



ST. HELENA

CHAPTER 14

PUBLIC TRUSTEE ORDINANCE

Non-authoritative Consolidated Text

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown

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Visit our [LAWS page](#) to understand the St. Helena legal system and the legal status of this version of the Ordinance.

This version contains a consolidation of the following laws—

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Ordinance 6 of 1977 .. in force 29 July 1977

No Subsidiary Legislation has been made under this Ordinance

¹ These contact details may change during 2011 or early in 2012. In case of difficulty, email shgwebsite@sainthelena.gov.sh or telephone (+290) 2470.

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CHAPTER 14**PUBLIC TRUSTEE ORDINANCE***(Ordinance 6 of 1977)*

AN ORDINANCE TO PROVIDE FOR THE APPOINTMENT OF A PUBLIC TRUSTEE AND TO AMEND THE LAW RELATING TO THE ADMINISTRATION OF TRUSTS.

Commencement*[29 July 1977]***Short title**

1. This Ordinance may be cited as the Public Trustee Ordinance.

Definitions

2. In this Ordinance, and in any rules made here under, unless the context otherwise requires—

“**court**” means any court of competent jurisdiction;

“**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 in time or otherwise;

“**personal representative**” means the executor, original or by representation, or administrator for the time being of a deceased person;

“**prescribed**” means prescribed for the time being by rules under this Ordinance or by other competent authority;

“**private trustee**” means a trustee other than the Public Trustee;

“**probate**” means a grant by the court to an executor of the right to administer a will;

“**trust**” includes an executorship or administratorship;

“**trustee**” shall be construed accordingly;

“**trust property**” shall include all property in the possession or under the control wholly or partly of the Public Trustee by virtue of any trust.

Office of Public Trustee

3. (1) There shall be established the office of Public Trustee.

(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 under the above name like any other corporation sole.

Powers and duties of Public Trustee

4. (1) Subject to and in accordance with the provisions of this Ordinance and rules made thereunder, the Public Trustee may, if he thinks fit—

- (a) act as personal representative in the administration of estates;
- (b) act as a custodian trustee;
- (c) act as an ordinary trustee;
- (d) be appointed to be a judicial trustee;

- (e) act as an agent of the personal representatives or trustees of the estate of any deceased person;
- (f) act as agent of any individual, association or corporation, or on behalf of the trustees or legal representatives of the same,

in any matter, in his discretion.

(2) Subject to the provisions of this Ordinance and to the rules made hereunder, the Public Trustee may act either alone or jointly with any person or body of persons in any capacity to which he may be appointed in pursuance of this Ordinance, 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 carrying on of any business, except in the cases in which he may be authorised to do so by rules made under this Ordinance, 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.

Administration of estates

5. (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 of an estate, may apply to the Public Trustee to administer the estate, and where any such application is made the Public Trustee may accept and administer the estate unless he sees good reason for refusing to do so.

(2) On the Public Trustee undertaking by declaration in writing to administer the estate the trust property other than stock shall by virtue of this Ordinance 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 Supreme Court under the laws applicable to trustees.

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.

(3) The Public Trustee shall have and exercise such administrative powers and authorities of the Supreme Court as may be conferred upon him by rules under this Ordinance, and such rules may provide for the Public Trustee to take the opinion of the Supreme Court on any question arising in the course of any administration without judicial proceedings, and otherwise for making the procedure under the section simple and inexpensive.

(4) Where proceedings have been instituted in any 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 the court, or that for any other reason it is expedient that the estate should be administered by the Public Trustee instead of by 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 in pursuance of this section.

Custodian Trustee

6. (1) 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 be made, where necessary;
 - (b) the management of the trust property and the exercise of any power or discretion exercisable by the trustees under the trust shall remain 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 under the general law regarding trustees, the custodian trustee shall not be reckoned as a trustee;
 - (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.

Appointment of Public Trustee to be trustee, executor, etc

7. 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 the rules made under this Ordinance 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 Ordinance, 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, the Public Trustee may be appointed sole trustee.

Power as to granting probate

8. (1) If in pursuance of any rule under this Ordinance 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.

(2) Any executor who has obtained probate or any administrator who has obtained letters of administration, and notwithstanding that he has acted in the administration of 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 administrator, if any. And the order of the court sanctioning such transfer shall, subject to the provisions of this Ordinance, 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.

Liability of Government

9. The Government of St. Helena 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 where the liability is one to which neither the Public Trustee nor any of his officers has 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 the Public Trustee shall not, nor shall the Government of St. Helena, be subject to any liability.

Appointment of officers

10. (1) The Governor shall appoint a fit person to the office of Public Trustee, who shall hold office during pleasure, and receive such salary and fees, and be appointed on such terms as the Governor may decide.²

(2) The Governor may appoint such persons to be officers of the Public Trustee as he may consider necessary for the purposes of this Ordinance.

(3) Any person appointed to be Public Trustee or any officer of the Public Trustee may be appointed from within or from outside the public service, and may be appointed on a substantive, acting or temporary basis either full time or part time and shall receive

² By Gazette Notice 149/2000, the Registrar of the Supreme Court was appointed to be the Public Trustee.

remuneration for his services in such manner and to such extent as shall be decided by the Governor having regard to all the circumstances of such appointment.

Fees charged by Public Trustee

11. (1) There shall be charged in respect of the services and duties of the Public Trustee such fees, whether by way of percentage or otherwise, as the Governor may prescribe, and such fees shall be collected and accounted for by such persons, and in such manner, and shall be paid to such account, as the Governor may direct.

(2) 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, in addition to any fees chargeable, and the same shall be accounted for as prescribed.

Appeal to the Court

12. A person aggrieved by an act or omission or decision of the Public Trustee in relation to any trust may apply to the court and the court may make such order in the matter as the court thinks just.

Actions and status of Public Trustee and officers

13. (1) The Public Trustee shall not, nor shall any of his officers, act under this Ordinance for reward, except as provided in this Ordinance.

(2) The Public Trustee may, subject to the rules made under this Ordinance, employ for the purposes of any trust, such solicitors, bankers, accountants, brokers or other persons as he may consider necessary, and in determining the persons to be so employed in relation to any trust the Public Trustee shall have regard to the interests of the trust, but subject to this shall, whenever practicable, take into consideration the wishes of the creator of the trust and of the other trustees (if any) and of the beneficiaries, either expressed or as implied by the practice of the creator of the trust, or in the previous management of the trust.

(3) On behalf of the Public Trustee such person as may be prescribed may take any oath, make any declaration, verify any account, give personal attendance at any court or place, and do any act or thing whatsoever which the Public Trustee is required or authorised to take, make, verify, give, or do:

Provided that nothing in this Ordinance or in any rule made under this Ordinance shall confer upon any person not otherwise entitled thereto any right to appear, or act, or be heard in or before any court or tribunal, on behalf or instead of the Public Trustee, or to do any act whatsoever on behalf of or on the instructions of the Public Trustee, which could otherwise only be lawfully done by a barrister or duly qualified solicitor.

(4) 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 as aforesaid, 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.

(5) 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.

Power to make rules

14. The Governor shall make rules for carrying into effect the objects of this Ordinance, and in particular for all or any of the following purposes, that is to say—

- (a) concerning the establishment of the office of Public Trustee, and prescribing the trusts or duties he is authorised to accept or undertake, and the security (if any) to be given by the Public Trustee and his officers;
 - (b) the transfer to and from the Public Trustee of any property;
 - (c) the accounts to be kept and an audit thereof;
 - (d) the discretionary decisions which may be made by the Public Trustee;
 - (e) prescribing the fees to be charged from time to time by the Public Trustee, and making provision for the determination of such fees in cases not specifically provided for, or in exceptional cases where a fee greater or lesser than the normal fee would be appropriate;
 - (f) the form and manner in which notices under this Ordinance shall be given.
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