



THE LEGAL CIRCLE

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FAQ on Administration and Distribution of a Deceased's Estate under Bangladesh Law

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1. Under the probate and administration law of Bangladesh, who has the prior right to take up the administration of the deceased' estate in a foreign country?

As per section 211(1) of the Succession Act, 1925 the executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased vests in him as such. However, section 211(2) clearly excludes Muslims from the application of section 211(1) as mentioned above. For reference, section 211(2) is quoted herein below:

"(2) When the deceased was a Hindu, Muslim, Buddhist, Sikh or Jaina or an exempted person, nothing herein contained shall vest in an executor or administrator any property of the deceased person which would otherwise have passed by survivorship to some other person."

Given the exclusions of Muslim from appointing an administrator, the general customary Muslim law shall be applicable with respect to the deceased's estate. In this regard, the customary Muslim law did not recognize the concept of administration of estate in general and the necessity of grant of representation; in particular it merely laid down machinery for the distribution of the estate of the deceased among the legatees and the heirs.

However, in the case where an administrator must be appointed for a deceased Muslim's estate, section 218 of the Succession Act states that if the deceased has died intestate and was a Muslim, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate. When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them

2. If the deceased died a Muslim, what is the law governing the distribution of the deceased estate in a foreign country?

Matters in relation to inheritance by Muslims are governed by Shariah Law which is derived from the rulings of Quranic verses and there is no codified or consolidated legislation in connection to the same. As per section 5 (2) of the Succession Act, 1925 succession to the moveable property of a deceased person is regulated by the law of the country in which such person had his domicile at the

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time of his death. However, section 4 of the Succession Act excludes Muslims from the application of section 5 (2). Furthermore, there is no legal provision which regulates the distribution of a Muslim deceased's estate that is located out of the country. In the absence of such regulation, the distribution of a Muslim deceased's estate shall be deemed to be regulated by the laws of the country where the property is located as opposed to the laws of Bangladesh. In this case, the estate of the deceased Muslim shall be distributed as per the laws of the foreign country.