

NO. 24
PUBLIC TRUSTEE ACT, 1952

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NO. 24
PUBLIC TRUSTEE ACT, 1952(1)

AN ACT to provide for the appointment of a public trustee, to amend the law relating to the administration of trusts and to provide for related matters.

Establishment of Public Trustee

1. Office of Public Trustee

(1) The Office of Public Trustee is hereby established.

(2) The public trustee shall be a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued in the corporate name like any other corporation sole, but an instrument sealed by the public trustee shall not, by reason of that seal, be rendered liable to a higher stamp duty than if the public trustee were an individual.

2. Officers

(1) The President may appoint a fit person to the office of the public trustee in accordance with article 195 of the Constitution.

(2) The President may appoint any other persons to be officers in the Office of the Public Trustee as the President considers necessary for the purposes of this Act.

3. Appearance in Court of public trustee

The public trustee is entitled to appear in court in person in any proceedings in which the public trustee is a party.

Functions of the Public Trustee

4. General functions of public trustee

- (1) Subject to and in accordance with this Act and the Regulations the public trustee may
- (a) act as an ordinary trustee,

- (b) act as a custodian trustee, or
- (c) be appointed trustee by the Court.

(2) Subject to this Act and the Regulations the public trustee may act alone or jointly with any other person or body of persons in a capacity to which the public trustee is appointed in pursuance of this Act.

(3) For the purposes of subsection (2), the public trustee shall have the powers, duties and liabilities, and is entitled to the rights and immunities and is subject to the control and orders of the Court as a private trustee, committee or receiver acting in that capacity.

(4) The public trustee may decline, absolutely or on the prescribed conditions, to accept a trust, but the public trustee shall not decline to accept a trust on the ground only of the small value of the trust property.

(5) The public trustee shall not accept a trust which involves the management or carrying on of a business, except in the cases in which the public trustee is authorised to do so by the Regulations nor a trust under a deed of arrangement for the benefit of creditors nor the administration of an estate known or believed by the public trustee to be insolvent.

5. Acceptance of charitable trust

The public trustee may accept trusts which are exclusively for religious or charitable purposes.

Custodian Trustee and Ordinary Trustee

6. Custodian trustee

(1) Subject to the Regulations the public trustee may, where the public trustee consents to act as a custodian trustee, and whether or not the number of trustees has been reduced below the original number, be appointed to be a custodian trustee of a trust,

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

(2) Where the public trustee is appointed to be custodian trustee of a trust,

- (a) the trust property shall be transferred to the custodian trustee as if the public trustee were sole trustee, and for that purpose vesting orders may, where necessary, be made by the Court;
- (b) the management of the trust property and the trust property and the exercise of a power or discretion exercisable by the trustee under the trust shall remain vested in the trustees as the managing trustees, other than the custodian trustee;
- (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 the securities and documents of title relating to the trust property, but the managing trustees shall have free access to those securities and documents and are entitled to take copies of them or extracts from them;
- (d) the custodian trustee shall concur in and perform the 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 the custodian trustee is requested to concur is a breach of trust, or involves a personal liability on the custodian trustee in respect of calls or otherwise, but, unless the custodian trustee so concurs the custodian trustee is liable for an act or a default on the part of the managing trustees or any of them;

- (e) the sums payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee; but the custodian trustee may allow the dividends and any other income derived from the trust property to be paid to the managing trustees or to the person directed by the managing trustees or into a bank to the credit of a person as directed by the managing trustee and accordingly the custodian trustee shall be exonerated from seeing to the application of the dividends or income and shall not be answerable for any loss or misapplication of the dividends or income;
- (f) the power of appointing new trustees, when exercisable by the trustees, shall be exercisable by the managing trustees, but the custodian trustee shall have the power of applying to the Court for the appointment of a new trustee as any other trustee;
- (g) in determining the number of trustees for the purposes of an Act of the United Kingdom Parliament or any other enactment the custodian trustee shall not be reckoned as a trustee;
- (h) the custodian trustee, acting in good faith, is not liable for accepting as correct and acting on the faith of a written statement by the managing trustees, as to the birth, death, marriage, or any other matter of pedigree or relationship, or any other matter of fact, on which the title to the trust property or a part of the trust property may depend, nor for acting on a legal advice obtained by the managing trustees independently of the custodian trustee;
- (i) the Court may, on the application of the custodian trustee, or any of the managing trustees, or of a beneficiary, and on proof to its 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 Court may make vesting orders and give directions as in the circumstances may seem to the Court to be necessary or expedient.

(3) Subsections (1) and (2) shall apply to a banking or an insurance company or any other body corporate entitled by the Regulations to act as custodian trustee, with power for the 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.

7. Public trustee as trustee, or executor

(1) The public trustee may by that name, or any other sufficient description, be appointed a trustee of a will or settlement or any other instrument creating a trust or to perform a trust belonging to a class which the public trustee is authorised by the Regulations to accept.

(2) The public trustee 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 commencement of this Act and either 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 the public trustee was a private trustee, with this addition, that, though the trustees originally appointed were two or more, the public trustee may be appointed sole trustee.

(3) Where the public trustee is appointed a trustee of a trust, a co-trustee may retire from the trust although there are not more than two trustees.

(4) The public trustee shall not be appointed 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 Court otherwise orders.

(5) Notice of a proposed appointment of the public trustee, as a new or additional trustee, shall, where practicable, be given in the prescribed manner to the persons beneficially interested who are resident in Ghana and whose addresses are known to the persons proposing to make the appointment, or, if the beneficiaries are infants, to their guardians.

(6) Where a person to whom a notice is given within twenty-one days from the receipt of the notice applies to the Court, the Court may, if having regard to the interest of the beneficiaries it considers it expedient to do so, make an order prohibiting the appointment being made.

(7) A failure to give the notice shall not invalidate an appointment made under this section.

8. Settlement of the beneficial interest of a lunatic

(1) The public trustee whether or not appointed a committee or receiver of a lunatic, may apply to the Court to direct a settlement of the property of a lunatic under this section.

(2) On the application, the Court may direct a settlement to be made of the property of a lunatic, or a part of that property or an interest in the property, on the trusts and subject to the powers and provisions that the Court may consider expedient, and in particular may give directions

- (a) where the property has been acquired under a settlement, a will or an intestacy, or represents property so acquired; or
- (b) where by reason of a change in the law of intestacy or of a change in circumstances since the execution by the lunatic of a testamentary disposition, or of an absence of information at the time of the execution, or on account of the former management of the property or the expenditure of money in improving or maintaining the same or for any other special reason the Court is satisfied that a person might suffer an injustice if the property were allowed to devolve as undisposed of on the death intestate of the lunatic or under a testamentary disposition executed by the lunatic.

(3) The Court may direct the committee or receiver of the lunatic or a trustee for the lunatic to execute a vesting instrument, trust instrument, conveyance, including a disentailing assurance, or any other instrument, and to do any other act or thing which may be required for giving effect to the settlement, in the name and on behalf of the lunatic.

(4) For the purposes of subsection (3), the Court may make a vesting order or appoint a person to convey, and a settlement approved by the Court shall be as effectual and binding on the person interested as if the same had been made by the lunatic while of full capacity.

(5) This section applies whether or not the lunatic has executed a testamentary disposition and although it is not known whether the lunatic has executed a disposition or not, but does not apply when the lunatic is an infant.

(6) A person who under an enactment relating to the administration of property has a hope of succession, whether under a testamentary disposition which is known to exist or in the event of the intestacy of the lunatic or an interest in the property of the lunatic or in a part of that property as well as the committee or receiver and any other person who may be authorised by Rules, made under this section, may request the public trustee to apply to the Court under this section and if the public trustee neglects, or refuses to do so, that person may personally apply to the Court under this section provided that notice of the application shall be served on the public trustee who may appear on the hearing of the application.

(7) Where the devolution of the property of the lunatic would be subject to the customary law and would not pass under an enactment relating to the administration of property, a person who would have a hope of succession, according to the customary law shall have the same right as a person who would have a hope of succession under subsection (6).

(8) Subject to making due provision for the maintenance of the lunatic in accordance with the station in life of the lunatic whether out of the capital or income of the property settled or other property or partly in one way and partly in another, and to providing, by means of a power of appointment or revocation, or otherwise, for the possibility of the lunatic recovering full capacity, the Court may, in making an order under this section, consider

- (a) the manner in which the property has been settled or dealt with on former occasions;
- (b) in the case of land or houses built on the property the claims of relatives, employees or dependants to the use or occupation of the property, and the expediency of settling personal estate to devolve with the property;
- (c) the maintenance or education of the illegitimate children of the lunatic and maintenance of their mother or mothers;
- (d) the maintenance of a wife married according to the customary law who would not have a hope of succession under subsections (6) and (7), or the maintenance of the parents or natural parents of the lunatic;
- (e) the continuation or provision of any pensions, and the application of a part of the income for charitable purposes;
- (f) the provisions of a testamentary disposition of the lunatic;
- (g) the expediency of providing for
 - (i) jointures, portions, and other annual or capital charges and powers to create any of them;
 - (ii) discretionary trusts, trusts for effecting or maintaining policies of insurance, powers of appointment, sinking funds for making good loss by fire, in lieu of, or in addition to, insurance, or for any other purpose;
 - (iii) the extension of any statutory powers of investment, management or otherwise;
 - (iv) the manner in which costs are to be raised and paid, whether out of the settled property or otherwise;
 - (v) any other matter or thing which, having regard to the nature of the settlement, or the property to be settled, and the management, development, and enjoyment of the property and to the persons who are to take, successively or otherwise, the Court may consider material.

(9) In this section “**testamentary disposition**” means an instrument executed by the lunatic while of full testamentary capacity, which, if revoked, might, on the lunatic’s death be proved as a will or codicil; and the Court may act on the evidence regarding the existence or absence of a testamentary disposition that it thinks fit.

(10) Before the death of the lunatic the Court may, as respects property remaining subject to the trusts of a settlement made under this section, on being satisfied that a material fact was not disclosed to the Court when the settlement was made, or on account of a substantial change in circumstances, by order

vary the settlement in a manner that it thinks fit, and give any consequential directions.

(11) The Rules of Court Committee, established under article 157 of the Constitution, may make Rules for giving effect to this section and in particular from compelling information to be furnished respecting, and production of, testamentary dispositions, in Court, or respecting a person who might receive a benefit under a settlement directed by the Court under this section, or for prescribing what notices of the proceedings are to be served, for dispensing with the notices, and, when necessary, for making representation orders.

9. Removal of trustee by Court

The Court may remove a private trustee if the Court is satisfied that the continuance of the existing trustee in office may be detrimental to the execution of the trust though the misconduct or maladministration has not been proved against the private trustee.

10. Granting probate to public trustee

(1) Where, in pursuance of the Regulations the public trustee is authorised to accept by that name probates of wills or letters of administration, the Court may grant probate of a will or letters of administration to the public trustee by that name.

(2) For the purposes of subsection (1) 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, but

- (a) the consent or citation of the public trustee shall not be required for the grant of letters of administration to any other person, and
- (b) 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.

11. Transfer by executor after probate to public trustee

(1) An executor who has obtained probate or an administrator who has obtained letters of administration and who has acted in the administration of the deceased's estate, may, with the sanction of the Court, and after a notice to the persons beneficially interested as directed by the Court transfer the estate to the public trustee for administration solely or jointly with the continuing executors or administrator.

(2) The order of the Court sanctioning the transfer shall, subject to this Act, give to the public trustee the powers of the executor and administrator.

(3) The executor and administrator are not liable in respect of any act or in default in reference to the estate subsequent to the date of the order, other than the act or default of the executor or administrator or of persons other than the executor or administrator for whose conduct the executor or administrator is in law responsible.

12. Public trustee in place of executor or administrator

The Court may, on the application of a person beneficially interested, appoint the public trustee, if sufficient cause is shown, in place of all or any of the existing executors or administrators or of a guardian of infants or committee or receiver of a person incapable of managing the affairs of that person.

13. Grant of probate or letters of administration

(1) The order of the Court granting probate or letter of administration to the public trustee sanctioning the transfer to the public trustee, or appointment of the public trustee as executor or administrator, of an estate shall, subject to this Act, give to the public trustee the relevant powers under the Administration of Estates Act, 1961 (Act 63).

(2) Where at the time of the transfer to, or appointment of the public trustee, the estate is fully administered and only the residue is transferred, the public trustee shall not be entitled to the remuneration allowed to the Administrator-General when administering estates.

14. Appointment in case of person not *sui juris*

Where the public trustee is appointed by the Court under subsection (1) of section 4 or subsection (1) of section 6, when the persons beneficially interested are minors, or otherwise incapacitated from managing their own affairs, the public trustee may apply to be appointed.

Liability and Fees

15. Liability of general revenue

(1) The sums required to discharge a liability which the public trustee, if the public trustee were a private trustee, would be personally liable to discharge shall be paid out of public funds.

(2) Subsection (1) does not apply where the liability is one to which neither the public trustee nor any of the officers has in any way contributed, and which neither the public trustee nor any of those officers could by the exercise of reasonable diligence have averted.

16. Exemption from personal liability

Where public funds have to be utilised under section 15, the Court may, if it appears that the person holding the office of public trustee has acted honestly and ought fairly to be excused for the breach of trust or other act or omission by which the liability was incurred and for omitting to obtain the directions of the Court in the matter in which the liability was incurred, relieve that person wholly or partly from personal liability for that liability.

17. Fees charged by public trustee

(1) The fees charged in respect of the functions of the public trustee, whether by way of percentage or otherwise, shall be determined by the Minister.

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

(3) The fees shall be paid into the Consolidated Fund.

(4) The incidence of the fees and expenses under this section as between capital and income shall be determined by the public trustee.

Miscellaneous

18. Appeal to Court from public trustee

A person aggrieved by an act or omission or decision of the public trustee in relation to a trust may apply to the Court, and the Court may make an order that the Court thinks just.

19. Mode of action of public trustee

(1) The public trustee shall not, nor any of the officers, act under this Act for reward, except as provided by this Act.

(2) The public trustee may, subject to the Regulations, employ for the purposes of a trust a legal practitioner, banker, accountant and broker or any other person the public trustee considers necessary.

(3) In determining the persons to be employed in relation to a trust the public trustee shall consider the interests of the trust, but subject to this shall, where practicable, take into consideration the wishes of the creator of the trust and of the other trustees, and of the beneficiaries, expressed or as implied by the practice of the creator of the trust, or in the previous management of the trust.

(4) On behalf of the public trustee a person employed under subsection (2) may take an oath, make a declaration, verify an account, give personal attendance at a Court or place, and do an act or thing which the public trustee is required or authorised to take, make verify, give or do.

(5) Where a bond of security would be required from a private person on the grant to that person of administration, or on appointment to act in a capacity, the public trustee, if administration is granted to the public trustee or is appointed to act in that capacity, shall not be required to give the bond or security, but shall be subject to liabilities and duties as if the public trustee had given the 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 is not 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.

Investigation and Audit of Trust Accounts

20. Investigation and audit of trust accounts

(1) Subject to the Regulations and unless the Court otherwise orders, the condition and accounts of a trust shall, on an application being made and notice of the application given in the prescribed manner by a trustee or beneficiary, be investigated and audited by the legal practitioner or an auditor agreed on by the applicant and the trustees or, in default of agreement, by the public trustee or a person appointed by the public trustee.

(2) Except with the leave of the Court an investigation or audit shall not be required within twelve months after a previous investigation or audit and a trustee or beneficiary shall not be appointed under subsection (1) to make an investigation or audit.

(3) The person making the investigation or audit,

(a) shall have a right of access to the books, accounts and vouchers of the trustees, and to the securities and documents of title held by trustees on account of the trust; and

(b) may require from the trustee the information and explanation that are necessary for the performance of that function.

(4) On the completion of the investigation and audit the auditor shall forward to the applicant and to each trustee a copy of the accounts, together with a report on the investigation and a certificate signed by the auditor to the effect that the accounts exhibit a true view of the state of the affairs of the trust and that the auditor has had the securities of the trust fund investments produced to and verified by the auditor or, that the accounts are deficient in the respects that are specified in the certificate.

(5) A beneficiary under the trust is entitled, subject to the Regulations at reasonable times to inspect and take copies of the accounts, report and certificate, and, at the expense of the beneficiary to be furnished with those copies or extracts.

(6) The auditor may be removed by order of the Court, and if the auditor is removed, or resigns, or dies, or becomes incapable of acting before the investigation and audit is completed, a new auditor may be appointed in the manner of the appointment of the original auditor.

(7) The remuneration of the auditor and the other expenses of the investigation and audit shall be prescribed, and shall, unless the public trustee otherwise directs, be borne by the estate.

(8) The public trustee may order the expenses to be borne by the applicant or by the trustees personally or partly by them and partly by the applicant.

(9) Where the person having the custody of a document to which the auditor has a right of access fails or refuses to allow the auditor to have that access or obstructs the investigation or audit, the auditor may apply to the Court, and the Court shall make the order that it thinks just.

(10) A person who in a statement of accounts, report or certificate required for the purposes of this section wilfully makes a false statement in a material particular commits an offence and is liable to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding twelve months or to both that fine and imprisonment.

Regulations

21. Regulations

(1) The Minister may, by legislative instrument, make Regulations for carrying into effect the objects of this Act, and in particular may make Regulations for

- (a) prescribing the trusts or duties which the public trustee is authorised to accept or undertake, and the security, to be given by the public trustee and the officers;
- (b) the transfer to and from the public trustee of property;
- (c) authorising the deposit or investment of trust funds in a bank or on the purchase of security, through the trust funds may not be deposited or invested by a private trustee;
- (d) the accounts to be kept and the audit of the accounts;
- (e) the establishment and regulation of a branch office;
- (f) excluding a trust from the operation of this Act or a part of this Act;
- (g) specifying the corporate bodies entitled to act as custodian trustees;
- (h) the form and manner in which notices under this Act shall be given.

(2) Where the Regulations require a declaration to be made, a person who makes the declaration knowing the declaration to be untrue in a material particular commits an offence and is liable to a fine not

exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding twelve months or to both the fine and imprisonment.

22. Interpretation

In this Act, unless the context otherwise requires,

“**Court**” means the High Court;

“**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;

“**lunatic**” includes every person adjudged a lunatic under the provisions of the Mental Health Act, 1972(2) and every person with regard to whom it is proved to the satisfaction of the Court that that person is through mental infirmity arising from disease or age incapable of managing his affairs;

“**private trustee**” means a trustee other than the public trustee;

“**trust**” includes an executorship or administratorship, guardianship of infants, or the office of committee or receiver of the estate of any person incapable of managing his own affairs; 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 a trust.

Endnotes

1 (Popup - Footnote)

1. The Act was enacted as the Public Trustee Ordinance, 1952 ([No. 24 of 1952](#)). It came into force on 29th November, 1952.

2 (Popup - Footnote)

2. [N.R.C.D. 30](#).