

**Public Trustee**

Cap. 248.

**PUBLIC TRUSTEE RULES, 1938**Vol. 1938,  
p. 23.  
1944/131.  
1960/103.

Made by the Minister under section 14 of the Public Trustee Act. Cap.248.

1. These Rules may be cited as the Public Trustee Rules, 1938.
2. In these rules, unless there is anything in the context or in the Act inconsistent therewith—
  - “trust” includes any trust duty or office which the Public Trustee is authorised by the Act or by these rules to accept; and the expression “trustee” shall be construed accordingly;
  - “trust instrument” includes any instrument, Act of Parliament, or order of court by which a trust is created or declared;
  - “trust property” includes all property subject to a trust, or comprised in an estate, which is proposed to be administered by the Public Trustee.

*Authorised Trusts and Duties*

3. Subject to the Act and to these rules, the Public Trustee is authorised—
  - (a) to accept any trust created or declared by any trust instrument or arising upon an intestacy;
  - (b) to accept any duty incident to, and to act in, any of the following offices, namely, (i) as incident to the office of trustee of any trust accepted by him the office of guardian of any infant beneficiary, (ii) the office (where the execution of any trust is involved therein) of agent or attorney for any person;
  - (c) to accept by the name of the Public Trustee probate or letters of administration of any kind and either as principal or as agent for any person;

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- (d) to accept as custodian trustee any trust created or declared by any trust instrument;
- (e) to receive any money or damages paid to him by order of any court or Judge in any cause, matter or suit in which a sum of money has been awarded and/or recovered by an infant or person of unsound mind not so found by inquisition, and to apply the same in accordance with any rule or direction of the Court or Judge in that behalf:

Provided that he shall not accept the trusts of any instrument made solely by way of security for money.

**4.** The Public Trustee may, if he thinks fit—

- (1) act as custodian trustee of a trust which involves the management or carrying on of any business, but upon the conditions that (a) he shall not act in the management or carrying on of such business, and (b) he shall not hold any property of such a nature as will expose the holder thereof to any liability except under exceptional circumstances and when he is satisfied that he is fully indemnified or secured against loss; and
- (2) accept as ordinary trustee, under exceptional circumstances, a trust which involves the management or carrying on of any business, but upon the conditions that, except with the consent of the Court, he shall only carry on the same (a) for a short time not exceeding eighteen months, and (b) with a view to sale, disposition or winding-up, and (c) if satisfied that the same can be carried on without risk of loss.

*Trusteeships*

**5.** (1) A testator may appoint the Public Trustee to be trustee or custodian trustee under any testamentary instrument without previously applying to him for his consent to act as such.

(2) No such appointment by a testator shall have effect, and no appointment of the Public Trustee to be trustee or custodian trustee shall be made except by a testator, unless and until (in either case), the consent of the Public Trustee to act as such

trustee shall have been obtained in accordance with these rules:

Provided that in the case of any such appointment by a testator the Public Trustee shall at any time after the fact of his appointment shall have come to his knowledge be at liberty to act as if an application for his consent had been received by him.

(3) It shall be the duty of any person appointed by a testator to be co-trustee with the Public Trustee, and not renouncing or disclaiming the trust, to give to the Public Trustee notice in writing of such appointment as soon as practicable after the same has come to his knowledge.

6. Upon receiving an application for his consent to act as trustee or as custodian trustee, the Public Trustee may require to be produced to him the trust instrument (if any), and may require to be supplied to him a copy of that instrument, and of any other document affecting the trust, and such particulars as to the nature and value of any trust property, and the liabilities (if any) attaching to such property, or the holder thereof, and the names and places of abode of any beneficiaries and trustees under the trust, and such other information relating to the trust as he may consider it desirable to obtain in any particular case.

7. As soon as may be after receiving any such application, the Public Trustee shall take into consideration upon such evidence as may appear to him sufficient—

- (a) the gross capital value of the trust property;
- (b) the mode of investment and the condition of the trust property;
- (c) the situation, tenure, and character of any land comprised in the trust property;
- (d) any liabilities attaching to the trust property or the holder thereof;
- (e) the duties incident to the office of trustee of the trust;
- (f) the places of abode and circumstances of any beneficiaries; and
- (g) all the circumstances of the case;

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and shall decide whether the application ought to be accepted or refused, and shall give notice to the applicant of such acceptance or refusal, and in case of acceptance shall in writing under his hand and official seal signify his consent to act in the trust.

#### ADMINISTRATION OF SMALL ESTATES

**8.** Upon receiving an application under section 5 (1) of the Act, the Public Trustee shall require to be supplied to him such evidence as to the value of the estate, and the circumstances of the persons beneficially entitled, and such other information relating thereto as he may consider it desirable to obtain in any particular case.

**9.** (1) If it is not proved to the satisfaction of the Public Trustee that the gross capital value of the estate is less than \$15,000, or if it does not appear to him that the persons beneficially entitled are persons of small means, or if he sees any other good reason for refusing the application, he shall refuse the same, and shall forthwith give notice to the applicant of such refusal.

(2) In any other case, the Public Trustee shall make in respect of the estate the declaration mentioned in section 5 (2) of the Act, and shall give notice to the applicant that the application is accepted, and shall take such other steps as may be necessary or proper to enable him to administer the estate; and any person having the custody of the probate or letters of administration, or other document relating to the estate, shall, upon the request in writing of the Public Trustee, deliver the same to him, or as he shall direct.

(3) A refusal under this rule shall not prevent the Public Trustee from exercising, with respect to the estate, any powers (other than powers under section 5 of the Act) exercisable by him with respect thereto under the Act or these rules, if duly appointed to exercise the same.

**10.** For the purposes of the administration the Public Trustee shall (subject as hereinafter provided) have all the administrative powers and authorities exercisable by a Master

of the Supreme Court in England acting in the administration of an estate.

**11.** (1) The Public Trustee may, in manner hereinafter provided and without judicial proceedings, take the opinion of the Court upon any question arising in the course of an administration.

(2) For the duty of advising upon any such question any Judge of the High Court may act for the purposes of this rule.

(3) Any such question shall be submitted to the Judge in such manner and at such time as he may direct, and shall be accompanied by such statement of facts, documents, and other information as he may require, and the Public Trustee shall, if the Judge so desires, attend upon him at such time and place as he may appoint.

(4) The Judge may, before giving his opinion, require the attendance of, or communicate with, any person interested in the estate as trustee or beneficiary, but no such person shall have a right to be heard by the Judge unless he otherwise directs.

(5) The Judge shall give his opinion to the Public Trustee, and the Public Trustee shall act in accordance with such opinion, and shall, upon the request in writing of any such interested person, communicate to him the effect of such opinion.

#### ADMINISTRATION OF TRUSTS AND ESTATES

**12.** There shall be kept at the office of the Public Trustee such registers and other books as shall be required for recording or entering in a convenient form as to each trust or estate which the Public Trustee is administering the particulars following—

- (a) the date of the acceptance of the trust or of the declaration made under section 5 (2) of the Act;
- (b) particulars of the trust property from time to time;

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- (c) the names and place of abode of the person in receipt of the income of the trust property;
- (d) a reference to any notice received of any dealing with any beneficial interest in the trust property, and of any exercise or release of any power relating to the trust or estate;
- (e) an entry of any decision or opinion of the Court in respect of the trust or estate;
- (f) such entries of his decisions and such other particulars as the Public Trustee may think fit;

and such particulars shall be recorded or entered accordingly.

**13.** The Public Trustee may invest or retain invested money belonging to any trust or estate and coming to his hands in any mode of investment expressly or impliedly authorised by the trust instrument or (if there is no trust instrument) authorised by law for the investment of trust funds, and may, if authorised by the trust instrument or otherwise by law, retain any investment existing at the date of the commencement of the trust:

Provided that he shall not invest in or hold any investment in such manner as to expose him to liability as the holder thereof, unless he is satisfied that he is fully indemnified or secured against loss.

**14.** (1) The securities and documents belonging or relating to a trust or estate which the Public Trustee is administering shall, if under his control, be kept at the Treasury or at some other safe place of deposit allowed generally or specially by the Treasurer, so far as the convenience of business will admit.

(2) All orders for the withdrawal of securities or documents from the Treasury or other place of deposit shall be signed by not less than two persons, viz.: (a) by the Public Trustee and a co-trustee, or (b) by the Public Trustee and an officer of the Public Trustee authorised in writing by him to act in that behalf, either generally or in any particular case, or (c) by a co-trustee and one such duly authorised officer, or (d) by two such duly authorised officers.

**15.** (1) Separate accounts shall be kept for every trust or estate.

(2) A separate account shall be kept of the capital of the trust property and of the mode in which it is from time to time invested, and all dealing with such capital shall be entered in such account.

(3) A separate account shall be kept of the income of the trust property (if received by the Public Trustee), and of the mode in which it is from time to time dealt with by the Public Trustee.

**16.** (1) All payments of money to or from the capital of the trust property shall be made through the Treasury.

(2) Where the Public Trustee authorises a co-trustee to pay money to or from the capital of the trust property through a bank, or where the instrument creating the trust authorises payment in such manner, the same may be made by cheque on such bank signed by not less than two persons, viz.: (a) by the Public Trustee and a co-trustee or (b) by the Public Trustee and an officer of the Public Trustee authorised in writing by him to act in that behalf.

**17.** In all cases where any deed or other instrument requires to be executed by the Public Trustee under his official seal, the affixing of the seal may be authenticated by the signature either of the Public Trustee or of some officer of the Public Trustee duly authorised by the Public Trustee in that behalf under his seal, and any deed or other instrument purporting to be a deed or instrument executed by the Public Trustee and to be sealed with his seal authenticated in manner provided by this rule shall be received in evidence and be deemed to be a deed or instrument so executed without further proof unless the contrary is shown.

**18.** All sums payable out of the income or capital of the trust property shall be made by voucher duly certified by the Public Trustee, or an officer of the Public Trustee authorised in writing by him to act in that behalf, either generally or in any particular case:

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Provided that in any particular case the Public Trustee may authorise the payment of income by the person liable to pay the same direct to the person entitled to receive the same, or to his bank.

**19.** (1) The income of the trust property may be paid by voucher to the person for the time being entitled to receive the same, and where such person is a married woman may be so paid notwithstanding any restraint on anticipation.

(2) Where authority is given to any corporation or bank to pay any income to any person, the books of that corporation or bank showing the payment of that income in accordance with the authority shall be a sufficient discharge to the Public Trustee.

(3) Where authority is given to any person to pay any income to the bank of the person entitled, the certificate of that bank stating the receipt of that income shall be a sufficient discharge to the Public Trustee.

(4) Where any person is solely entitled to receive any income, the Public Trustee may, on the request in writing of that person, and notwithstanding any restraint on anticipation, authorise that person for such period as the Public Trustee may think fit to collect or arrange for the collection of such income. During the continuance of any such authority such request in writing shall be a sufficient discharge to the Public Trustee in respect of such income.

(5) The income of the trust property in cases coming within the provisions of rule 16 (2) may be paid to the person for the time being entitled to receive the same by cheque through such bank signed in the same manner as is therein provided.

**20.** The Public Trustee may, if the special circumstances of the case appear to him to render it desirable, pay to any other trustee of the trust or allow him to receive, the income of the trust property or any part thereof, on such trustee undertaking to apply it in manner directed by the trust.

**21.** The Public Trustee may make advances for the purposes of any trust or estate in course of administration, or about to be



administered, by him, out of any moneys which may be placed at his disposal for that purpose, and upon such terms as he may think proper.

**22.** Subject to the provisions of the Act and of these rules and to the terms of any particular trust, the Public Trustee may, in the administration of any trust or estate, take and use professional advice and assistance in regard to legal and other matters, and may act on credible information (though less than legal evidence) as to matters of fact.

**23.** The Public Trustee may at any time require a statutory declaration or other sufficient evidence that a person is alive and is the person to whom any money or property is payable or transferable, and may refuse payment or transfer until such declaration or evidence is produced.

**24.** Where a person appearing to be beneficially entitled to any sum of money under the trust or to be interested in the trust property cannot be found, or it is not known whether he is living or dead, the Public Trustee may apply to the Court for directions as to the course to be taken with reference to such person, and until an order of the Court is made shall keep any sum payable to such person, and if it is kept for more than six months shall invest the same or deposit the same at interest and shall accumulate the dividends or interest thereof.

**25.** (1) Upon an application in writing by or with the authority of any person interested in the trust property, the Public Trustee—

- (a) shall permit the applicant or his attorney-at-law or other authorised agent to inspect and take copies of any entry in any register or book relating to the trust or estate and (so far as the interest of the applicant in the trust property is or may be affected thereby) of any account, notice or other document in the custody of the Public Trustee;
- (b) shall at the expense of the applicant supply him or his attorney-at-law or other authorised agent with a copy

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of any such entry, account, notice or document as aforesaid, or with any extract therefrom;

- (c) shall give to the applicant or his attorney-at-law or other authorised agent such information respecting the trust or estate and the trust property as shall be reasonably requested in the application and shall be within the power of the Public Trustee.

(2) Subject as aforesaid, the Public Trustee and his officers shall observe strict secrecy in respect of every trust or estate in course of administration.

*Corporate Bodies as Custodian Trustees*

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**26.** (1) Any corporation incorporated or registered under the laws of the Island and having a place of business here and empowered by its constitution to undertake trust business, and being either—

- (a) a company incorporated by special Act, or Royal Charter, or

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- (b) a company registered (whether with or without limited liability) under the Companies Act, having a capital (in stock or shares) for the time being issued of not less than \$1,200,000, of which not less than \$500,000 shall have been paid up in cash, or

- (c) a company registered without limited liability under the Companies Act, whereof one of the members is a company within any of the classes hereinbefore defined, shall be entitled to act as a custodian trustee.

(2) In this rule, “trust business” means the business of acting as trustee under wills and settlements and as executor and administrator.

*Investigation and Audit of Trust Accounts*

**27.** Any application under section 13 (1) of the Act shall be made to the Public Trustee, and notice thereof shall (unless the Public Trustee otherwise directs) be given by the applicant to every other person being a trustee or beneficiary under the trust.

**28.** (1) Upon receiving any such application, the Public Trustee may in his absolute discretion by notice to the applicant require that before a day to be specified in the notice such security (by deposit of a sum of money) as he shall deem sufficient shall be given to him by the applicant for the payment of any expenses of the investigation and audit which may be ordered by the Public Trustee to be paid by the applicant personally.

(2) Where any such requirement is made, no further proceedings shall be taken upon the application until the security has been given, and if the same is not given before the day specified in the notice the application shall be disallowed unless under special circumstances the Public Trustee thinks fit to extend the time for giving the security or to dispense therewith.

(3) Any sum so deposited shall be deposited into the Treasury until all proceedings in connection with the investigation and audit have been concluded, and thereupon the deposited sum shall be applied in or towards payment of any expenses of the investigation and audit which may be so ordered to be paid by the applicant personally and the balance (if any) shall be paid to the applicant.

**29.** The Public Trustee may in his absolute discretion upon the application of any trustee or beneficiary direct that the investigation and audit shall extend only to a specified period of time or to a specified part of the trust property or shall be otherwise restricted.

**30.** If within one month from the date of the application under section 13 (1) of the Act no attorney-at-law or public accountant shall have been appointed by the applicant and the trustees to conduct the investigation and audit, there shall be deemed to be a default of agreement within the meaning of the said section 13 (1) and the applicant may apply to the Public Trustee accordingly.

**31.** The remuneration of the auditor and the other expenses of the investigation and audit shall be such as may be determined by the Public Trustee:

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Provided that the Public Trustee may refer the costs of any attorney-at-law (being part of such expenses) for taxation to the Registrar or Clerk of the Court, and in such case the amount of the said costs when taxed shall be included in such expenses.

**32.** (1) Where any investigation or audit has been made, copies of the report and certificate of the auditor under section 13 (3) of the Act and such copies of accounts and other documents as the Public Trustee may require shall be forwarded to him by the auditor, and shall be considered by the Public Trustee before giving any direction or making any order under section 13 (6) of the Act.

(2) The expense of making and forwarding any such copies as aforesaid and the fee of the Public Trustee (within the limits prescribed by or in pursuance of any order relating to the fees of the Public Trustee for the time being in force) shall for the purpose of section 13 (6) of the Act be part of the expenses of the investigation and audit.

**33.** (1) Before making any order under section 13 (6) of the Act, the Public Trustee shall, if any of the parties interested so desire, hear the said parties in such manner as he shall think fit.

(2) Any such order shall specify the person by or to whom any sum is to be paid and the amount of such sum:

Provided that such an order may direct payment of the taxed costs of any attorney-at-law employed in connection with the investigation and audit, and such costs shall be taxed by the Registrar or Clerk of the Court, and the amount of such costs when taxed shall be paid as if such amount had been specified in the order.

(3) Any such order may be enforced in the same manner as a judgment or order of the Court to the same effect.

#### *Miscellaneous*

**34.** The accounts of the Public Trustee shall be audited and the securities held by him verified from time to time by the Auditor-General.

**35.** Any officer of the Public Trustee who shall be authorised by him in writing in that behalf may take any oath, make any declaration, verify any account and give personal attendance at any court or place.

**36.** (1) Any notice or application required to be given or made for the purposes of the Act or these rules to the Public Trustee may be addressed to the Public Trustee at his office.

(2) Any notice or application required to be given or made for the purpose of the Act or these rules to any person other than the Public Trustee may be addressed to that person at his last known place of abode or place of business.

(3) Any such notice or application may be delivered at the place to which it is addressed or may be served by post.

**37.** Where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceeding in pursuance of these rules is an infant, idiot, or lunatic, the guardian or (as the case may require) the committee or receiver of the estate of such person may make such application, give such consent, do such act, and be party to such proceedings as such person if free from disability might have made, given, done or been party to, and shall otherwise represent such person for the purposes of these rules. Where there is no guardian or committee or receiver of the estate of any such infant, idiot, or lunatic, or where any person is of unsound mind, or incapable of managing his affairs but has not been found lunatic under any inquisition, it shall be lawful for the Court to appoint a guardian of such person for the purpose of any proceedings under these rules and from time to time to change such guardian.

**38.** (1) The Public Trustee may in writing authorise any officer of the Public Trustee to exercise and perform (either generally or in relation to any particular case and subject to such conditions and restrictions (if any) as the Public Trustee may impose) all or any of the powers and duties of the Public Trustee under any of the foregoing rules except—

(a) the power of authorising officers of the Public Trustee to

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transfer securities or assure land or to sign vouchers and cheques; and

- (b) the power of making advances for the purpose of any trust or estate.

(2) Any such authority, conditions or restrictions may at any time in like manner be withdrawn or varied by the Public Trustee at his discretion.

**39.** The Public Trustee may frame and cause to be printed and circulated or otherwise promulgated such forms and directions and regulations as he may deem requisite or expedient for facilitating proceedings under the Act and these rules.