



Singapore  
Institute of Legal Education

# Probate & Succession Planning

## **Inheritance (Family Provision) Act**

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# Inheritance (Family) Provision Act (Cap 138)

## Background to the IFPA

Singapore's Inheritance (Family Provision) Act ("IFPA") was passed in 1966 and is based on the UK Inheritance (Family Provision) Act 1938.

Singapore's IFPA has not been amended in any substantive way since it was passed in 1966. In comparison however the UK Act has been massively revamped since 1966 and in fact underwent a sea-change in 1975 when it was renamed the Inheritance (Provision for Family and Dependents) Act 1975 (the "1975 UK Act"). UK's current legislation on family provisions on death is materially different from Singapore's, and great care should be taken when reading English texts and authorities, as the 1975 UK Act is not in *pari materia* with Singapore's IFPA.

# Introduction to the IFPA

IFPA does not apply to everyone:

Firstly, Section 1(2) of the Act states that the Act does not apply to the estates of deceased Muslims.

Secondly, in section 3(1) states that the Act only applies where a person dies domiciled in Singapore.

It is therefore important if one is advising clients on an IFPA matter to ascertain that the deceased person was domiciled in Singapore and was not a Muslim.

# Basis for IFPA Application

## Only “Dependants” can claim

### Who is a “Dependant”

Section 3(1) of the IFPA states who are the dependants for the purposes of the IPFA. These are: -

- *a wife or husband;*
- *a daughter who has not been married\* or who is, by reason of some mental or physical disability, incapable of maintaining herself;*
- *an infant son; or*
- *a son who is, by reason of some mental or physical disability, incapable of maintaining himself.*

(\*in *Jeanne Christine Monteiro v Ling Mie Hean* [1997] SGHC 296, the unmarried Daughter was 61 years old).

# Basis for IFPA Application

## Elaboration of “son or daughter”

“*son and daughter*” includes [per S. 2 IFPA]:-

- a male or female child adopted by the deceased by virtue of an order made under the provisions of any written law relating to the adoption of children for the time being in force in Singapore, Malaysia or Brunei Darussalam, and also
- the son or daughter of the deceased *en ventre sa mere* at the date of the death of the deceased.

The term “*en ventre sa mere*” literally means in the mother’s womb so if the child was conceived and in the womb of the mother when the father dies, such child, after his birth, would be entitled to claim for provision from the estate of the deceased father.

## When to make IFPA Application

It is provided at section 3(1) of the IFPA that if the court - in this case it means an Family Justice Court (see definition of “family proceedings” in S.2 of the Family Justice Act) - on an application by or on behalf of the dependants is of the opinion that the disposition of a deceased estate which is effected by his will or under the law relating to intestacy or a combination of both the Will and intestacy is not such as to make reasonable provision for the maintenance of that dependant, the court may order that such reasonable provision as the court thinks fit shall, subject to such conditions or restrictions, if any, as the court may impose, be made out of the deceased’s net estate for the maintenance of that dependant. However where the disposition of a deceased’s estate is such that the surviving spouse is entitled to not less than 2/3<sup>rds</sup> of the income of the net estate and where the only other dependant or dependants (if any) is or are a child or children of the surviving spouse, then the claim will fail.

This provision was construed in ***Soh Siew Yok v Ching Kwong Yew*** [1991] SGHC 37 [“**Soh’s case**”]

# Time Limits

**In advising a “dependant” regarding the filing of an IFPA application, please note the time limits in S. 4 and 6, IFPA**

**Time within which application must be made.**

**4. (1)** Except as provided by this section or section 6, an order under this Act shall not be made save on an application made within 6 months from the date on which representation in regard to the deceased’s estate is first taken out.

(2) If it is shown to the satisfaction of the court that the limitation to the said period of 6 months would operate unfairly

(a) in consequence of the discovery of a will or codicil involving a substantial change in the disposition of the deceased’s estate (whether or not involving a further grant of representation);

(b) in consequence of a question whether a person had an interest in the estate; or as to the nature of an interest in the estate, not having been determined at the time when representation was first taken out; or

(c) in consequence of some other circumstances affecting the administration or distribution of the estate,

the court may extend that period.

## What the Court can order under IFPA

If the court makes an order for provision of maintenance for a dependant, then section 3(2) states that, subject to s. 3(4), the order shall be by way of periodical payments and the order shall provide for their termination not later than -

- (a) in the case of a wife or husband, her or his remarriage;
- (b) in the case of a daughter who has not been married, or who is under disability, her marriage or the cesser of her disability, whichever is the later;
- (c) in the case of an infant son, his attaining the age of 21 years;
- (d) in the case of a son under disability, the cesser of his disability,

or in any case, his or her earlier death.



# What the Court can order under IFPA

Section 3(4) provides that if the deceased's net estate does not exceed \$50,000 in value, the Court has the power to make an order providing for maintenance in whole or in part by way of a lump sum payment.

See *APZ v AQA - IFPA* [2011] 3 SLR 1110 for explanation of S.3(4)

Candidates must read Sections 3(5), 3(6), 3(7), 3(8) carefully as these set out the matters which the Court will have regard to in relation to any IFPA application. Section 3(5), 3(6) and 3(7) also very important when advising a client on making of the client's will if the client does not want to make reasonable provisions for some or all dependants. The client can then also be advised of the problems that his executors will face, and/or in suitable cases, be advised to include the reasons for the testator not providing financial provisions for his dependants which would ordinarily have been expected.

*See Jeanne Christine Monteiro*

## Useful advice for clients vis-à-vis IFPA

*Section 3(7) reads “The court shall also, on any such application, have regard to the deceased’s reasons, so far as ascertainable, for making the dispositions made by his will (if any), or for refraining from disposing by will of his estate or part of his estate, or for not making any provision, or any further provision, as the case may be, for a dependant, and the court may accept such evidence of those reasons as it considers sufficient including any statement in writing signed by the deceased and dated, so, however, that in estimating the weight, if any, to be attached to any such statement the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.”*

# Effect of a successful IFPA application

**A successful IFPA application has the following effect on the Estate:**

## **Effect and form of order**

**5. —(1) Where an order is made under this Act, then for all purposes, including the purposes of the enactments relating to ... the will or the law relating to intestacy, or both the will and the law relating to intestacy, as the case may be, shall have effect, and shall be deemed to have had effect as from the deceased's death, subject to such variations as may be specified in the order for the purpose of giving effect to the provision for maintenance thereby made.**

(2) The court may give such consequential directions as it thinks fit for the purpose of giving effect to an order made under this Act, but no larger part of the net estate shall be set aside or appropriated to answer by the income thereof the provision for maintenance thereby made than such a part as, at the date of the order, is sufficient to produce by the income thereof the amount of the said provision.

So, a person's testamentary freedom is limited by the operation of this Act.

## Court of Appeal decisions concerning IFPA

There are 2 reported Court of Appeal decisions with regard to the IFPA thus far.

The first case is ***AAG v Estate of AAH deceased*** [2010] 1 SLR 769. The applicant had sought on behalf of her 2 illegitimate daughters for maintenance out of the estate of the deceased under the IFPA. The defendants/respondents were the administrators of the estate of the natural father of the illegitimate children. The sole issue in the appeal was whether an illegitimate child could claim for support and maintenance under the IFPA.

The decisions of both the High Court as well as the Court of Appeal was that the IFPA does not allow illegitimate children to claim maintenance under the Act.

## Court of Appeal decisions concerning IFPA

The second Court of Appeal decision is ***AOS v Estate of AOT deceased*** [2012] 3 SLR 721.

The widow had a stormy marriage with her late husband, the testator. In March 2005 she had commenced divorce proceedings and a decree nisi had already been granted in January 2006. However before ancillary matters could be determined the testator died.

Under his will, the testator had given his entire estate to his eight-year-old grandson and nothing to his wife (the applicant) or his other children. The widow filed an IFPA application, not only for herself, but also her 3 adult children.

## AOS v Estate of AOT

There were several issues which had to be decided:

1. Were the 2 adult male children (aged 32 and 28) – who were studying overseas - “dependants”? It was held they were not, and so they were not eligible to claim under the IFPA. (It is noted in any case that the mother could not claim on their behalf).
2. Was the eldest son (aged 35, who suffered from cerebral palsy and obsessive compulsive disorder) a dependant? It was held that he had to make his own application, and the mother could not apply for him.
3. Thirdly, the widow had sought under the IFPA an order for maintenance of \$20,000 a month to be paid out of the estate to her and further or in the alternative a lump sum payment of \$7.2 million, or in the alternative, the transfer of ownership of the matrimonial home of the parties, which was owned by the Testator

## Court of Appeal decisions concerning IFPA

Regarding the Widow's claim - Can the court should take into account the impending division of matrimonial assets which, at the time of the testator's death was pending, as a relevant factor in determining or quantifying the reasonable provision or maintenance under IFPA.

The broader legal question was whether it was just and appropriate that a surviving spouse in the circumstances of this case should be entitled to a smaller part of the testator's estate under the IFPA than she would otherwise have received if the ancillary proceedings under the Women's Charter divorce action had already been concluded (which it was not in this case).

## Court of Appeal decisions concerning IFPA

It was discovered during the trial that during his lifetime, the testator had purchased a number of properties in the appellant's sole name, and she had been receiving at least \$12,000 monthly income from the properties, which was in excess of her stated monthly expenses of \$9,443. In addition the court also found that the wife was also receiving a monthly sum of \$5,000 from the testator's family in India.

She was therefore getting something in the region of \$17,000 from her own resources or from the family of the testator from India. Taking these into consideration, the High Court ruled that there was no need for any further provision to be made under the IFPA as she had already been reasonably provided for by the deceased.



## AOS's case

This case raised interesting issues as to the interplay and interconnection between the just and equitable division relief under the Women's Charter and reasonable provision of maintenance under the IFPA.

In the *AOS* case the Court of Appeal thought that in light of the *inter vivos* gifts that the testator had given to the appellant and her stated monthly expenses being less than the income that she was receiving, that there was no need to disturb the decision made by the High Court not to allow any further provision under the IFPA.

## Court of Appeal decisions concerning IFPA

Takeaway from AOS's case:

The Court of Appeal reiterated that the IFPA is concerned with maintenance and not the creation of legacies. The appellant's prayers were far in excess of what constituted reasonable maintenance under the IFPA. In claiming for half of the testator's estate the appellant was seeking to incorporate the provisions of the Women's Charter concerning just and equitable division of matrimonial assets between divorcing parties into the IFPA. The Court of Appeal said they had no power to do so under the IFPA.

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