

## PUBLIC TRUSTEE (FEES) ORDER

(SECTION 12)

*[Commencement 1st April, 1971]*

Citation.

1. This Order may be cited as the Public Trustee (Fees) Order.

Interpretation.

2. In this Order, unless the context otherwise requires —

“Act” means the Public Trustee Act;

“financial year” means the year ending the 31st December;

“gross capital value” means the value of the trust property without deduction for debts, incumbrances, or funeral expenses;

“trust” includes an executorship or administratorship and also includes the administration of an estate in pursuance of section 6 of the Act, and any reference to the acceptance of a trust or to trust property shall be construed accordingly;

“will” includes any testamentary disposition.

## PART I GENERAL

- 3.** The following fees shall be charged in respect of the duties of the Public Trustee — Classification of fees.
- (a) an acceptance fee;
  - (b) an administration fee;
  - (c) a withdrawal fee;
  - (d) fees for special services.
- 4.** Fees shall be paid out of capital, except the following which shall be paid out of income — Incidence.
- (a) fees which the Public Trustee directs to be paid out of income by virtue of section 12(3) of the Act;
  - (b) the administration fee in cases to which paragraph 16 of this Order applies;
  - (c) the insurance fee to which paragraph 19 of this Order applies;
  - (d) the enquiry fees to which paragraph 21 of this Order applies where they relate to the interest of a person entitled to income; and
  - (e) the income collection fee to which paragraph 24 of this Order applies.
- 5.** In ascertaining the amount payable in respect of any fee the Public Trustee — Calculation.
- (a) shall take the value of any trust property to be the price which he estimates that that property would fetch in the open market; and
  - (b) may treat the value of any trust property as being that multiple of \$25 which is nearest to his estimate of the exact value.

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- Time of payment.           **6.** The Public Trustee may, if it appears just and reasonable in any case, agree to the postponement of any payment due in respect of any fee.
- Commutation.               **7.** Liability to pay all or any sums which may become due in respect of any fee or any part of those sums may be commuted by the Public Trustee in consideration of a payment which seems to him to represent the capital value of that liability after taking into account —
- (a) interest accruing thereon at the rate of 4 per cent annually; and
  - (b) any circumstances likely to affect that liability but for the commutation.
- Power to remit fees and settle disputes.           **8.** The Public Trustee may, with the approval of the Minister of Finance —
- (a) compromise any dispute about his right to a fee or about the amount due; and
  - (b) remit so much as appears equitable of a fee payable in relation to any trust where —
    - (i) the whole or any part of the trust property is subject to another trust in which he is acting;
    - (ii) his duties have been or are likely to be exceptionally simple; or
    - (iii) the trust is otherwise of an exceptional character.

## PART II

### THE ACCEPTANCE FEE

- When payable.           **9.** An acceptance fee shall be payable, in accordance with the provisions of this Part of this Order, upon acceptance by the Public Trustee of any trust other than one consisting entirely of an annuity or other terminable payment purchased by any person in the name of, transferred to or covenanted to be paid to the Public Trustee for the benefit of some other person.
- Property subsequently coming into trust.           **10.** If additional property becomes subject to a trust which is administered by the Public Trustee and is not an accumulation of the income of that property already subject to the trust, an acceptance fee shall be payable in respect of the gross capital value of the additional property

at the date on which it becomes subject to the trust, of such amount as would have been payable in respect of that value if that value had formed part of the value of the property comprised in the trust at the date of acceptance.

**11.** (1) When an acceptance fee becomes payable in accordance with either of paragraph 9 or 10 of this Order in respect of any trust property, part or all of which is not in possession or is not readily realisable, the Public Trustee shall charge an additional fee of \$3.00. Postponement of payment.

(2) Where the Public Trustee charges an additional fee in accordance with this paragraph —

- (a) he shall exclude the property which is not in possession or is not readily realisable from the trust property for the purpose of ascertaining the amount of the acceptance fee then payable; and
- (b) shall, when the property so excluded falls into possession or is realised, as the case may be, charge an acceptance fee on such amount as would have been payable in respect thereof if the gross capital value of the excluded property had been treated as part of the value of the trust property at the date of acceptance.

**12.** The acceptance fee shall be calculated, in accordance with the provisions of this paragraph, as a percentage of the gross capital value of the trust property on the date of acceptance or on any other date, being no more than two months before or after that date, as seems to the Public Trustee to be convenient — Amount of fee.

- (a) where the Public Trustee is acting —
  - (i) as executor or administrator;
  - (ii) as executor or administrator and as trustee;
  - (iii) as original trustee of a will;
  - (iv) as substituted or additional trustee;
  - (v) as administrator of a small estate under section 6 of the Act —

In respect of the first \$25,000	\$1 per \$100
In respect of any excess over \$25,000 up to \$50,000	75c. per \$100
In respect of any excess over \$50,000 up to \$75,000	50c. per \$100

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| In respect of any excess<br>over \$75,000 | 25c. per \$100 |
| Minimum fee                               | \$45           |
- (b) where the Public Trustee is acting —
- (i) as original trustee of a trust created *inter vivos* (other than a declaration of trust in favour of one beneficiary only); or
- (ii) as trustee of a superannuation scheme —
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| In respect of the first<br>\$25,000                      | 75c. per \$100 |
| In respect of any excess<br>over \$25,000 up to \$50,000 | 50c. per \$100 |
| In respect of any excess<br>over \$50,000 up to \$75,000 | 30c. per \$100 |
| In respect of any excess<br>over \$75,000                | 20c. per \$100 |
| Minimum fee  | \$45.          |
- (c) where the Public Trustee is acting —
- (i) under a declaration of trust in favour of one beneficiary only; or
- (ii) as a substituted or additional trustee of a legacy to which, under the terms of a trust, a person will become entitled at a stated age —
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| In respect of the first \$25,000                         | 50c. per \$100 |
| In respect of any excess over<br>\$25,000 up to \$50,000 | 25c. per \$100 |
| In respect of any excess over<br>\$50,000                | 15c. per \$100 |
| Minimum fee  | \$15           |
- (d) where the Public Trustee is acting exclusively as custodian trustee, the fee shall be one half the fee which would have been payable under this paragraph if he had then been appointed managing trustee of the same trust, save that not less than the appropriate minimum fee shall be charged in any case.

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**PART III**  
**THE ADMINISTRATION FEE**

**13.** An administration fee shall be payable, in accordance with the provisions of this Part of this Order, at the commencement of each financial year, and — When payable.

- (a) shall be payable in full notwithstanding that the Public Trustee ceases to act in any trust or part of a trust in the course of the financial year;
- (b) shall not be payable in respect of the period between the date of acceptance of any trust or part of a trust, as the case may be, and the commencement of the next financial year.

**14.** (1) The administration fee shall be calculated in accordance with the provisions of this paragraph, as a percentage of the net capital value of a trust as certified by the Public Trustee. Amount of fee.

(2) The net capital value of a trust shall be estimated by the Public Trustee after allowing for —

- (a) the exclusion of interests not in possession; and
- (b) the deduction of funeral and testamentary expenses and all debts other than those specifically charged upon any property.

(3) The Public Trustee shall estimate the net capital value of a trust by reference to values prevailing on the following dates —

- (a) initially, the last day of the financial year in which it is accepted by the Public Trustee; and
- (b) subsequently, on each succeeding anniversary.

(4) Where additional property hereafter becomes subject to a trust or where an interest already subject to a trust falls into possession —

- (a) the initial valuation thereof shall be made by reference to values prevailing on the last day of the financial year in which that property was accepted by the Public Trustee; and
- (b) any subsequent valuation thereof shall be made by reference to values prevailing on the date appropriate, in accordance with the foregoing subparagraph, to the remainder of the trust property.

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Annual rate.

**15.** For each financial year the administration fee shall be charged at the rate of 50c per \$100 of the net capital value of each trust:

Provided that, where the Public Trustee is acting exclusively —

- (a) as custodian trustee, the fee shall be charged at the rate of 15c. per \$100 of the net capital value of each trust;
- (b) as trustee of a superannuation scheme, the fee shall be charged at the rate of 20c. per \$100 of the net capital value thereof;
- (c) as trustee under a declaration of trust for one beneficiary only, the fee shall be charged at the rate of 20c. per \$100 of the net capital value of the trust.

Annuities.

**16.** Where trust property includes, an annuity, or other terminable payment, purchased by any person in the name of, transferred to or covenanted to be paid to the Public Trustee for the benefit of some other person, the administration fee in respect of that annuity or payment shall be charged at the rate of 2 per cent of the gross income without deduction of other outgoings, and no other fee shall be payable in respect thereof under this Part of this Order.

#### **PART IV THE WITHDRAWAL FEE**

When payable.

**17.** A withdrawal fee shall be payable upon the Public Trustee ceasing to act in any trust, whether upon retirement or otherwise, or upon the withdrawal or distribution therefrom of any part of the trust property, except where —

- (a) trust property held under a declaration of trust in favour of one beneficiary only is withdrawn for the purpose of transfer to a new trust accepted by the Public Trustee;
- (b) trust property is withdrawn for the purpose of paying any fees prescribed by this Order.

Amount of fees.

**18.** (1) The withdrawal fee shall be calculated, in accordance with the provisions of this paragraph, as a percentage of the gross capital value of the property withdrawn.

(2) Subject to subparagraph (3) hereof, the withdrawal fee shall be charged —

- (a) where the property is withdrawn before the expiration of three complete financial years following that in which the trust was accepted by the Public Trustee, at the rate of \$1 per cent;
- (b) where the property is withdrawn after the expiration of three complete financial years following that in which the trust was accepted by the Public Trustee, at the rate of \$1.50 per cent.

(3) Where the Public Trustee is acting in any case to which paragraph 12(c) of this Order applies, the withdrawal fee shall be charged at the rate of 50c. per cent.

## PART V FEES FOR SPECIAL SERVICES

**19.** Upon effecting or renewing any policy of insurance a fee shall be payable equal to the amount of any commission allowed thereon. Insurance fee.

**20.** Upon any dealing in securities a fee shall be payable equal to the amount of any commission refunded by a broker. Stockbrokers' commission fee.

**21.** (1) Where the Public Trustee, in compliance with a request, gives information for the purpose of any dealing with a beneficial interest, a fee of \$10 shall be payable by the person to whom he gives information in respect of each dealing. Enquiry fees.

(2) Where the Public Trustee produces for inspection by a person, other than one who is beneficially interested in a trust or is a co-trustee of a trust, any deeds or documents relating to that trust, a fee of \$6 shall be payable.

**22.** Upon a sale or purchase of any stocks, funds, shares, securities or land or upon an advance on mortgage a fee shall be payable at the rate of 40c. per \$100 of the amount realised or invested: Investment fee.

Provided that —

- (a) where the Public Trustee is custodian trustee only the fee shall be charged at one-half of the rate prescribed in this paragraph;

- (b) the fee prescribed in this paragraph shall not be payable in respect of any amount which is realised on a sale for the purpose of paying any fee prescribed by this Order.

Audit fee.

**23.** Upon the performance by the Public Trustee of all his duties under section 10 of the Act, there shall be payable a fee of \$75.

Income collection fee.

**24.** (1) Subject to the provisions of this paragraph an income collection fee shall be payable annually, at such time or times as the Public Trustee may direct, in respect of the gross annual income of any trust.

(2) The fee so payable shall be charged at the following rates —

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| (a) in respect of the first \$6,000                  | 1½% |
| (b) in respect of income over \$6,000 up to \$12,000 | ¾%  |
| (c) in respect of income over \$12,000               | nil |

(3) Where in any trust there are two or more distinct funds, each of them shall be treated, for the purpose of calculating the income collection fee, as a separate trust:

Provided that, if the whole of the income of such funds is payable to the same person, the fee payable under this paragraph shall not exceed the amount that would be payable if that income were derived from a single fund.

- (4) Where the Public Trustee is acting exclusively as —
- (a) a custodian trustee;
  - (b) a trustee of a superannuation scheme; or
  - (c) a trustee acting under a declaration of trust for one beneficiary only,

the income collection fee shall be payable at one half of the rate prescribed by subparagraph (2) of this paragraph:

Provided that the Public Trustee may remit so much as appears equitable of the amount payable under this subparagraph where —

- (a) his duties have been or are likely to be exceptionally simple; or
- (b) the circumstances are otherwise exceptional.

(5) No fee shall be payable under this paragraph in respect of an annuity or terminable payment to which paragraph 16 of this Order applies.