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NOTIFICATION

No.B.13011/1/90-DCA, the 19th August, 2019: In pursuance to paragraph 11 of the Sixth Schedule to the Constitution of India, the following Rules duly approved by the Hon'ble Governor, Mizoram on 9.8.2019 is hereby published for general information, namely:

“The Lai Autonomous District Council (Inheritance of Property) Act, 2019.”

Rodney L. Ralte,
Secretary to the Govt. of Mizoram,
District Council & Minority Affairs Deptt.

An Act

to provide for the Law relating to Inheritance of property and connected matter, among the tribal people living within the Lai Autonomous District Council;

It is enacted by The Lai Autonomous District Council in the seventieth years of the Republic of India as follows:

CHAPTER I PRELIMINARY

1. Short Title, Extent and Commencement:

- 1) This Act may be called The Lai Autonomous District Council, (*Inheritance of Property*) Act, 2019.
- 2) It extends to the whole of The Lai Autonomous District Council, constituted under Sixth Schedule to the Constitution of India.
- 3) It shall come in to force from the date of public notification in the Official Gazette of the Government of Mizoram.

2. Application of the Act:

1. This Act shall apply to any person who are Lai by community.
2. It shall also apply to any person belonging to tribal, permanently living within the Lai Autonomous District Council.

3. Definition: For the purpose of this Act

- 1) **'Acquired property'** means property other than inherited/ancestral property acquired by any member of the family by any means.
- 2) **'Ancestral property'** means and include all properties other than self-acquired property.
- 3) **'Bia Ro Vui (Will)'** means a testamentary instrument by which a person show how his properties are to be distributed upon his death.
- 4) **'District Council'** means The Lai Autonomous District Council constituted under the provision of Sixth Schedule to the Constitution of India.
- 5) **'Executive Committee'** means the Executive Committee of the Lai Autonomous District Council
- 6) **'Fa put'** means a child brought by the wife to her husband's house where the husband is not the biological father of the child.
- 7) **'Head of family'** means a person who manage, rule and control all the movable and immovable properties of the family;
- 8) **'Indangchuak'** means a person who had established his own family and settled in a separate household on his own away from his paternal home.
- 9) **'Legitimate son/daughter'** means a son/daughter begotten wherein *'phunthawh'* was paid to the family of the mother of such son/daughter and include *'lak fa'* if *'phunthawh'* is paid.
- 10) **'Major'** means a person who has attained 18 years of age.
- 11) **'Minor'** means a child below 18 year of age.
- 12) **'Phunthawh'** means consideration paid to a woman by a man to legitimize a child born between them.
- 13) **'Property'** means any property movable or immovable;

CHAPTER II
(BIA RO VUI) WILL

4. (1) A person of sound mind who has attained majority under the law in force, while he/she is fully possessed of his/her clear conscience capable of exercising his/her free will may execute a 'Will' in writing in the presence of at least two witnesses as to how all or some or part of his/her self-acquired property which he/she can alienate during his/her life time be disposed after his/her death.

(2) If the testator executes more than one 'Will' for the same property, the latter or last one will prevail over the other or others.

(3) The making of a 'Will' caused by coercion, threat, intimidation or undue influence or fraud is void.

(4) The witnesses to the 'Will' must have attained majority under the law in force and they must be of sound mind.

5. Attestation:

(1) The testator of a 'Will' must give his or her signature in the presence of the witnesses. If, however, he or she is unable to write, the left or the right thumb impression respectively must be given.

(2) Each witness to a 'Will' must give his or her signature or thumb impression as the case may be in the presence of the other witnesses and the testator.

(3) Any 'Will' or any part of a 'Will', the making of which has been caused by fraud, or by such impetuosity takes away the free agency of the testator is void.

6. Probate only to appoint executor: Probate shall be granted only to an executor appointed by the 'Will'.

7. Effect of probate: Probate of a 'Will' when granted establishes the 'Will' from the death of the testator, and renders valid on intermediate acts of the executor as such.

8. Grant of Probate: The Intermediate District Council Court shall have the like powers and authority in relation to the granting of probate and all matters connected therewith, as are by law vested in it in relation to any civil suit or proceeding pending therein.

9. Production of testamentary papers:

(1) The Intermediate District Council Court, may, order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person.

(2) If it is shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same.

(3) Such person shall be bound to answer truly to such question which may be put to him by the Court, and if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit and had made such default.

10. Interference of the Court for Protection of Property:

Until probate is granted of the 'Will' of a deceased person, the Intermediate District Council Court within whose jurisdiction any part of the property of the deceased person is situated, is authorized and required to interfere for the protection of such property at the instance of any person claiming to be interested therein in case of any loss or damage, and for that purpose, if it thinks fit, to appoint an officer to take and keep possession of the property.

11. When probate may be granted: Probate of the 'Will' to the estate of a deceased person may be granted by the Intermediate District Council Court under the seal of the Court, if it appears by a petition of the persons applying for the same that the testator at the time of his decease had a fixed place of abode or any property movable or immovable, within the jurisdiction of the Court.

12. Conclusiveness of probate: Probate shall have effect over all the property and estate, movable or immovable of the deceased, throughout the area in which the same is granted and shall be conclusive, as to the representative titles against all debtors of the deceased, and all person holding property which belong to him and shall effort full indemnity to all debtors trying their debts and all persons delivering up such property to the person to whom such probate has been granted.

13. Petition for probate: Application for probate with the 'Will' annexed, shall be made by a petitioner distinctly written in the language generally used in proceedings before the court in which the application is made, and stating: -

(1) the time of the testator's death.

(2) that the writing annexed is his last 'Will' and testament.

(3) that it was duly executed.

(4) the amount of the assets which are likely to come to the petitioner's hand.

(5) that the petitioner is the executor named in the 'Will'.

(6) that the deceased at the time of his death had affixed place of abode or had some property situated within the jurisdiction of the court.

14. Power of the Intermediate District Council Court:

(1) In all cases, the Intermediate District Council Court may, if it thinks proper -

- (a) examine the petitioner in person upon oath or affirmation.
- (b) require further evidence of the due execution of the 'Will'.
- (c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceeding before the grant of probate.

(2) The citation shall be fixed in some conspicuous part of the court and, or otherwise published or made known in such manner as the court issuing the same may direct.

15. Time of grant of probate: No probate of a 'Will' shall be granted until after the expiration of seven clear days from the day of the testator's death. No application for probate of will shall be made after expiry of sixth months from the death of testator, unless being condoned.

16. Filing of original Wills of which probate of Will annexed granted:

(1) The Intermediate District Council Court shall file and preserve all original 'Will' of which probate with the 'Will' annexed may be granted by it among the records of a court until a public registry for 'Will' is established.

(2) The Intermediate District Council Court shall make rules for the preservation and inspection of the 'Will' so filed.

17. Surrender of revoked probate:

(1) When a grant of a probate is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up probate to the Court who made grant.

(2) If such person willfully and without reasonable cause omits so as to deliver up the probate, he shall be punishable with fine which may extend to Rs. 3000/- (*Rupees three thousand*) or with imprisonment for a term which may extend to two months or with both.

18. Payment to executor before probate revoked:

When a grant of a probate is revoked, all payments bonafide made to another executor under such grant before the revocation thereof shall, notwithstanding such revocation, be deemed legal to the person making the same and the executor who has acted under such revoked grant may retain and reimburse himself in respect of any payments made by him which the person to whom the probate may afterwards be granted might have lawfully made.

CHAPTER - III

INHERITANCE OF FATHER'S (HEAD OF THE FAMILY) PROPERTY

In the absence of a 'Will', the following provision shall apply:

19. (1) On the death of the head of the family, the wife will automatically become the nominal head of the family if she remains a chaste widow and looks after the welfare of her minor children. However, the wife shall have no right to alienate any property left by her deceased husband, she is responsible to see that the properties left by her deceased husband devolved according to the line of preference as given below.

(2) The property left by the deceased father will be inherited by the sons who are not 'Indangchuak'. However, the eldest son will get half of the properties and the other half will be inherited by the youngest son who is not 'indangchuak'; provided that the eldest son looks after members of the family who are not 'Indangchuak'.

(3) If the eldest son 'A' who is not 'indangchuak' of the Head of the Family dies before the Head of the Family, then on the death of the Head of the Family, the Head of the Family's properties will be divided between the surviving sons of the Head of the Family who are not 'Indangchuak' and the share that would have gone to 'A' would go to A's sons.

Provided that the children of 'A' were not 'Indangchuak' at the time of the death of the Head of the Family.

(4) If the Head of the Family has no son, then the ancestral property will be inherited by the brothers of the Head of the family and the other properties will be inherited by the unmarried daughters who are living with the surviving wife.

(5) The sons and daughters of the Head of the Family from a previous marriage who are legitimate children of the head of the family shall have the same right and interest as the sons and daughters of the later marriage.

(6) In the event of there being no sons or unmarried daughters then the ancestral property will go to the brothers of the head of the family and all other properties jointly acquired by the husband and wife will go to the wife of the Head of the Family.

(7) In the event of there being no sons, unmarried daughters or brothers, then the property will go to the married daughters in equal share.

(8) The personal property left by unmarried son who died while he was in his father's house and having no issue will be inherited by his surviving father. If the father had died, his surviving eldest brother who is not 'indangchuak' will inherit. If there is no surviving brother, the eldest surviving sister will inherit. If he had a surviving 'lakfa' son, the son will inherit provided that 'phunthawh' was paid.

(9) The personal property left by unmarried daughter who died while she was in her father's house and having no issue will be inherited by her surviving father. If the father had died, her surviving eldest brother will inherit. If there is no surviving brother, the eldest surviving sister will inherit.

20. Inheritance of a woman's personal property:

(1) If a woman predeceased her husband, her personal property will devolve to her surviving husband.

(2) If she has no surviving husband, then her property will be divided as if the property of the Head of the Family is divided as in Section 19. However, the eldest son will have one extra share.

(3) If there is 'fa put' in the family, he/she will have a right to have a share of the mother's property.

21. Inheritance for support till death: The one who supports the owner of specified property till his/her death as desired by the owner of that property is entitled to first preference to inheritance of that property irrespective of the order of preference given in Section 19.

22. Right of son on indangchuak and of married daughter: The son who has left his father's house on indangchuak and the married daughter will have no share of the property left by their father or mother except as provided in sections 19.

Explanation: For the purpose of inheritance, the son even if married or unmarried daughter living in another village, town or city or in a foreign country for employment, service or profession is not indangchuak.

23. Right of a divorced daughter: A divorced daughter who has returned to her father's or mother's house will be treated as unmarried daughter for the purpose of inheritance.

24. No Objection given in good faith not barred: Notwithstanding anything contained in the foregoing paragraphs, if there is such consent or no objection from the legal heirs of the head of the family or the owner of a property in nominating any person to inherit the properties of the head of the family or the owner of a property, the competent Court will be at liberty to declare such nominee as legal heir and entitled to all such properties irrespective of the line of preference of inheritance.

25. Obligation of legal heir: A person who inherits property cannot disown himself or herself of the liabilities left by the person whose property he/she inherits.

26. Date of operation of inheritance: The right to inherit will operate only after the death of the person who owns property.

27. Right of a predeceased wife to possess house property: Even though the legal heirs might have taken their shares of the property left by the deceased father, the surviving wife cannot be deprived of her right to live in and to enjoy the house property of her deceased husband and its appurtenant including the benefits thereof provided however that she remains a chaste widow.

28. Jurisdiction of Courts:

(1) The Intermediate District Council Court having original jurisdiction over the area where the legatee/petitioner resides shall have the power

(a) to grant or revoke probate of the original 'Will' produced before him by the executor.

(b) to grant heirship certificate in respect of any property.

(c) to adjudicate upon any dispute arising out of and within the scope of this Act.

(2) All appeals arising out of orders passed by Intermediate District Council Court in respect of probate of 'Will' shall lie before the District Council Court.

29. Court to which petition should be made:

Every petition under this Act shall be presented to the Intermediate District Council Court within the local limits of whose original jurisdiction where -

(1) the petitioner resides; or

(2) the respondent, at the time of the presentation of the petition resides; or

(3) the property situates;

30. Application of other Laws not barred: Save as otherwise provided, the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.

31. Repeal and Savings:

(1) The Pawi Autonomous District Council, (*Inheritance of Property*) Act, 1980 is hereby repealed provided that all acts done thereunder shall be deemed to have been done under this Act.

(2) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for probate of 'Will', appeal and all other cases of inheritance pending at the commencement of this Act, and any such proceeding may be continued and determined as if this Act had not been passed.

32. Power to remove difficulties: The District Council may by notification publish in the Official Gazette remove difficulties in implementation of the provisions of this Act.