

# Inheritance Procedures and Practical Measures in Malaysia

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One Asia Lawyers – International Inheritance Practice Group

As the number of Japanese individuals holding assets overseas continues to increase, it is becoming increasingly common for Japanese nationals to own real estate or maintain bank deposits in Malaysia.

While the acquisition of such assets is often relatively straightforward, succession planning and inheritance matters are frequently overlooked. As a result, many individuals and their families encounter unexpected legal and practical difficulties when inheritance issues arise.

In this newsletter, we provide a concise overview of the fundamental framework of Malaysian inheritance law and highlight several key points that asset holders should be aware of.



## 1. Governing Law in Malaysian Inheritance Matters

When a Japanese national passes away abroad, a private international law issue arises as to which country's laws should govern the succession of the deceased's assets.

In Malaysia, the applicable law differs depending on the nature of the asset concerned.

With respect to immovable property (real estate), succession is governed by the law of the place where the property is located. By contrast, movable assets, such as bank deposits and shares, are generally governed by the law of the deceased's domicile at the time of death.

Accordingly, even where the deceased is a Japanese national, any real estate situated in Malaysia will generally be subject to Malaysian inheritance law.

Another notable feature of the Malaysian legal system is its dual legal structure based on religion, a characteristic shared by several Southeast Asian jurisdictions. In general, inheritance matters involving non-Muslims, including most Japanese nationals, are governed by the civil law regime described above, whereas the estates of Muslims are subject to Islamic inheritance law.

Due to space limitations, this newsletter focuses solely on the inheritance rules applicable to non-Muslims and does not discuss Islamic inheritance law.

## 2. Overview of Malaysian Inheritance Law

### (1) Statutory Distribution of an Estate

One of the key differences between Malaysian and Japanese inheritance law lies in the rules governing statutory inheritance shares.

For example, where the surviving heirs consist of a spouse and children, Japanese law generally provides that the estate is divided equally between the spouse and the children, with

the spouse receiving one-half of the estate. Under Malaysian law, however, the spouse is entitled to one-third of the estate, while the children collectively receive the remaining two-thirds.

Similarly, where the surviving heirs consist of a spouse and parents, Malaysian law generally allocates one-half of the estate to the spouse and the other half to the parents.

Although the categories of legal heirs under Malaysian law are broadly similar to those under Japanese law, the statutory inheritance shares differ in important respects. As a result, assumptions based solely on Japanese inheritance law may lead to outcomes that are inconsistent with Malaysian law.

## (2) Statutory Trust

Another important feature of Malaysian inheritance law is the concept of a **Statutory Trust**.

Where a person dies intestate (without a valid will) and a minor child is entitled to inherit, Malaysian law automatically establishes a trust to hold and administer that child's inheritance until he or she reaches the age of 18.

This statutory trust should not be confused with the trusts commonly used for estate planning purposes in common law jurisdictions. Unlike private trusts, which may provide flexibility in asset management and succession planning, a statutory trust is a legally prescribed arrangement with limited flexibility. Consequently, it can be a relatively rigid mechanism for managing inherited assets.

## (3) Court Involvement in Estate Administration

From a practical perspective, perhaps the most significant difference between Malaysian and Japanese inheritance procedures is that estate assets generally cannot be administered, transferred, or distributed without court authorization.

For example, when the holder of a bank account passes away, the account is typically frozen. Even the lawful heirs cannot withdraw funds unless they first obtain the necessary court order.

The same principle applies to real estate. Regardless of whether all heirs agree on the distribution of the property, title cannot be transferred without completing the relevant court procedures.

This requirement for court involvement is fundamentally different from common practice in Japan and should be understood at an early stage when planning for succession involving Malaysian assets.

## (4) Probate and Letters of Administration

Where the deceased has left a valid will, the estate is generally administered through a **Probate** proceeding.

The executor appointed under the will applies to the court for a **Grant of Probate**, which confirms the validity of the will and authorizes the executor to administer the estate in accordance with its terms.

By contrast, where no valid will exists, an application must be made for the appointment of an **Administrator** to manage the estate. Upon approval, the court issues **Letters of Administration**, granting the administrator authority to deal with the deceased's assets.

In cases of intestacy, the court may also require additional safeguards to protect the estate. In particular, the applicant may be required to provide either:

- \* two sureties with financial capacity equivalent to the value of the estate; or
- \* an **Administration Bond** in an amount equivalent to the value of the estate.

These requirements are intended to ensure that the administrator properly performs his or her duties and does not misappropriate estate assets.

### **3. Wills**

A properly prepared will is one of the most important tools for ensuring that succession procedures in Malaysia can be carried out efficiently.

Under Malaysian law, a will is generally required to satisfy the following formalities in order to be valid:

It must be in writing;

The testator must be at least 18 years of age at the time of execution; and

It must be signed in the presence of at least two witnesses.

A will executed under Japanese law may also be recognized and relied upon in Malaysia. However, in practice, the will must first be translated into English, and the Malaysian court will generally require evidence that the will was validly executed under Japanese law. This is typically provided through an Affidavit of Foreign Law prepared by a qualified Japanese legal professional.

While it is possible to submit a Japanese will to the Malaysian courts, the additional translation, certification, and evidentiary requirements often result in significant delays. In practice, it is not uncommon for the probate process to be delayed by several months solely for the purpose of establishing the validity of a foreign will.

Accordingly, where an individual owns assets in Malaysia, it is generally advisable to prepare a separate will that complies with Malaysian legal requirements in order to facilitate a smoother succession process.

### **4. Key Considerations in the Transfer of Real Estate**

Even after the court procedures relating to the estate have been completed, additional steps are required before title to Malaysian real estate can be transferred to the heirs or beneficiaries.

The first requirement is the payment of **Stamp Duty**. The amount payable is generally determined based on the market value of the property as assessed by the Inland Revenue Board of Malaysia, and the applicable duty must be settled before the transfer can proceed.

The second, and often more significant, hurdle is obtaining **State Approval**.

Under Malaysian law, foreign individuals are generally required to obtain approval from the relevant state authority before acquiring real property. In many cases, this requirement also applies where ownership is transferred by way of inheritance. As a result, heirs who are foreign

nationals may be required to undergo an additional approval process even after obtaining the necessary court orders.

The practical application of these rules varies among the individual states of Malaysia. However, it is common for the approval process to take several months, resulting in further delays before the transfer of ownership can be completed.

Accordingly, when Malaysian real estate forms part of an estate, it is important to factor in not only the court proceedings but also the post-probate administrative requirements that may significantly extend the overall timeline for succession.

## **5. Conclusion**

When dealing with overseas assets, it is often difficult to address issues effectively once they have already arisen. For this reason, it is important to undertake appropriate planning and asset structuring at an early stage.

Inheritance involving Malaysian assets can impose significant procedural burdens, and the difference between having made prior arrangements and having made none can be substantial. In particular, the preparation of a properly drafted will is one of the most effective estate planning measures available under Malaysian law.

By putting an appropriate will in place at an early stage and adopting a broader, international perspective toward asset management, individuals can significantly reduce the burden on their families and minimize the risk of future disputes.

Our firm provides practical legal advice and support on inheritance and estate planning matters involving overseas assets, including those located in Malaysia. Even where a client has not yet reached the stage of implementing a specific succession strategy, we are able to assist with the initial assessment and planning process. Should you wish to discuss these matters further, please feel free to contact us.

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