of the estate or interest, residue or share, mentioned in the last preceding subsection, in the trustee or trustees appointed under the provisions of that subsection, the personal representatives as such are discharged from all further liability in respect of that estate or interest, residue or share.

(3) Trustees appointed under the provisions of subsection (1) may retain any property, transferred to them pursuant to the provisions of this section, in its existing condition or state of investment, or may convert it into money, and upon conversion shall invest the money in any of the securities or property authorized for the investment of trust funds.

(4) Where a personal representative has, before the commencement of this Regulation, retained or sold any such estate or interest, residue or share as is mentioned in subsection (1), and has invested it or the proceeds thereof in any investments in which he was authorized to invest money subject to the trust, then, subject to any order of the court made before that date,

he shall be deemed not to have incurred any liability on that account or by reason of not having paid or transferred the money or property into court.

(5) The power of appointing trustees conferred upon personal representatives by this section is subject to any direction or restriction contained in the will of the deceased.

**Personal representative may relinquish office.**

18. (1) A personal representative may at any time, by leave of the court, and on such conditions as the court may impose, relinquish his office to such persons as the court may appoint.

(2) Notwithstanding any such order, the personal representative shall continue liable for all acts and neglect whilst he was acting as executor or administrator, but not otherwise or further.

**Personal representative may represent estate.**

19. In all proceedings concerning the estate of a deceased person, his personal representative, so long as such estate remains vested in him, shall represent such estate.

**All creditors to stand in equal degree.**

20. (1) In the administration of the estate of every deceased person, all the creditors of such person shall be treated as standing in equal degree, and be paid accordingly out of the assets, whether legal or equitable.

(2) Nothing herein contained shall prejudice or affect any mortgage, lien, charge or security which any person may hold or be entitled to for payment of his debt.

**Bond to be executed.**

21. (1) Subject to the provisions of the next succeeding subsection every person to whom administration is granted shall, previous to the issue of such administration, execute in the form prescribed by the rules, a bond, with one or two sureties conditioned for duly collecting, getting in, administering and distributing the estate of the deceased.

(2) No such bond shall, unless specifically ordered by the court, be required from a trustee corporation or from any person obtaining administration to the use or for the benefit of the Crown.

**Penalty of bond.**

22. Every bond shall be in a penalty equal to the gross amount under which the estate of the deceased is sworn but the court may dispense with one or both sureties to any bond or reduce the amount of such penalty, or limit the liability of any surety to such amount as the court thinks reasonable; or in place of any such bond, the court may accept the security of any incorporated company or guarantee society approved of by the Court.

**Sureties to bond may be dispensed within certain cases.**

**23.** (1) Notwithstanding any other provision of this Regulation, in any case where a person dies leaving property not exceeding four thousand dollars in value, and administration is granted to the husband or widow of the deceased, no surety or sureties shall be required to the administration bond.

(2) Notwithstanding any other provision of this Regulation, in any case where the claim of any creditor of the deceased or any portion of such claim is secured by a mortgage of or other charge on the estate of the deceased, no surety or sureties shall be required to the administration bond in an amount of the gross value of the property of the deceased and the amount of the claim which such mortgage or charge secures.

**Court may revoke administration or order new or additional bond.**

**24.** The court may, at any time, upon the application of any person interested in the estate or of his own motion on the report of the Registrar –

(a) revoke the administration already granted; or

(b) order the administrator to execute a further or additional bond in such sum, with or without sureties, as the court may direct; and upon default may remove the administrator and appoint another in his place, with power to sue or be sued upon any contract made by the removed administrator; or

(c) order that the liability of any surety to any administration bond be reduced to such amount as the court in the circumstances of the case thinks reasonable.

**If condition of bond broken, bond may be assigned.**

**25.** The court may order the Registrar for and on behalf of Her Majesty to assign any bond to some person to be named in such order, and such person, or his personal representative, shall be entitled to sue upon the bond in his own name, and be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach of the condition of the said bond.

**Court may grant relief if estate being wasted or in danger.**

**26.** If, upon the application of a surety to any bond, it appears to the court that the estate is being or is in danger of being wasted, or that the surety is being or is in danger of being in any way prejudiced by the act or default of the person administering the estate, or that any surety desires to be relieved from further liability, the court may grant such relief as it may think fit.

**In case of renunciation or failure to take probate, right of Executor gone.**

**27.** Where an executor renounces probate of the will, or dies without having taken probate, or where, being personally cited to take probate; he does not appear to such citation, the right of such executor in respect of the executorship shall wholly cease; and the representation to the testator and the administration of his estate shall go, devolve and be committed in like manner as if such person had not been appointed executor.

**Where infant is executor, etc.**

28. (1) Where an infant is sole executor, administration with the will annexed may be granted to the guardian of such infant, or to such person as the court thinks fit, until such infant has attained the age of twenty-one years, with full or limited powers to act in the premises until probate has been granted to the said executor.

(2) The person to whom such administration is granted shall, unless otherwise ordered, have the same powers vested in him as any ordinary administrator with the will annexed.

**Where person entitled to probate or administration is out of the jurisdiction.**

29. Where an executor or any person entitled to probate or administration is out of the jurisdiction but has some person within the jurisdiction appointed under power of attorney to act for him, administration may be granted to such attorney, but on behalf of the person entitled thereto, and on such terms and conditions as the court thinks fit:

Provided that nothing in this Regulation shall prevent the court from granting probate to an executor who is out of the jurisdiction.

**Administration pendente lite.**

30. (1) Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the court may grant administration of the estate of the deceased to an administrator, who shall have all the rights and powers of a general administrator, other than the right of distributing the residue of the estate, and every such administrator shall be subject to the immediate control of the court and act under its direction.

(2) The court may, out of the estate of the deceased, assign to an administrator appointed under this section such reasonable remuneration as the court thinks fit.

**Administration with the will annexed.**

31. Where a person dies leaving a will but without having appointed an executor, or leaving a will and having appointed an executor who is not willing and competent to take probate, the court may appoint an administrator of the estate of the deceased, or of any part thereof, upon his giving security as aforesaid, and such administration may be limited as the court thinks fit.

**Probate or administration if executor, etc., absent or neglects to obtain probate, etc.**

32. Where an executor neglects to apply for or to renounce probate within six months from the death of the testator or from the time of such executor attaining the age of twenty-one years, or where an executor is unknown or cannot be found, the court may, upon the application of any person interested in the estate, or of any creditor of the testator, grant administration with the will annexed to the applicant, and such administration may be limited as the court thinks fit.

**Special letters of administration if personal representative not within jurisdiction.**

**33.** (1) If, at the expiration of three months from the date of grant of probate or administration of the will or estate of any deceased person, the personal representative is residing out of the New Hebrides, the court may, upon the application of any creditor or person interested in the estate, grant to the applicant special letter of administration of the estate, grant to the applicant special letters of administration of the estate of such deceased person, with such limitation as to powers and duration as the court may decide.

(2) The applicant shall satisfy the court that the personal representative is resident out of the jurisdiction, and that the applicant is thereby delayed in recovering or obtaining payment of moneys, or the possession of goods and chattels, or any other part of the estate to which he is by law entitled, or that the estate is liable to loss or waste.

**On return of personal representative special administration may be revoked.**

**34.** (1) On the return within the jurisdiction of the personal representative, he may apply to the court to revoke such special grant; and the court may make such order upon such terms and conditions as to the court may seem fit, and thereafter the original probate or administration shall be and remain as valid and effectual as if such special grant had never been made.

(2) Upon any order being made for the rescission of any special grant, the special administrator shall be bound to account to the original personal representative, and to pay over all moneys received by him and then remaining in his hands.

**Absent executor liable to account.**

**35.** Should a personal representative neglect to apply for an order for the revocation of any special grant as aforesaid he shall, until such special grant is revoked be liable to make good all claims and demands against the estate of the deceased to the extent of the assets which have come to his hands, or which might have come to his hands but for his wilful neglect or default, including the neglect herein mentioned.

**Court may remove executor.**

**36.** The court may for any reason which appears to it to be sufficient, either upon the application of any person interested in the estate of any deceased person or of its motion on the report of the Registrar and either before or after a grant of probate has been made -

(a) make an order removing any executor of the will of such deceased person from office as such executor and revoking any grant of probate already made to him; and

(b) by the same or any subsequent order appoint an administrator with the will annexed of such estate; and

(c) make such other orders as it thinks fit for vesting the estate in the administrator and for enabling the administrator to obtain possession of control thereof; and

(d) make such further or consequential orders as it may consider necessary in the circumstances.

**Revocation pending litigation not to abate proceedings.**

**37.** Where probate or administration is revoked pending any proceeding commenced by or against any personal representative lawfully acting as such, such proceedings shall be continued in the name of the personal representative appointed on such revocation as if the same had been originally commenced by or against such last-mentioned personal representative.

**Power to postpone distributions.**

**38.** A personal representative shall not be bound to distribute the estate of the deceased before the expiration of one year from the date of grant of probate or administration as the case may be.

**Beneficiary may apply to court in certain cases**

**39.** Subject to the provisions of the last preceding section, if an executor who has obtained probate, or an administrator with the will annexed, after request in writing neglects or refuses to –

- (a) execute a transfer of land given to a beneficiary; or
- (b) transfer, pay or deliver to the person entitled any gift or residuary gift,

such beneficiary may apply for an order directing such executor or administrator to comply with such request, and the court may make such order as it thinks fit.

**Inventory and accounts.**

**40.** (1) Every person to whom probate or administration is granted may and shall if so required by the Registrar file an inventory of the estate of the deceased, and pass his accounts relating thereto within such time, and from time to time, and in such manner as may be prescribed by the rules or as the court may order.

(2) The order of the court allowing any account shall be prima facie evidence of the correctness of the same, and shall, after the expiration of three years from the date of such order, operate as a release to the person filing the same, except so far as it is shown by some person interested therein that a wilful or fraudulent error, omission or entry has been made in such account.

**If accounts not filed Registrar to apply for order.**

**41.** (1) If a personal representative neglects to file an inventory or to pass accounts within one month after being required by the Registrar so to do, the Registrar may apply for an order upon such personal representative to file such inventory or exhibit such account forthwith.

(2) No proceeding under this section shall affect the liability of the personal representative to be proceeded against for an account and administration, or prevent the court from ordering the assignment of any bond to any person with a view to enforcing the penalty thereof as hereinbefore mentioned.

**Court may settle all questions arising in administration.**

42. (1) The court may make such order with reference to any question arising in respect of any will or administration, or with reference to the application of any estate which a personal representative may have in hand, or as to the residue of the estate, as the circumstances of the case may require.

(2) Such order shall bind all persons whether *sui juris* or not.

(3) No final order for distribution shall be made except upon notice to all the parties interested, or as the court may direct.

**Payments made before revocation to be valid.**

43. (1) Where any probate or administration is revoked, all payments bona fide made to the personal representative before the revocation shall be a legal discharge to the person making the same.

(2) A personal representative who has acted under any revoked probate or administration may retain and reimburse himself, or shall be entitled to be reimbursed, in respect of all payments *bona fide* made by him before revocation, in the same manner as if such revocation had taken place.

**Payment, etc., to be valid notwithstanding defect.**

44. All persons making or permitting to be made any payment or transfer *bona fide* upon any probate or administration granted under the authority of this Regulation shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or administration not then known to such person.

**Executor deemed to be resident in the New Hebrides.**

45. (1) Every personal representative appointed under this Regulation, or named in any probate or letters of administration granted by any court of competent jurisdiction in any country or territory of the Commonwealth and making application under this Regulation for the resealing of such probate or administration, shall be deemed to be resident in the New Hebrides.

(2) Where not actually so resident he shall, before the issue or sealing of any probate or administration, file with the Registrar an address within the town in Vila at which notices and processes may be served upon him, and all services at such registered address shall be deemed personal service.

**PART VI – RESEALING PROBATES AND ADMINISTRATION**

**Probates, etc., to be sealed**

46. (1) When any probate or administration heretofore or hereafter granted by any court of competent jurisdiction in any country or territory of the Commonwealth is produced to and a copy thereof deposited with the Registrar by any person being the personal representative

whether original or by representation or by any person duly authorized by power of attorney in that behalf, under the hand and seal of such personal representative, such probate or administration may be sealed with the seal of the court.

(2) When so sealed, such probate or administration shall have the like force, effect and operation in the New Hebrides and every personal representative thereunder shall perform the same duties and be subject to the same liabilities, as if such probate or administration had been originally granted by the court.

(3) The court may require any such administrator or attorney of an administrator, to give security for the due administration of the estate in respect of matters or claims in the New Hebrides.

## **PART VII - CAVEATS**

### **Caveat.**

47. (1) Any person may lodge with the Registrar a caveat against any application for probate or administration, or for the sealing of any probate or letters of administration under the provisions of the Regulation, at any time previous to such probate or administration being granted or sealed.

(2) Every such caveat shall set forth the name of the person lodging the same, and an address within the town in Vila at which notices may be served on him.

### **Court may remove caveat.**

48. (1) In every case in which a caveat is lodged, the court may, upon application by the person applying for probate or administration, or for the sealing of any probate or letters of administration, as the case may be, remove the same.

(2) Every such application shall be served on the caveator by delivering a copy of the same at the address mentioned in his caveat.

(3) Such application may be heard and order made upon affidavit or oral evidence, or as the court may direct.

## **PART VIII - MISCELLANEOUS**

### **Affidavits may be sworn before a Judicial Officer**

49. Any affidavit required by the Regulation to be sworn may be sworn before a Judicial Officer.

### **Deposits not exceeding four hundred dollars in any bank may be paid to widow or next of kin without probate or administration.**

50. On the death of any person leaving the sum of money not exceeding four hundred dollars



standing to his credit in any bank, if a grant of probate or letters of administration is not produced to such bank within four months of the death of such person, and no notice in writing of any will, or of an intention to apply for administration, is given to the bank within the said period, the bank may, after fourteen days notice in writing to the Court, pay such sum of money to any person who appears to the satisfaction of the manager of the bank to be the person who would be beneficially entitled to such sum of money if a grant of probate or letters of administration had been obtained, and payment of such sum of money accordingly shall be a valid discharge to the bank against the claims of any other person whomsoever.

### **Records of grants, etc.**

**51.** (1) The Registrar shall cause entries to be made in a book to be kept for that purpose of –

- (a) all grants of probate and administration, and all orders to collect;
- (b) the filing, passing and allowance off the accounts of all personal representatives; and
- (c) any special order extending the time for passing such accounts.

(2) Such books shall set forth –

- (a) the dates of such grants;
- (b) the names of the testators or intestates;
- (c) the place and time of death;
- (d) the names and description of the personal representatives;
- (e) the proved value of estates;
- (f) the dates of the filing, passing, allowance of, and special orders with reference to the said accounts.

(3) Where the grant of probate or administration is made or resealed by the court, a copy of that grant may, on payment of the prescribed fee, be obtained from the court, with or without the annexure thereto of a copy of the will, if any, to which it relates, and such copy may be issued under seal for all purposes as an office copy, and when so sealed and issued shall be sufficient evidence of that grant and of the death and date of death of the deceased without further proof.

### **Payment of balance of estate to Curator or Public Trustee of the country or territory where deceased was domiciled.**

**52.** (1) Where any person is administering the estate of any person who at the time of his death was domiciled in any country or territory of the Commonwealth, and whose estate is being administered by the Curator or Public Trustee of the place in which the deceased was domiciled, the balance of the estate, after payment of local creditors, commission fees and expenses, may be paid over to such last-named Curator or Public Trustee.

(2) Where any part of the estate of deceased person, whose estate is being administered by any person is situated outside the New Hebrides, such person may receive any part of such estate so situated, and, when received, the same shall be dealt with according to the law of the

New Hebrides.

**Rules of Court and fees.**

**53.** (1) There shall be a rules committee consisting of the Judge of the court in the New Hebrides and such other members not exceeding two as he may appoint to make and prescribe all such rules, forms and fees as may be necessary or convenient to carry out the objects and purposes of this Regulation and in particular, but without prejudice to the generality of the foregoing, prescribe what part of the business, and of the jurisdiction exercisable by the Judge in Chamber, may be transacted exercise by the Registrar or other officer of the court.

(2) Subject to the provisions of this Regulation and to such rules as are made from time to time pursuant to the last preceding subsection of this section, all the rules, forms, fees prescribed thereunder in force in the Principal Probate Registry in England as at the date referred to in section 3 hereof, so far as the same can be read as applicable to local circumstances, shall apply as if made pursuant to the last preceding subsection of this section.

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