

# REPRINT

## **PUBLIC TRUSTEE ACT (CAP. 31)**

**As in force at: 1 March 1996**

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**AN ACT TO PROVIDE FOR THE APPOINTMENT OF A PUBLIC TRUSTEE, TO DEFINE HIS POWERS AND FUNCTIONS AND TO MAKE PROVISIONS FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO**

## **PUBLIC TRUSTEE ACT (CAP. 31)**

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# PUBLIC TRUSTEE ACT (Cap. 31)

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## PART I PRELIMINARY

### 1 Short title

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

### 2 Interpretation

(1) In this Act, except where the context otherwise requires:

**“agent”** means an agent of the Public Trustee appointed under section 3(1);

**“Board”** means the Public Trustee Investment Board established by section 26;

**“Common Fund”** means the fund constituted by section 24;

**“Court”** means the High Court;

**“estate”** includes any interest in land as defined in section 2 of the *Land and Titles Act* and also any goods, chattels, moneys, valuable security, chose in action, or other property of any whatsoever kind;

**“letters of administration”** includes any letters of administration whether general or with a copy of the will annexed or limited in time or otherwise;

**“movable property”** includes money, securities for money (not being immovable property), debts, choses in action, rights, credits, goods and all other property and interests whatsoever (not being immovable property) which devolves by law upon the executor or administrator and any share or interest in any such property or interest;

**“provincial government officer”** means an officer appointed under section 3(1), from each province to act as agent;

**“Public Trustee”** means the Public Trustee appointed under section 3(1);

**“private trustee”** means any 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 of or under the control, either wholly or in part, of the Public Trustee by virtue of any trust.

- (2) Any officer acting under the directions of a provincial government officer may exercise any of the powers conferred and discharge any of the duties imposed upon a provincial government officer by this Act and for this purpose any reference to a provincial officer shall be deemed to include a reference to an officer so acting.

## **PART II                    ESTABLISHMENT OF OFFICE OF PUBLIC TRUSTEE**

### **3                    Appointment of Public Trustee and other officers**

- (1) For the purpose of carrying out the provisions of this Act, there shall be appointed:
  - (a) a Public Trustee;
  - (b) such other officers as may be necessary for the due administration of the Act;
  - (c) an officer or such other officers as may be necessary from each provincial government.
- (2) Any appointment under subsection (1) shall, where the person appointed is to be a public officer, be made pursuant to the *Constitution*, but otherwise shall be made by the Minister.
- (3) An officer appointed pursuant to subsection (1)(c) shall be deemed to be an agent for the purpose of carrying out his duties.

## **PART III                    ADMINISTRATION OF ESTATES**

### **4                    Provincial government officer may report death to Public Trustee**

- (1) When a person dies within Solomon Islands the provincial government officer or the magistrate of the province in which the death occurs may, if he considers it necessary or expedient, upon receiving notice of such death or upon such death coming to his knowledge, forthwith institute inquiries to ascertain whether the deceased left any, and if so what, estate within Solomon Islands, and may report the death together with full particulars as to the estate, as far as is ascertainable, to the Public Trustee.
- (2) When a person dies elsewhere than within Solomon Islands leaving estate within Solomon Islands the provincial government officer of the province in which the estate is situate may, if he considers it necessary or expedient, upon receiving notice of such death or upon such death coming to his knowledge, forthwith report the death, together with full particulars of the estate, as far as is ascertainable, to the Public Trustee.

### **5                    Application by Public Trustee for grant**

- (1) Upon receipt of any report made pursuant to section 4 or upon otherwise receiving knowledge of the death of any person referred to in that section; the Public Trustee shall cause such further inquiry to be made as to the estate of the deceased person as he may consider necessary, and if it appears to him:
  - (a) that such person died intestate;
  - (b) that the deceased, having made a will devising or bequeathing his estate or any part thereof, has omitted to appoint an executor;
  - (c) that the person or persons named as executor or executors in the will of the deceased are dead or have renounced probate thereof or otherwise are unable or unwilling to act;
  - (d) that application for probate of the will of the deceased or letters of administration with the will annexed to the deceased's estate

has not been made within six months from the date of the death of the deceased to any court having jurisdiction to make a grant;

- (e) that the deceased has appointed the Public Trustee as an executor of his will; or
- (f) that the whole or any of the estate of the deceased has been left unadministered and that the executors of the will of the deceased to whom probate has been granted, or the persons to whom a grant of letters of administration to the deceased's estate has been made, are dead or otherwise are unable or unwilling to complete the administration of the estate,

he may apply to the Court for probate of the will or for letters of administration to the estate of such deceased person, whereupon the Court may make a grant to the Public Trustee of probate or letters of administration, as the case may require.

- (2) Notwithstanding anything contained in subsection (1), if the circumstances of the case appear to the Court so to require, for reasons to be recorded in the proceedings, the Court may, if it thinks fit, of its own motion or otherwise, after having heard the Public Trustee, grant letters of administration, with or without the will annexed to the Public Trustee even though there are persons who, in the ordinary course, would be legally entitled to probate or to administer the estate of the deceased in preference to the Public Trustee.

## **6 Preferential right to letters of administration in certain cases**

- (1) Upon application being made by him to the Court, the Public Trustee shall be deemed to have a right to letters of administration, other than letters *pendente lite*, in preference to:
  - (a) a creditor;
  - (b) a legatee, other than a universal or residuary legatee; or
  - (c) a friend of the deceased.
- (2) Nothing in subsection (1) shall be construed to require the Public Trustee to exercise the right referred to therein.

## **7 Notice of application for grant**

- (1) The Public Trustee shall serve a notice of his intention to apply for a grant of administration upon all executors and the next of kin of the deceased known to him to be resident within Solomon Islands, (except in the circumstances set out in section 5(1)(e)) and shall also cause a notice of any such application to be published once at the provincial office of the province or in the *Gazette* and in such other manner, if any, as the Court, either generally or in respect of any particular case, may direct, and after the expiration of thirty days from the date of such service and publication he may apply to the Court for a grant of probate or letters of administration as the case may require; and the Court shall, if satisfied by affidavit that the case is within the provisions of this Act, make an order upon the application of the Public Trustee accordingly:

Provided that:

- (a) the Court may order such further notice as it may think fit to be given before making such order;
  - (b) it shall not be necessary for the Public Trustee to serve such notice as is in this section mentioned in any case where the Public Trustee has obtained the consent in writing of all executors and the next of kin known to him to be resident within Solomon Islands to make such application; and
  - (c) in any case where the Court is satisfied by affidavit that the estate or any portion thereof may otherwise be purloined, lost, destroyed or damaged, or that unreasonable expense will be incurred by delay in the matter, the Court may direct that the aforesaid notice to apply be waived.
- (2) For the purpose of this section, notice may be served upon executors either personally or by registered post and where service is effected by registered post the date of service shall be deemed to be fourteen days after posting.

## **8 Revocation of grant to Public Trustee**

- (1) At any time after a grant of letters of administration to the Public Trustee under this Act, any person to whom the Court might have



committed administration if no such grant had been made may apply to the Court for revocation of such grant and for a grant to himself of probate of the will or letters of administration; but no such application shall be made until seven days after notice in writing of intention to make it has been served upon the Public Trustee.

- (2) Upon such application the Court, after hearing the Public Trustee if he appears, may revoke the grant to the Public Trustee and grant probate or letters of administration, as the case may be, to the applicant subject to such limitations and conditions as the Court may think fit:

Provided that letters of administration granted to the Public Trustee shall not be revoked as aforesaid unless such application is made within six months after the grant to the Public Trustee and the Court is satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made.

- (3) Upon such revocation and new grant, all the interest, powers, rights and duties of the Public Trustee in regard to the estate affected by such grant, and all liabilities of the Public Trustee under any contract or agreement entered into by him in relation to such estate or any part thereof shall cease; and such portion of the estate as is left unadministered by the Public Trustee shall vest in the person obtaining such new grant, subject nevertheless to all lawful contracts theretofore made relating to such estate and to the allowance and payment of all outlays, disbursements, costs, fees, charges and expenses reasonably incurred in the administration thereof.
- (4) The provisions of this section shall apply in the case of an estate of which the Public Trustee has taken possession pursuant to section 17(1) in like manner as if the certificate made out under that section had been a grant of letters of administration to the Public Trustee on the date upon which he took possession.

## **9           Sealing of probate and letters of administration granted outside Solomon Islands**

Where the Public Trustee has been requested in writing by an executor or administrator, as the case may be, to obtain a sealing in Solomon Islands of any probate or letters of administration granted

by any court of probate in the United Kingdom, any Commonwealth country, any British Possession, or any British court of probate in a foreign country, the Public Trustee may file with the Court a duly certified copy thereof and may thereupon, without further formality, apply to the Court to seal the same and the Court may seal such probate or letters of administration with the seal of the Court and such probate or letters of administration shall thereafter be of like force and effect and shall have the same operation in Solomon Islands as if granted by the Court.

## **10 Disputes to be decided on petition to Court**

- (1) In all cases where probate of the will or letters of administration have been granted to the Public Trustee under this Act, it shall be lawful, except as hereinafter provided, for the Court, on the petition of the Public Trustee or any person interested in the estate, to decide all disputes, matters, claims and demands in respect thereof, and to make such orders as it shall think fit touching the collection, sale, investment, disposal or administration of such estate:

Provided that in any case in which it appears not to be desirable that the matter in question should be so decided, the Court may direct such proceedings to be instituted as appear proper for the due decision thereof; and any such proceedings shall be instituted and carried on in the manner provided by section 73 of the *Wills, Probate and Administration Act*.

- (2) Notwithstanding anything contained in subsection (1), in the case of an estate consisting solely of property not exceeding the gross value of one thousand dollars falling to be administered by the Public Trustee under section 18, no such petition as is mentioned in subsection (1) shall be presented to the Court, but it shall be lawful for the Public Trustee to decide all disputes, matters, claims and demands arising out of or in respect of or in connection with such estate and to make such orders as he may think fit touching the collection, sale, investment, disposal or administration of such estate, and the decision and order of the Public Trustee in respect of any of the matters aforesaid shall be final and conclusive.
- (3) It shall be lawful in his discretion for the Public Trustee to delegate in any particular case all or any of the powers conferred upon him by subsection (2) to any provincial government officer, or to any

magistrate, and in such case the decision and order of such provincial government officer or magistrate, as the case may be, shall, notwithstanding any other law to the contrary, be final and conclusive.

## **11 Protection of property of deceased persons' estates**

In the case of deceased persons leaving estates within Solomon Islands the provincial government officer of the province or the magistrate may, if he deems it advisable for the protection of the estate, take possession thereof; and in such case he shall forthwith report his action to the Public Trustee, who shall give such directions and take such proceedings in the matter as he shall think fit.

## **12 Realisation and distribution of property**

- (1) The Public Trustee may convert into money all movable property of an estate which he administers under this Act, and may with the consent of the Court convert into money all or any part of the immovable property of such estate:

Provided that if all parties interested in the said immovable property consent in writing to its conversion into money by the Public Trustee, or if the value of the said immovable property does not exceed one thousand dollars and the Public Trustee is satisfied that the conversion of the said immovable property into money would be to the advantage of the estate, the consent of the Court shall not be necessary.

- (2) The Public Trustee shall cause a public notice to be published once at the provincial office of the province or in the *Gazette* and in such other manner as he shall deem expedient, calling upon the creditors of the person whose estate he is administering under this Act to come in and prove their debts before him within such reasonable period, having regard to the circumstances as shall be declared in the notice.
- (3) The Public Trustee shall, after the expiration of the said period, pay the debts proved of which he shall then have had notice, and if the whole thereof cannot be paid he shall pay a dividend thereon; and if he shall collect any further assets after making such payments, he shall, in case any part of the debts proved remain unpaid, pay the same and any debts subsequently proved before him, or a dividend

thereon:

Provided that such debts as are subsequently proved as aforesaid shall first be paid a dividend in proportion to their amount equal to the dividend paid to the creditors having previously proved their debts.

- (4) After payment of all debts, fees and expenses incidental to the collection, management and administration of the estate, the Public Trustee shall pay over the residue according to the rules of law applicable to Solomon Islands in that respect to the persons beneficially entitled thereto; and where such persons are resident outside Solomon Islands payment may be made to any agent or representative duly authorised to receive the same; and remittances made by registered letter shall be deemed equivalent to payment:

Provided that:

- (a) where the Public Trustee has been granted letters of administration to an estate within Solomon Islands of a person who at the time of his death was not domiciled, or who appears to the Public Trustee to have then not been domiciled, within Solomon Islands, and a grant of probate of such deceased person's will or letters of administration to his estate has been made in the country of such deceased person's domicile, the Public Trustee may pay over or transfer to the person holding such grant the residue of the estate within Solomon Islands without dealing with the application thereof and without incurring any liability in regard to such payment or transfer;
  - (b) where such deceased person was domiciled in a foreign country, such payment or transfer may be made to a consular officer or agent of such country, whose receipt shall be a full and complete discharge to the Public Trustee in respect of the same.
- (5) Notwithstanding subsection (4), in the event of the Public Trustee, after making such enquiries or taking such other steps as may appear to him to be appropriate, being unable to trace any party beneficially entitled to the residue of any estate or to any portion thereof, the Public Trustee shall make application to the Court for directions and the Court may, if having regard to all the

circumstances it is satisfied that such party is unlikely to be traced, direct that the estate or such portion thereof shall be credited to a special account in any bank in Solomon Islands under the control of the Accountant-General subject to such conditions, if any, as the Court may consider fit:

Provided that it shall be lawful for the Permanent Secretary, Ministry of Finance in consultation with the Public Trustee at any time to dispose of and distribute the same or any part thereof to or among any kindred of the deceased or other person having a legal claim thereto or to among any kindred of the deceased or other person who, although not having any legal claim thereto, can show a reasonable moral claim thereto, in such shares or in such manner as he may think fit.

### **13        Shares of minors**

Where any person entitled to a share under a will, or otherwise to a share in the distribution of an estate of a deceased person whose estate is being administered by the Public Trustee is a minor, the Court may, upon the application of the Public Trustee, appoint the father or the mother of such minor or some other suitable person to receive the share of the minor on his behalf and upon the appointment being made by the Court the Public Trustee may pay the share of the minor accordingly and may take the receipt of such father, mother or other person in full and complete discharge so far as regards such share:

Provided that where the share of the minor does not exceed one thousand dollars in value, the Public Trustee may, in his discretion and without making application to the Court, pay or transfer such share to the father or the mother of the minor or to some other suitable person on behalf of the minor and the receipt of the father or the mother or such other suitable person shall be a full and complete discharge to the Public Trustee in respect of such share.

### **14        Assets received from outside Solomon Islands**

Where the administration of an estate has been committed to the Public Trustee and he receives assets which at the time of the death of the deceased were situate outside Solomon Islands such assets shall for all purposes be treated in the same manner as assets which

were within Solomon Islands at the time of the death.

**15 Priority of Public Trustee's fees and expenses**

Notwithstanding the provisions of any other Act or rule of law to the contrary, the fees payable to the Public Trustee under this Act and any regulations made thereunder and any court fees and realisation expenses and other charges incurred by the Public Trustee in collecting and realising the assets of the estate of any deceased person shall rank for payment after any funeral expenses or testamentary charges of the deceased but in priority to all other expenses and to any debts for which the deceased was liable.

**16 Public Trustee may seek opinion of Court**

The Public Trustee may, *ex parte*, seek the opinion or obtain the direction of the Court upon any question, whether of law or of fact, arising under this Part, or in the course of his duties, or with respect to the exercise of any of the powers conferred upon him by this Part.

**PART IV ADMINISTRATION OF SMALL ESTATES**

**17 Summary administration of small estates by Public Trustee**

- (1) Notwithstanding anything contained in Part III, it shall, except where the Court otherwise orders, be lawful for the Public Trustee in the case of a small estate, within the meaning of section 3(1) of the *Wills, Probate and Administration Act*, of a deceased person who has died intestate or left a will in such circumstances that the Public Trustee may apply for a grant of probate or letters of administration pursuant to the provisions of section 5 and upon making out a certificate to that effect, to take possession of and to administer the estate of such deceased person in accordance with the provisions of this Act, so far as such provisions are applicable, without making any application to the Court for a grant of probate or letters of administration, as the case may be.
- (2) For the avoidance of doubt it is hereby declared that where the Public Trustee acting pursuant to subsection (1) administers any estate summarily, no court or other fees shall be payable but the Public Trustee may recover from the estate any out-of-pocket expenses actually incurred by him in administering the estate.

**18 Summary administration of small estates by certificate of Public Trustee**

- (1) Notwithstanding anything to the contrary contained in this Act or the *Wills, Probate and Administration Act*, where it appears to the Public Trustee that the gross value of the assets or property of a deceased person does not exceed one thousand dollars the Public Trustee, on the application of any person to whom probate or letters of administration (as the case may be) might be granted, may at any time after the expiration of fourteen days after the death of the deceased grant to such person a certificate entitling him to administer the estate of such deceased person and to pay thereout any debts or charges, and to pay, remit or deliver any surplus to the person or persons entitled thereto according to law or as he may be directed by the Public Trustee, and the grant of such certificate shall be a full and final discharge to the Public Trustee as against all persons whatsoever from any further liability in respect of such estate:

Provided that the Public Trustee shall not grant any certificate under this section unless he is satisfied as to the title of the claimant to a grant of probate or letters of administration and as to the value of the assets left by the deceased within Solomon Islands, either by the oath of the claimant, or by such other evidence as he may require.

- (2) Where a certificate is granted under subsection (1), the holder of the certificate shall have, in respect of the assets specified in the certificate, the same powers and duties, and shall be subject to the same liabilities, as he would have had or to which he would have been subject if letters of administration had been granted to him, but shall not be required:
- (a) to file accounts or inventories of the assets of the deceased before the Court or any other authority; or
  - (b) to give any bond for the due administration of the estate.
- (3) Notwithstanding anything contained in subsection (1), the Public Trustee may revoke any certificate granted thereunder on either of the following grounds, namely:
- (a) that the certificate was obtained by fraud or misrepresentation made to him; or

- (b) that the certificate was obtained by means of an untrue allegation of fact material in law to the grant notwithstanding that such allegation may have been made by reason of ignorance or inadvertence;

and, upon revocation of the certificate, the holder thereof shall, on the requisition of the Public Trustee, deliver up the same to the Public Trustee, and if such person wilfully and without reasonable cause omits to deliver up the certificate, he shall be guilty of an offence and liable to a fine of two hundred dollars or to imprisonment for three months or to both such fine and such imprisonment.

## **PART V                      TRUSTS**

### **19                      Powers and duties of Public Trustee in relation to trusts**

- (1) Subject to and in accordance with the provisions of this Act, and any regulations made thereunder, the Public Trustee may, if he thinks fit:
  - (a) act as an ordinary trustee;
  - (b) be appointed trustee by the Court;
  - (c) act as a custodian trustee;
  - (d) act as sole trustee in respect of any trust property in Solomon Islands notwithstanding the provisions of any law for the time being applicable therein which may require the appointment of more than one trustee;
- (2) Subject to the provisions of this Act and of any regulations made thereunder, the Public Trustee may act either alone or jointly with any other person or body of persons in any capacity to which he may be appointed in pursuance of the provisions of this Act, and shall have all the same powers, duties and liabilities, and be entitled to the same rights and immunities, and in like manner be subject to the control and orders of the Court, as a private trustee acting in the same capacity.
- (3) The Public Trustee may decline either absolutely, or subject to such conditions as he may impose, to accept any trust.



- (4) The Public Trustee shall not accept any trust under any composition or scheme of arrangement for the benefit of creditors.
- (5) The Public Trustee shall not, save as provided by any regulations made under this Act, accept any trust which involves the management or carrying on of any business, except for the purpose of winding up such business forthwith in order to realise the trust funds.
- (6) The Public Trustee shall not accept any trust for religious purposes which involves the exercise by him as trustee of any religious observance or ceremony or the decision of any questions as to the religious merit or character of any individual or institution.

## **20 Appointment of Public Trustee to be trustee of a trust**

- (1) Any person intending to create a trust, other than which the Public Trustee is prohibited by the provisions of this Act from accepting, may, by the instrument creating such trust and with the consent of the Public Trustee, appoint the Public Trustee by that or any other sufficient description to be either the sole or a joint trustee of the property subject to the trust:

Provided that the consent of the Public Trustee shall be recited in the instrument creating the trust and that such instrument shall be executed by the Public Trustee.

- (2) Upon any appointment being made pursuant to subsection (1), the property subject to the trust shall, subject to the provisions of the *Land and Titles Act* relating to registration, vest in the Public Trustee either solely or jointly with other trustees, as the case may be, and shall be held by him or them upon the trusts declared by the instrument creating the trust.

## **21 Appointment of Public Trustee by Court**

If any property is the subject of a trust, other than a trust which the Public Trustee is by virtue of the provisions of this Act prohibited from accepting, and there is no trustee within Solomon Islands willing or having the capacity to act in the trust, the Court may, on the application of any person having an interest in the trust or of the Public Trustee, make an order for the appointment of the Public

Trustee by that name and with his consent to be the trustee of such property.

## **22 Appointment of Public Trustee as custodian trustee**

- (1) Subject to any regulations made under this Act, the Public Trustee may, if he consents to act as such, and whether or not the number of trustees had been reduced below the original number, be appointed to be custodian trustee of any trust:
  - (a) by order of the Court on the application of any person on whose application the Court may order the appointment of a new trustee; or
  - (b) by the testator, settlor or other creator of any trust; or
  - (c) by any person having power to appoint new trustees.
- (2) Where the Public Trustee is appointed to be the custodian trustee of any trust:
  - (a) the trust property shall be transferred to the Public Trustee as if he were the sole trustee and for that purpose the Court may on application by him make such vesting orders as may appear to it, having regard to the circumstances of the case, necessary to give effect to the purposes of the appointment;
  - (b) the management of the trust property and the exercise of any power of discretion exercisable by the trustees under the trust shall remain vested in the trustees other than the Public Trustee (which trustees are hereinafter referred to as the “managing trustees”);
  - (c) as between the Public Trustee and the managing trustees, and subject and without prejudice to the rights of any other persons, the Public Trustee shall have the custody of all securities and documents of title whatsoever relating to the trust property, but the managing trustees shall have full access thereto and shall be entitled to take copies thereof or extracts therefrom;
  - (d) the Public 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 constitutes a breach of trust or involves a personal liability upon him in respect of calls or otherwise, but, unless he so concurs the Public 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 Public Trustee; so however that the Public Trustee may in his discretion allow any dividends or other income derived from the trust property to be paid to the managing trustees or to such person or persons as they may direct, or into such bank to the credit of such person or persons as they may direct, and in such case the Public Trustee shall be exonerated from supervising 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 Public Trustee shall have the same power to apply to the Court for the appointment of a new trustee in like manner as any other trustee may apply;
- (g) in determining the number of trustees for the purpose of any law for the time being applicable to Solomon Islands or as required by any trust instrument, the Public Trustee shall not be reckoned as a trustee;
- (h) the Public Trustee, if he acts in good faith, shall not be liable for accepting as correct and acting upon the purport 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 Public Trustee;
- (i) the Court may, upon the application of either the Public Trustee or any of the managing trustees, or of a beneficiary, and upon 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 thereupon make such vesting orders and give such directions as in the circumstances may seem to the Court to be necessary or expedient.

**23      Transfer of legacy, etc. for infants and persons of unsound mind to Public Trustee**

If any infant or person of unsound mind is entitled to any gift, legacy or share of the assets of a deceased person it shall be lawful for the person by whom such gift is made, or the executor or administrator by whom such legacy or share is payable or transferable, or any trustee of any such gift, legacy or share to transfer the same by an instrument in writing to the Public Trustee by that name or any other sufficient description with his consent:

Provided that the consent of the Public Trustee shall be recited in such instrument and that such instrument shall be duly executed by the Public Trustee.

**PART VI                      THE COMMON FUND**

**24      Establishment of the Common Fund**

- (1) Subject to the provisions of this Part, any capital moneys available for investment which shall become vested in the Public Trustee shall be deemed to constitute one common fund to be known as the Common Fund, and may from time to time be invested by the Public Trustee in consultation with the Permanent Secretary of the Ministry of Finance.
- (2) No investment shall be made from the Common Fund on account of or belonging to any particular trust or estate.
- (3) Interest, dividends or other gains accruing from any investment made from the Common Fund shall be paid into the Common Fund

**25      Special investments outside the Common Fund**

Notwithstanding anything contained in section 24, moneys expressly or by necessary implication directed by the terms of any instrument creating a trust to be held or invested otherwise than in the manner

limited by subsection (1) of that section may be held or invested by the Public Trustee in accordance with the terms of such instrument:

Provided that such moneys shall not form part of the Common Fund and any loss or deficiency in respect of any such investment or of money received therefrom or realised thereby shall be borne by the trust or estate to which such moneys belong or if received or realised would belong, and no part of any such loss or deficiency shall be borne by the Common Fund.

## **26 Public Trustee Investment Board**

The Minister shall appoint such persons as he deems fit to be members of the Public Trustee Investment Board (hereinafter in this Act referred to as the “Board”) for the purpose of administering the Common Fund.

## **27 Powers and duties of the Board**

- (1) The Board shall:
  - (a) determine from time to time the rates of interest to be paid by the Common Fund;
  - (b) determine from time to time the manner in which moneys in the Common Fund shall be invested in the best interests of the Common Fund; and
  - (c) cause proper accounts to be kept of the Common Fund.
- (2) For the avoidance of doubt it is hereby declared that, notwithstanding anything contained in subsection (1)(b), no person dealing with the Public Trustee in the matter of the sale or purchase of any investment shall be under any obligation to enquire whether such sale or purchase has received the sanction of the Board or is in accordance with any direction issued to the Public Trustee by the Board.

## **28 Interest payable by the Common Fund**

- (1) The Common Fund shall pay to the respective trusts and estates which form the Fund, interest, if any, at a rate to be determined from time to time by the Board.

- (2) Any interest payable pursuant to subsection (1) shall be deemed to accrue from day to day and shall be apportionable in respect of time accordingly to the credit of each of the respective trusts or estates which constitute the Common Fund.
- (3) Different rates of interest may be prescribed for payment on capital moneys not payable at call and on capital moneys held in the ordinary course of administration for distribution or at call.
- (4) The Board shall publish by notice exhibited at the provincial office of the province or printed in the *Gazette* the rates of interest from time to time determined by the Board and such rates shall remain in force until amended by the next succeeding such publication.
- (5) Interest accrued shall be credited to the respective trusts and estates at such intervals, not exceeding half yearly as the Public Trustee may consider expedient.

**29 Government guarantee of the Common Fund**

The Consolidated Fund shall be liable to make good any lawful claims upon the Common Fund which cannot be met therefrom whether such claims relate to capital moneys or income.

**30 Public Finance and Audit Act to apply**

The provisions of Part VII of the *Public Finance and Audit Act* shall apply to the Common Fund.

**PART VII GENERAL**

**31 Security not required of Public Trustee**

The Public Trustee shall not be required by the Court to enter into any bond or security on his appointment in any capacity under the provisions of this Act.

**32 Court orders**

On application being made:

- (a) by any person claiming an interest in the estate of any deceased person under administration by the Public Trustee;

(b) by any person claiming to be a beneficiary in any trust in respect of which the Public Trustee is a trustee;

(c) by the Public Trustee on his own motion,

the Court may enquire into any matter touching any property, or the interest or produce thereof, vested in the Public Trustee and may make in respect thereof any order which to the Court may seem just.

### **33 Public Trustee may incur expenditure**

The Public Trustee may, in addition to any other powers of expenditure lawfully exercisable by him, incur expenditure on such acts as may be necessary for the proper care and management of any property belonging to the estate of any deceased person administered by him or any trust in respect of which he is a trustee.

### **34 Power to appoints agents**

- (1) The Public Trustee may where he deems it necessary appoint any person or persons other than an agent referred to in section 3, to act as his agent for the purpose of managing, collecting or getting in property belonging to any deceased person whose estate is in the course of administration by him or of any estate of which he is a trustee.
- (2) Except in the case of the provincial government officer of any province or of any other public officer acting in his official capacity, the Public Trustee shall require any person appointed by him to act as agent pursuant to subsection (1) to enter into a bond or otherwise to provide such security to the satisfaction of the Public Trustee in a sum equivalent to the estimated value of the estate or such part thereof in respect of which he is appointed agent, for the proper performance of such agency.
- (3) Every agent appointed under subsection (1) shall in all respects act in the management, collection or getting in of property under the direction of the Public Trustee, but the Public Trustee shall not be answerable for any act or omission of any such agent which is not due to any fault or neglect on the part of the Public Trustee.
- (4) Except where any public officer or provincial government officer acts

in his official capacity as agent for the Public Trustee under this section, such agent may be remunerated either by way of salary or fees or proportion thereof chargeable under this Act as the Minister shall fix.

**35            Payments and expenditure to be from estate or trust**

Any expenditure incurred by the Public Trustee pursuant to section 33 and any remuneration paid to an agent under section 34 shall be paid out of the funds of the particular estate or trust involved and not out of the Common Fund.

**36            Employment of solicitors, bankers, etc.**

- (1) Subject to any regulations made under this Act, the Public Trustee may, without leave of the Court instruct and employ for any purpose connected with the administration of any estate or the management of any trust, any barrister, solicitor, banker, accountant or broker, or other person as he may consider necessary:

Provided that, except where the employment of such barrister, solicitor, banker, accountant or broker, or other person is on behalf of the Common Fund, remuneration thereof shall be paid out of the funds of the particular estate or trust involved and not out of the Common Fund.

- (2) In addition to the power conferred by subsection (1), the Public Trustee may act on credible information, notwithstanding that it may be less than legal evidence, as to any matter of fact and notwithstanding that such information may not have been obtained from a barrister, solicitor, banker, accountant or broker or other person instructed or employed by him pursuant to the provisions of that subsection.

**37            Power to administer oaths**

The Public Trustee may, whenever he deems it expedient so to do for the purposes of this Act, in order to satisfy himself regarding any question of fact relating to any estate or trust, examine upon oath (which by this section he is empowered to administer) any person who consents so to be examined.



### **38 Authentication of deeds**

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 of the Public Trustee, and any deed or instrument purporting to be a deed or instrument executed by the Public Trustee and to be sealed with his seal authenticated in the manner provided by this section shall be received in evidence and be deemed to be a deed or instrument so executed without further proof unless the contrary be shown.

### **39 General protection of Public Trustee and agents**

- (1) Neither the officer for the time being occupying the office of Public Trustee nor any officer or agent of the Public Trustee shall be personally liable to any person in respect of goods or chattels sold or otherwise disposed of which were in the possession (at the time of death) of any person whose estate is being administered by the Public Trustee, unless the Public Trustee, officer, or agent, had actual notice before the sale or other disposal, that such goods or chattels were not the property of the person whose estate is being administered:

Provided that, in the case of the sale or disposal by the Public Trustee or any officer or agent thereof of goods or chattels in fact belonging to any third person, the amount realised by such sale or disposal shall be paid over to the owner upon proof by him to the satisfaction of the Public Trustee or of the Court of such ownership, unless the same shall already have been applied in payment of the debts of the deceased or distributed in the ordinary course of administration of the estate involved while the Public Trustee or his officer or agent was in ignorance and without actual notice of the claim of such person to the goods or chattels in question.

- (2) Neither the Public Trustee nor any officer or agent appointed by him shall be liable for any act or thing done *bona fide* and in furtherance of any of their duties pursuant to the provisions of this Act, unless it is shown that such act or thing done was not only illegally done but wilfully done or done by reason of gross negligence.

#### **40 Government liability for acts of Public Trustee**

- (1) The Government shall be liable to make good all sums required to discharge any liability which the Public Trustee, if he were a private executor, administrator or trustee, would be personally liable to discharge, except when the liability is one to which neither the Public Trustee nor any of his officers or agents had in any way contributed, and which neither he nor any of his officers or agents could by the exercise of reasonable diligence have averted, and in that case, the Public Trustee shall not, nor shall the Government, be subject to any liability.
- (2) Any sum required to meet a liability of the Government under this section shall be charged upon and paid out of the Consolidated Fund.

### **PART VII MISCELLANEOUS**

#### **41 Regulations**

The Minister, in consultation with the Public Trustee, may by regulations prescribe or provide for:

- (a) anything required or authorised by this Act to be prescribed;
- (b) forms and scales of fees or charges;
- (c) transfer to or from the Public Trustee of any property;
- (d) excluding any trusts from management by the Public Trustee;
- (e) the safe custody, deposit and investment of funds or other property which comes into the possession of the Public Trustee;
- (f) accounts to be kept and the auditing thereof; and
- (g) generally carrying into effect the provisions of this Act.

#### **42 Transitional provisions**

- (1) Where the estate of any deceased person is at the commencement of this Act under the administration of the Official Administrator of Unrepresented Estates, or where by the terms of any will, deed, Act or other instrument reference is made to the Official Administrator of

Unrepresented Estates, such estate shall be deemed to be, and at all times to have been, under the administration of the Public Trustee and such reference shall be deemed to refer to the Public Trustee; and any property, whether movable or immovable or of what kind so ever, which is vested in the Official Administrator of Unrepresented Estates by virtue of such office, shall become, and is hereby declared to be, vested in the Public Trustee.

- (2) For the purposes of this section, the ***“Official Administrator of Unrepresented Estates”*** means the Official Administrator of Unrepresented Estates appointed under article 13 of the British Solomon Islands and Gilbert and Ellice Islands (Probate and Administration) Order in Council, 1914.

## ENDNOTES

### 1

#### KEY

|                       |                               |
|-----------------------|-------------------------------|
| amd = amended         | Pt = Part                     |
| Ch = Chapter          | rem = remainder               |
| Div = Division        | renum = renumbered            |
| exp = expires/expired | rep = repealed                |
| GN = Gazette Notice   | Sch = Schedule                |
| hdg = heading         | Sdiv = Subdivision            |
| ins = inserted        | SIG = Solomon Islands Gazette |
| lt = long title       | st = short title              |
| LN = Legal Notice     | sub = substituted             |
| nc = not commenced    |                               |

#### NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 31 of the Revised Edition of the Laws of Solomon Islands.

### 2

#### LIST OF LEGISLATION

##### ***Public Trustee Act (Cap. 31)***

*Constituent legislation:* 4 of 1987 (Commenced 27 February 1996)

### 3

#### LIST OF AMENDMENTS