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A brief discussion on Succession Certificates in Bangladesh: Statutory Mandates and Practical Challenges

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When an individual passes away intestate, the transition of their wealth can quickly become a procedural labyrinth for surviving heirs. In Bangladesh, unlocking inherited financial assets requires formal judicial authorization to ensure lawful distribution and protect the deceased's estate. The primary legal recourse is obtaining a Succession Certificate under the Succession Act, 1925. However, the intersection of statutory mandates and practical bottlenecks often presents an acute challenge for grieving families and corporate entities alike.

1. The Statutory Mandate:

The Movable vs. Immovable Misconception Explanation:

A common misconception is that a succession certificate is required for all movable property and is unavailable for all immovable property. The statutory position is more precise. Under the Succession Act, 1925, the relevant distinction is principally between “debts and securities” and other forms of property. Bank deposits, fixed deposits, shares, Government securities and debts owed to the deceased may fall within the scope of a succession certificate. However, an ordinary movable asset, such as a

motor vehicle or jewellery, does not become subject to a succession certificate merely because it is movable. Similarly, land and buildings, being immovable property, are generally dealt with through the applicable law of inheritance, title, mutation, partition and other relevant legal procedures. The purpose of the certificate is to enable the holder to collect or receive those assets and to provide protection to the person or institution making payment in good faith.

Challenge: A primary obstacle for heirs stems from the widespread misconception that a Succession Certificate confers comprehensive rights over the entirety of the deceased's estate, including land and real estate. Additionally, practical challenges frequently arise when certain heirs show reluctance to participate in the succession proceedings, often due to the apprehension that involving themselves in a court case will result in undue hardship. This lack of cooperation consequently creates a highly difficult position for the remaining heirs who are actively seeking to obtain the succession certificate.

Available recourse: To resolve these challenges, applicants must adopt specific procedural remedies. First, because Succession Certificates apply strictly to movable assets, real estate must be handled separately using a local Warisan certificate for land mutation (or a civil Partition Suit if disputed). Second, if reluctant heirs refuse to participate, active heirs can file the succession case as "Petitioners" and formally implead the uncooperative heirs as "Opposite Parties"; if they fail to respond to the court's summons, the judge is legally empowered to proceed ex parte, allowing the proactive heirs to successfully secure the certificate and unlock the movable assets without facing indefinite delays.

2. Procedural hurdles in common problems

In Bangladesh, determining the correct jurisdiction and venue is critical when initiating a succession case. Under Section 371 of the Succession Act, 1925, territorial jurisdiction lies strictly with the District Judge within whose local limits the deceased ordinarily resided at the time of their death. However, this rigid territorial requirement frequently clashes with modern realities. Today, rightful heirs often reside in distant districts or abroad, making their physical participation in the court proceedings highly impractical and difficult to coordinate.

Furthermore, in many succession matters, the greatest procedural hurdle is not the substantive law itself, but the meticulous establishment of the family tree. The court may require clarity regarding:

- The surviving spouse or spouses;
- All living sons, daughters, and surviving parents;
- Predeceased children and their respective descendants;
- Adopted children, where legally recognized under the applicable personal law;
- Heirs residing overseas or those whose current whereabouts remain unknown; and
- Any other individuals who may claim a legitimate legal interest under the deceased's specific religious personal law.

Navigating the geographical dispersion of heirs while satisfying the court's requirement remains one of the most practical characteristics of a succession proceeding.

3. The Protective Effect of the Certificate

A succession certificate is designed not to determine legal title conclusively, but to facilitate the collection of specific debts and securities. Crucially, under Section 381 of the Succession Act, 1925, it serves a vital dual function. It grants the holder legal authority to collect assets and provides statutory indemnity to debtors such as banks and financial institutions who release funds in good faith. This built-in legal protection explains why institutions strictly mandate the certificate before transferring a deceased's financial assets.

4. List of Necessary Documents for a Succession Certificate

While the exact documentary requirements may vary depending on the specific facts of the case, the relationship of the applicants to the deceased, and the nature of the estate, the following fundamental documents are typically required to initiate and secure a succession certificate:

1. National Identity Card (NID), Birth Certificate, or Passport of all applicants and legal heirs.
2. Recent passport-sized photographs of all applicants and legal heirs.
3. A valid Warishan Certificate issued by the relevant local government authority (e.g., Union Parishad Chairman, Municipality Mayor, or Ward Councilor).
4. National Identity Card (NID) of the deceased.
5. The official Online Death Certificate of the deceased.
6. Hospital Death Certificate and Burial/Cremation Certificate (if applicable).
7. Detailed particulars of the movable assets and liabilities, including Bank Statements, Fixed Deposit Receipts (FDRs), share certificates, and records of any credit/debit liabilities.

5. Court Fees for Succession Cases

Upon a successful final hearing, the court will order the deposit of mandatory court fees. The Succession Certificate will not be officially issued until these fees are settled, which must be done strictly within 15 days of the court's order. The applicable fee structure is tiered based on the total value of the claimed assets:

1. Up to Tk 20,000: No court fees are required.
2. Tk 20,001 to Tk 1,00,000: 1% of the claimed amount (payable via the Nezarat section, Stamp, or Bank Chalan).
3. Above Tk 1,00,000: 2% of the claimed amount (payable via Stamp or Bank Chalan).

6. Succession Certificate Is Not the Same as a Warishan Certificate

One of the most persistent practical problems is the confusion between succession- and warishan. A Warishan Certificate or similar certificate issued by a local authority may assist in establishing the identity of surviving heirs. However, it does not automatically perform the same statutory function as a succession certificate issued under the Succession Act. Conversely, a Succession Certificate cannot substitute for land mutation, a deed of partition, probate, letters of administration, or a final declaration of title in property disputes.

7.A Strategic Approach to Mitigating Delays

Adopting a disciplined legal strategy can significantly expedite the succession process. Applicants can reduce delays by following these consolidated steps:

- A. Identify the Asset & Legal Route: Determine if the asset is a movable debt or security suited for a Succession Certificate, or if another route (e.g., probate, letters of administration, or land mutation) is required.
- B. Establish Jurisdiction & Family Tree: Confirm the correct territorial court based on the deceased's last residence (Section 371) and accurately map all rightful heirs.
- C. Reconcile Documents & Draft the Petition: Ensure absolute consistency across all identity and financial records before filing a precise petition detailing the specific assets (Section 372).
- D. Anticipate Procedural Hurdles: Proactively prepare for potential objections from third parties and the court's requirement to furnish a surety bond (Section 375).
- E. Execute the Certificate: Once issued, utilize the certificate strictly to collect the specific debts and securities explicitly listed within it.

A succession certificate under Sections 370 to 381 of the Succession Act, 1925, is specifically designed to bridge a practical gap, unlocking the financial assets of the deceased. However, the most significant hurdles frequently stem from incomplete family trees and inconsistent documentation rather than the statute itself. Securing a certificate, therefore, requires more than merely filing an application; it demands a meticulous legal strategy. Ultimately, uncompromising procedural accuracy is not a technical luxury. It is the deciding factor between a seamless asset recovery and years of avoidable delay.

How can we assist?

Successfully navigating succession proceedings requires uncompromising procedural compliance. Accord Chambers' provides comprehensive legal support, from drafting precise succession petitions and executing effective trial management to facilitating the final transmission of corporate shares and bank funds. For any strategic assistance, please feel free to reach us any time.

For any query, feel free to contact us: assistance@accordchambers.com.

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