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CHAPTER 248

PUBLIC TRUSTEE

An Act to provide for the appointment of a Public Trustee and to amend the law relating to the administration of trusts.

1936-1.
1944-21.
1949-5.
1956-56.
1959-21.
1963-5.
1975-46.
L.N. 168/
1967.

[1st June, 1937] Commence-
ment.

1. This Act may be cited as the Public Trustee Act.

Short title.

PART I

Preliminary

2. For the purposes of this Act—

Interpreta-
tion.

“expenses” includes costs and charges;

“letters of administration” means letters of administration of the estate and effects of a deceased person, whether general or with a will annexed or limited either in time or otherwise;

“prescribed” means prescribed for the time being by rules under this Act;

“private trustee” means a trustee other than the Public Trustee;

“trust” includes an executorship or administratorship; and “trustee” shall be construed accordingly;

“trust property” includes all property in the possession or under the control wholly or partly of the Public Trustee by virtue of any trust;

and other expressions have the same meaning as in sections 2 and 24 to 58 of the Trustees Act.

Cap. 250.

3. (1) The Public Trustee shall be a corporation sole under that name with perpetual succession and an official seal and may sue and be sued under the above name like any other

Public
Trustee to
be a cor-
poration sole.

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corporation sole, but any instruments sealed by him shall not, by reason of his using a seal, be rendered liable to a higher stamp duty than if he were an individual.

1959-21.

(2) The person holding the office, permanently or otherwise, of Crown Solicitor shall perform all the duties and exercise all the powers, authority and jurisdiction imposed on or vested in the Public Trustee by law.

PART II

Powers and Duties of Public Trustee

General powers and duties of Public Trustee.

4. (1) Subject to and in accordance with this Act and the rules, the Public Trustee may, if he thinks fit—

- (a) act in the administration of estates of small value;
- (b) act as custodian trustee;
- (c) act as an ordinary trustee;
- (d) be appointed to be a judicial trustee.

(2) Subject to this Act and to the rules, the Public Trustee may act either alone or jointly with any person or body of persons in any capacity to which he may be appointed in pursuance of this Act and shall have all the same powers, duties and liabilities and be entitled to the same rights and immunities and be subject to the control and orders of the High Court, as a private trustee acting in the same capacity.

(3) The Public Trustee may decline, either absolutely or except on the prescribed conditions, to accept any trust, but he shall not decline to accept any trust on the ground only of the small value of the trust property.

(4) The Public Trustee shall not accept any trust which involves the management or carrying on of any business, except in the cases in which he may be authorised to do so by rules, nor any trust under a deed of arrangement for the benefit of creditors, nor the administration of any estate known or believed by him to be insolvent.

Administration of small estates.

5. (1) Any person who in the opinion of the Public Trustee would be entitled to apply to the High Court for an order for the administration by the High Court of an estate, the

gross capital value whereof is proved to the satisfaction of the Public Trustee to be less than fifteen thousand dollars, may apply to the Public Trustee to administer the estate, and where any such application is made and it appears to the Public Trustee that the persons beneficially entitled are persons of small means, the Public Trustee shall administer the estate, unless he sees good reason for refusing to do so. 1975-46.

(2) On the Public Trustee undertaking, by declaration in writing signed and sealed by him, to administer the estate, the trust property other than stock shall, by virtue of this Act, vest in him, and the right to transfer or call for the transfer of any stock forming part of the estate shall also vest in him, in like manner as if vesting orders had been made for the purpose by the High Court under the Trustees Act and that Act shall apply accordingly:

Provided that the Public Trustee shall not exercise the right of himself transferring the stock without the leave of the High Court.

(3) As from such vesting, any trustee entitled under the trust to administer the estate shall be discharged from all liability attaching to the administration, except in respect of past acts.

(4) For the purposes of the administration, the Public Trustee may exercise such of the administrative powers and authorities of the High Court as may be conferred on him by the rules, subject to such conditions as may be imposed by the rules.

(5) Rules shall be made under this Act for enabling the Public Trustee to take the opinion of the High Court on any question arising in the course of any administration without judicial proceedings and otherwise for making the procedure under this section simple and inexpensive.

(6) Where proceedings have been instituted for the administration of an estate and by reason of the small value of the estate it appears to the High Court that the estate can be more economically administered by the Public Trustee than by the High Court or that for any other reason it is expedient that the estate should be administered by the Public Trustee instead of the High Court, the High Court may order that the estate shall

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be administered by the Public Trustee, and thereupon (subject to any directions by the High Court) this section shall apply as if the administration of the estate had been undertaken by the Public Trustee in pursuance of this section.

Custodian trustee.

6. (1) Subject to the rules, the Public Trustee may, if he consents to act as such and whether or not the number of trustees has been reduced below the original number, be appointed to be custodian trustee of any trust—

- (a) by order of the High Court made on the application of any person on whose application the High Court may order the appointment of a new trustee; or
- (b) by the testator, settlor or other creator of any trust; or
- (c) by the person having power to appoint new trustees.

(2) Where the Public Trustee is appointed to be custodian trustee of any trust—

- (a) the trust property shall be transferred to the custodian trustee as if he were sole trustee and for that purpose vesting orders may, where necessary, be made under the Trustees Act;

Cap. 250.

- (b) the management of the trust property and the exercise of any power or discretion exercisable by the trustees under the trust shall remain vested in the trustees other than the custodian trustee (which trustees are hereinafter referred to as the managing trustees);
- (c) as between the custodian trustee and the managing trustees, and subject and without prejudice to the rights of any other persons, the custodian trustee shall have the custody of all securities and documents of title relating to the trust property, but the managing trustees shall have free access thereto and be entitled to take copies thereof or extracts therefrom;
- (d) the custodian trustee shall concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into court), unless the matter in which he is requested to concur is a breach of trust or involves a personal liability upon him in respect of

calls or otherwise, but, unless he so concurs, the custodian trustee shall not be liable for any act or default on the part of the managing trustees or any of them;

- (e) all sums payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee:

Provided that the custodian trustee may allow the dividends and other income derived from the trust property to be paid to the managing trustee or to such person as they direct or into such bank to the credit of such person as they may direct, and in such case shall be exonerated from seeing to the application thereof and shall not be answerable for any loss or misapplication thereof;

- (f) the power of appointing new trustees, when exercisable by the trustees, shall be exercisable by the managing trustees alone, but the custodian trustee shall have the same power of applying to the High Court for the appointment of a new trustee as any other trustee;
- (g) in determining the number of trustees for the purposes of the Trustees Act, the custodian trustee shall not be reckoned as a trustee;
- (h) the custodian trustee, if he acts in good faith, shall not be liable for accepting as correct and acting upon the faith of any written statement by the managing trustees as to any birth, death, marriage or other matter of pedigree or relationship or other matter of fact upon which the title to the trust property or any part thereof may depend, nor for acting upon any legal advice obtained by the managing trustees independently of the custodian trustee;
- (i) the High Court may, on the application of either the custodian trustee or any of the managing trustees or of any beneficiary, and on proof to their satisfaction that it is the general wish of the beneficiaries, or that on other grounds it is expedient, to terminate the custodian trusteeship, make an order for that purpose, and the High Court may thereupon make such vesting orders and give such directions as under the circumstances may seem to the High Court to be necessary or expedient.

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(3) This section shall apply in like manner as to the Public Trustee to any banking or insurance company or other body corporate entitled by the rules to act as custodian trustee, with power for such company or body corporate to charge and retain or pay out of the trust property fees not exceeding the fees chargeable by the Public Trustee as custodian trustee.

Appoint-
ment as
trustee,
executor,
etc.

7. (1) The Public Trustee may by that name, or any other sufficient description, be appointed to be trustee of any will or settlement or other instrument creating a trust or to perform any trust or duty belonging to a class which he is authorised by the rules to accept and may be so appointed whether the will or settlement or instrument creating the trust or duty was made or came into operation before or after the 1st June, 1937 and either as an original or as a new trustee or as an additional trustee, in the same cases and in the same manner and by the same persons or court, as if he were a private trustee, with this addition, that though the trustees originally appointed were two or more, the Public Trustee may be appointed sole trustee.

(2) Where the Public Trustee has been appointed a trustee of any trust, a co-trustee may retire from the trust under and in accordance with section 27 of the Trustees Act, notwithstanding that there are not more than two trustees and without such consents as are required by that section.

(3) The Public Trustee shall not be so appointed either as a new or additional trustee where the will, settlement or other instrument creating the trust or duty contains a direction to the contrary, unless the High Court otherwise orders.

(4) Notice of any proposed appointment of the Public Trustee either as a new or additional trustee shall where practicable be given in the prescribed manner to all persons beneficially interested who are resident in Barbados and whose addresses are known to the persons proposing to make the appointment or, if such beneficiaries are infants, to their guardians.

(5) Where any person to whom such notice has been given within twenty-one days from the receipt of the notice applies to the High Court, the High Court may, if having regard to the interests of all the beneficiaries it considers it expedient to do so, make an order prohibiting the appointment being made.

(6) A failure to give any such notice shall not invalidate any appointment made under this section.

8. (1) Where, in pursuance of any rule, the Public Trustee is authorised to accept by that name probates of wills or letters of administration, the High Court may grant such probate or letters to the Public Trustee by that name, and for that purpose the Court shall consider the Public Trustee as in law entitled equally with any other person or class of persons to obtain the grant of letters of administration, save that the consent or citation of the Public Trustee shall not be required for the grant of letters of administration to any other person and that, as between the Public Trustee and the widower, widow or next-of-kin of the deceased, the widower, widow or next-of-kin shall be preferred, unless for good cause shown to the contrary.

Granting
probate to
Public
Trustee.

(2) Any executor who has obtained probate or any administrator who has obtained letters of administration, and notwithstanding he has acted in the administration of the deceased's estate, may, with the sanction of the High Court and after such notice to the persons beneficially interested as the High Court may direct, transfer such estate to the Public Trustee for administration either solely or jointly with the continuing executors or administrator, if any.

(3) The order of the High Court sanctioning such transfer shall, subject to this Act, give to the Public Trustee all the powers of such executor and administrator.

(4) Such executor and administrator shall not be in any way liable in respect of any act or default in reference to such estate subsequent to the date of such order, other than the act or default of himself or of persons other than himself for whose conduct he is in law responsible.

PART III

General

9. There shall be charged upon the Consolidated Fund all sums required to discharge any liability which the Public Trustee, if he were a private trustee, would be personally liable to discharge, except where the liability is one to which neither the Public Trustee nor any of his officers has in any way contributed and which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and

Liability of
Public
Trustee a
charge on
Consolidated
Fund.
L.N. 168/
1967.

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in that case the Public Trustee shall not be subject to any liability nor shall any sums be charged upon the Consolidated Fund.

Fees to be charged.

10. (1) There shall be charged in respect of the duties of the Public Trustee such fees, whether by way of percentage or otherwise, as the Minister responsible for Finance may by order fix, and such fees shall be collected and accounted for by such persons and in such manner, and shall be paid to such account, as such order may direct.

(2) Any expenses which might be retained or paid out of the trust property if the Public Trustee were a private trustee shall be so retained or paid, and the fees shall be retained or paid in the like manner as and in addition to such expenses.

(3) Such fees shall be applied as an appropriation in aid of moneys provided for expenses under this Act and so far as not so applied shall be paid into the Public Treasury.

(4) The fees under this section shall be so arranged from time to time as to produce an annual amount not more than sufficient to discharge the expenses incidental to the working of this Act (including such sum as the Minister responsible for Finance may from time to time determine to be required to insure the Consolidated Fund against loss under this Act).

(5) The incidence of the fees and expenses under this section as between capital and income shall be determined by the Public Trustee.

Appeal from decision of Public Trustee.

11. (1) A person aggrieved by any act or omission or decision of the Public Trustee in relation to any trust may apply to the High Court, and the High Court may make such order in the matter as it thinks just.

(2) Subject to Rules of Court, an application under this section of the High Court shall be made to a Judge in chambers.

Mode of action of Public Trustee.

12. (1) The Public Trustee shall not, nor shall any of his officers, act under this Act for reward, except as provided by this Act.

(2) The Public Trustee may, subject to the rules, employ for the purposes of any trust such solicitors, bankers, accountants

and brokers or other persons as he may consider necessary, and in determining the persons to be so employed in relation to any trust the Public Trustee shall have regard to the interests of the trust, but subject to this shall, whenever practicable, take into consideration the wishes of the creator of the trust and of the other trustees (if any) and of the beneficiaries, either expressed or as implied by the practice of the creator of the trust or in the previous management of the trust.

(3) On behalf of the Public Trustee such person as may be prescribed may take any oath, make any declaration, verify any account, give personal attendance at any court or place and do any act or thing whatsoever which the Public Trustee is required or authorised to take, make, verify, give, or do.

(4) Nothing in this Act or in any rule shall confer upon any person not otherwise entitled thereto any right to appear or act or be heard in or before any court or tribunal, on behalf or instead of the Public Trustee, or to do any act whatsoever on behalf or on the instructions of the Public Trustee, which could otherwise only be lawfully done by a barrister or solicitor.

(5) Where any bond or security would be required from a private person upon the grant to him of administration or upon his appointment to act in any capacity, the Public Trustee, if administration is granted to him or if he is appointed to act in such capacity as aforesaid shall not be required to give such bond or security but shall be subject to the same liabilities and duties as if he had given such bond or security.

(6) The entry of the Public Trustee by that name in the books of a company shall not constitute notice of a trust, and a company shall not be entitled to object to enter the name of the Public Trustee on its books by reason only that the Public Trustee is a corporation, and, in dealings with property, the fact that the person or one of the persons dealt with is the Public Trustee shall not of itself constitute notice of a trust.

13. (1) Subject to the rules and unless the High Court otherwise orders, the condition and accounts of any trust shall, on an application being made and notice thereof given in the prescribed manner by any trustee or beneficiary, be investigated and audited by such solicitor or public accountant as may be agreed on by the applicant and the trustees or, in default of

Investigation
and audit of
trust
accounts.

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agreement, by the Public Trustee or some person appointed by him:

Provided that (except with the leave of the High Court) such an investigation or audit shall not be required within twelve months after any such previous investigation or audit and that a trustee or beneficiary shall not be appointed under this section to make an investigation or audit.

(2) The person making the investigation or audit (hereinafter called the auditor) shall have a right of access to the books, accounts and vouchers of the trustees and to any securities and documents of title held by them on account of the trust and may require from them such information and explanation as may be necessary for the performance of his duties.

(3) Upon the completion of the investigation and audit, the auditor shall forward to the applicant and to every trustee a copy of the accounts, together with a report thereon, and a certificate signed by him to the effect that the accounts exhibit a true view of the state of the affairs of the trust and that he has had the securities of the trust fund investments produced to and verified by him or, as the case may be, that such accounts are deficient in such respects as may be specified in such certificate.

(4) Every beneficiary under the trust shall, subject to the rules, be entitled at all reasonable times to inspect and take copies of the accounts, report, and certificate and, at his own expense, to be furnished with copies thereof or extracts therefrom.

(5) The auditor may be removed by order of the High Court, and, if any auditor is removed or resigns or dies or becomes bankrupt or incapable of acting before the investigation and audit is completed, a new auditor may be appointed in his place in like manner as the original auditor.

(6) The remuneration of the auditor and the other expenses of the investigation and audit shall be such as may be prescribed by the rules and shall, unless the Public Trustee otherwise directs be borne by the estate, and, in the event of the Public Trustee so directing, he may order that such expenses be borne by the applicant or by the trustees personally or partly by them and partly by the applicant.

(7) Where any person having the custody of any documents to which the auditor has a right of access under this section fails or refuses to allow him to have access thereto or in anywise obstructs the investigation or audit, the auditor may apply to the High Court, and thereupon the High Court shall make such order as it thinks just.

(8) Subject to rules of court, applications under or for the purposes of this section to the High Court shall be made to a Judge in chambers.

(9) Any person who in any statement of accounts, report or certificate required for the purposes of this section wilfully makes a statement false in any material particular shall be liable on conviction on indictment to imprisonment for two years and on summary conviction by a magistrate to imprisonment for six months and in either case to a fine in lieu of or in addition to such imprisonment.

14. (1) The Minister may make rules for carrying into effect the objects of this Act, and in particular for all or any of the following purposes, that is to say—

Power of
Minister to
make rules.

- (a) prescribing the trusts or duties the Public Trustee is authorised to accept or undertake, and the security, if any, to be given by the Public Trustee and his officers;
- (b) the transfer to and from the Public Trustee of any property;
- (c) the accounts to be kept and the audit thereof;
- (d) excluding any trusts from the operation of this Act or any part thereof;
- (e) the classes of corporate bodies entitled to act as custodian trustees;
- (f) the form and manner in which notices under this Act shall be given;
- (g) such other matters and things as to which rules under this Act are to be made or which may be deemed necessary for the better carrying into effect of this Act.

(2) Rules made under this section shall have no force or effect until they have been approved by resolution of both Houses, and when so approved shall come into force on a day to be fixed by the Governor-General by proclamation.

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(3) Where the rules require a declaration to be made for any purpose, a person who makes such declaration knowing the same to be untrue in any material particular, shall be guilty of a misdemeanour.

Rules and
fees to be
gazetted.

15. All rules made and all scales and fees fixed under this Act shall be published in the *Official Gazette*.