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**CHAPTER 177****PUBLIC TRUSTEE****ARRANGEMENT OF SECTIONS**

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## CHAPTER 177

## PUBLIC TRUSTEE

**An Act to provide for the appointment of a Public Trustee and for matters connected therewith.***6 of 1970  
E.L.A.O., 1974**[Assent 2nd April, 1970]**[Commencement 1st April, 1971]*

1. This Act may be cited as the Public Trustee Act. Short title.
2. In this Act, unless the context otherwise requires — Interpretation.
  - “court” means the Supreme 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 will annexed or limited either in time or otherwise;
  - “Minister” means the Minister responsible for Law Courts; *E.L.A.O., 1974.*
  - “private trustee” means a trustee other than the Public Trustee;
  - “rules” means rules made under this Act;
  - “rules of court” means rules made by the Rules Committee of the court under section 76 of the Supreme Court Act; Ch. 53.
  - “section” means a section of this Act;
  - “settlement” means a settlement created by any deed, will, agreement for a settlement or other agreement, Act or other instrument or any number of instruments under or by virtue of which instrument or instruments any land is for the time being —
    - (a) held on trust for any person by way of succession;
    - (b) held on trust for any person —
      - (i) being an infant for an estate in fee simple or for a term of years; or

- (ii) in fee simple or for any other interest contingently on the happening of an event;

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

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

and other words and expressions have the same meaning as in the Trustee Act.

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Office of Public Trustee.

**3.** (1) There shall be and is hereby established the office of Public Trustee, and that office shall be a public office.

(2) The Public Trustee shall be a corporation sole under that name, with perpetual succession and a common seal, and may sue and be sued in his corporate name, but any instrument sealed by him shall not, by reason of his using a seal, be rendered liable to a higher stamp duty than if he were an individual.

Appointment of Public Trustee.  
*E.L.A.O., 1974.*

**4.** The Governor-General, acting in accordance with the advice of the Public Service Commission, may appoint a fit and proper person to be Public Trustee and may in like manner appoint a deputy or deputies to assist him, and every deputy so appointed shall be a public officer and, subject to the control of the Public Trustee, be competent to discharge any of the duties and exercise any of the powers of the Public Trustee and when discharging such duties or exercising such powers shall have the same privileges and be subject to the same liabilities as the Public Trustee.

General powers and duties of Public Trustee.

**5.** (1) Subject to and in accordance with the provisions of this Act and of any rules, the Public Trustee may, if he thinks fit —

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

(2) Subject to the provisions of this Act and to any rules, the Public Trustee may act either alone or jointly with any person or body of persons in any capacity to

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which he may be appointed in pursuance of this Act, and shall have all the same powers, duties and liabilities, and be entitled to the same rights and immunities and be subject to the control and orders of the court, as a private trustee acting in the same capacity.

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

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

6. (1) Any person who, in the opinion of the Public Trustee, would be entitled to apply to the court for an order for the administration by the court of an estate of a deceased person the gross capital value whereof is proved to the satisfaction of the Public Trustee to be, at the time of such application, less than ten thousand dollars, may apply to the Public Trustee to administer the estate, and where any such application is made and it appears to the Public Trustee that the persons beneficially entitled are persons of small means, the Public Trustee shall administer the estate unless he sees good reason for refusing to do so.

Administration  
of small estates.

(2) On the Public Trustee undertaking, by declaration in writing signed and sealed by him, to administer the estate, the trust property other than stock shall by virtue of this Act vest in him and the right to transfer or call for the transfer of any stock forming part of the estate shall also vest in him in like manner as if vesting orders had been made for the purpose by the court under the Trustee Act, and that Act shall apply accordingly. As from such vesting any trustee entitled under the trust to administer the estate shall be discharged from all liability attaching to the administration, except in respect of past acts:

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

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

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

(5) Where proceedings have been instituted in the court for the administration of an estate, and by reason of the small value of the estate it appears to the court that the estate can be more economically administered by the Public Trustee than by the court, or that for any other reason it is expedient that the estate should be administered by the Public Trustee instead of the court, the court may order that the estate shall be administered by the Public Trustee, and thereupon (subject to any directions by the court) this section shall apply as if the administration of the estate had been undertaken by the Public Trustee under this section.

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

- (a) by order of the court made 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 the person having power to appoint new trustees.

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

- (a) the trust property shall be transferred to the custodian trustee as if he were sole trustee, and for that purpose vesting orders may, where necessary, be made under the Trustee Act;
- (b) the management of the trust property and the exercise of any power or discretion exercisable by the trustees under the trust shall remain

Custodian trustee.

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vested in the trustees other than the custodian trustee (which trustees are hereinafter referred to as the managing trustees);

- (c) as between the custodian trustee and the managing trustees, and subject and without prejudice to the rights of any other persons, the custodian trustee shall have the custody of all securities and documents of title relating to the trust property, but the managing trustees shall have free access thereto and be entitled to take copies thereof or extracts therefrom;
- (d) the custodian trustee shall concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into court), unless the matter in which he is requested to concur is a breach of trust, or involves a personal liability upon him in respect of calls or otherwise; but, unless he so concurs, the custodian trustee shall not be liable for any act or default on the part of the managing trustees or any of them;
- (e) all sums payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee:

Provided that the custodian trustee may allow the dividends and other income derived from the trust property to be paid to the managing trustees or to such person as they direct, or into such bank to the credit of such person as they may direct, and in such case shall be exonerated from seeing to the application thereof and shall not be answerable for any loss or misapplication thereof;
- (f) the power of appointing new trustees, when exercisable by the trustees, shall be exercisable by the managing trustees alone, but the custodian trustee shall have the same power of applying to the court for the appointment of a new trustee as any other trustee;
- (g) in determining the number of trustees for the purposes of the Trustee Act, the custodian trustee shall not be reckoned as a trustee;

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- (h) the custodian trustee, if he acts in good faith, shall not be liable for accepting as correct and acting upon the faith of any written statement by the managing trustees as to any birth, death, marriage or other matter of pedigree or relationship or other matter of fact, upon which the title to the trust property or any part thereof may depend, nor for acting upon any legal advice obtained by the managing trustees independently of the custodian trustee;
  - (i) the court may, on the application of either the custodian trustee, or any of the managing trustees, or of any 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 thereupon make such vesting orders and give such directions as under the circumstances may seem to the court to be necessary or expedient.

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

Appointment of  
Public Trustee to  
be trustee,  
executor, etc.

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



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(2) Where the Public Trustee has been appointed a trustee of any trust, a co-trustee may retire from the trust under and in accordance with section 11 of the Trustee Act, notwithstanding that there are not more than two trustees, and without such consents as are required by that section. Ch. 176.

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

(4) Notice of any proposed appointment of the Public Trustee either as a new or additional trustee shall, where practicable, be given in the prescribed manner to all persons beneficially interested who are resident in The Bahamas and whose addresses are known to the persons proposing to make the appointment, or, if such beneficiaries are infants, to their guardians, and if any person to whom such notice has been given within twenty-one days from the receipt of the notice applies to the court, the court may if having regard to the interests of all the beneficiaries it considers it expedient to do so, make an order prohibiting the appointment being made:

Provided that a failure to give any such notice shall not invalidate any appointment made under this section.

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

(2) Any executor who has obtained probate or any administrator who has obtained letters of administration, and notwithstanding he has acted in the administration of

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the deceased's estate, may, with the sanction of the court, and after such notice to the persons beneficially interested as the court may direct, transfer such estate to the Public Trustee for administration either solely or jointly with the continuing executors or administrators, if any. And the order of the court sanctioning such transfer shall, subject to the provisions of this Act, give to the Public Trustee all the powers of such executor and administrator, and such executor and administrator shall not be in any way liable in respect of any act or default in reference to such estate subsequent to the date of such order, other than the act or default of himself or of persons other than himself for whose conduct he is in law responsible.

Investigation and  
audit of trust  
accounts.

**10.** (1) Subject to any rules and unless the court otherwise orders, the condition and accounts of any trust shall, on an application being made and notice thereof given in the prescribed manner by any trustee or beneficiary, be investigated and audited by such counsel and attorney or qualified accountant as may be agreed on by the applicant and the trustees or, in default of agreement, by the Public Trustee or some person appointed by him:

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

(2) The person making the investigation or audit (hereinafter called the auditor) shall have a right of access to the books, accounts and vouchers of the trustees and to any securities and documents of title held by them on account of the trust, and may require from them such information and explanations as may be necessary for the performance of his duties, and, upon the completion of the investigation and audit, shall forward to the applicant and to every trustee a copy of the accounts, together with a report thereon, and a certificate signed by him to the effect that the accounts exhibit a true view of the state of the affairs of the trust and that he has had the securities of the trust fund investments produced to and verified by him or (as the case may be) that such accounts are deficient in such respects as may be specified in such certificate.

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

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

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

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

(7) Subject to rules of court, applications under or for the purposes of this section to the court shall be made to a judge in chambers.

(8) If any person in any statement of accounts, report or certificate required for the purposes of this section wilfully makes a statement false in any material particular, he shall be liable, on conviction on information, to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars or to both such imprisonment and fine or, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars or to both such imprisonment and fine.

**11.** (1) The Government of The Bahamas shall be liable to make good all sums required to discharge any liability which the Public Trustee, if he were a private trustee, would be personally liable to discharge, except

Liability of  
Consolidated  
Fund.

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where the liability is one to which neither the Public Trustee nor any of his officers or agents have in any way contributed, and which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in that case neither the Public Trustee, his officers or agents nor the said Government shall be subject to any liability.

(2) All sums payable in pursuance of this section shall be paid out of the Consolidated Fund.

Fees charged by  
Public Trustee.  
*E.L.A.O., 1974.*

**12.** (1) There shall be charged in respect of the duties of the Public Trustee such fees as may be fixed by the Minister by order from time to time, and any such order may contain such incidental and supplementary provisions as appear to the Minister to be necessary or expedient for the purpose of the order.

(2) Every order made under this section shall indicate, with respect to each fee fixed by the order, whether it is payable out of capital or out of income.

(3) Where an order made under this section provides that a fee is to be paid out of capital, and it appears to the Public Trustee in the case of a particular trust fund that there are special reasons which render it expedient that the fee should be paid out of income, the Public Trustee may direct that the fee shall in that case be payable out of income:

Provided that, if a person of full age is for the time being beneficially entitled in possession to the income of the trust fund (being so entitled directly under the trust in relation to which the fee is payable and not by virtue of a derivative settlement) the Public Trustee shall not give a direction under this subsection in respect of that trust fund except with consent in writing of that person.

(4) The fees under this section shall be arranged from time to time so as to produce an annual amount sufficient to discharge the salaries and expenses incidental to the working of this Act (including such sum as the Minister of Finance may from time to time determine to be required to insure the Consolidated Fund against loss under this Act) and no more.

(5) In this section —

“trust fund” includes any part of a trust fund and also includes an estate administered by the Public Trustee and any part of such an estate; and

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“trust” includes the administration of a small estate by the Public Trustee under section 6.

**13.** Any expenses which might be retained or paid out of the trust property if the Public Trustee were a private trustee shall be so retained or paid out by the Public Trustee, and fees charged in accordance with section 12 shall be retained or paid in the like manner as and in addition to such expenses. Expenses.

**14.** A person aggrieved by any act or omission or decision of the Public Trustee in relation to any trust may apply to the court in accordance with rules of court and the court may make such order in the matter as the court thinks just. Appeal to the court.

**15.** (1) The Public Trustee may, subject to any rules, employ for the purposes of any trust such counsel and attorneys, bankers, accountants and brokers as he may consider necessary. Mode of action of Public Trustee.

(2) In any proceedings before the court under this Act the Public Trustee may appear either personally or by counsel and attorney.

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

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

**16.** (1) The Minister may make rules for carrying into effect the objects of this Act and in particular, but without derogation from the generality of the foregoing, for all or any of the following purposes — Rules.  
*E.L.A.O., 1974.*

- (a) prescribing the trusts or duties the Public Trustee is authorised to accept or undertake;
- (b) the transfer to and from the Public Trustee of any property;
- (c) the accounts to be kept by the Public Trustee and their audit;
- (d) excluding any trust from the operation of this Act or any part thereof;
- (e) the classes of corporate bodies entitled to act as custodian trustees;
- (f) the form and manner in which notices under this Act shall be given.

(2) If the rules require a declaration to be made for any purpose, a person who makes such declaration knowing the same to be untrue in any material particular, shall be guilty of an offence and liable upon summary conviction to a fine not exceeding two years or to both such fine and imprisonment.