



**ST HELENA**

**REVISED EDITION OF THE LAWS, 2017**

**COURTS AND JUSTICE**

**PUBLIC TRUSTEE ORDINANCE, 1977<sup>1</sup>**

*Ordinance 6 of 1977  
In force 29 July 1977*

*No amendments to 1 November 2017*

*No subsidiary legislation to 1 November 2017*

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**PUBLIC TRUSTEE ORDINANCE, 1977**

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AN ORDINANCE to provide for the appointment of a Public Trustee and to amend the law relating to the administration of trusts.

**Short title**

1. This Ordinance may be cited as the Public Trustee Ordinance, 1977.

**Definitions**

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<sup>1</sup> Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.

2. In this Ordinance, and in any rules made under it, 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 by rules under section 14, 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;

“**rules**” means rules made under section 14 of this Ordinance;

“**trust**” includes an executorship or administratorship and “**trustee**” is to 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.

### **Office of Public Trustee**

3. (1) This section establishes the office of Public Trustee.

(2) The Public Trustee is a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued under that name like any other corporate body.

### **Powers and duties of Public Trustee**

4. (1) Subject to and in accordance with this Ordinance and the rules, the Public Trustee may in any matter, at the discretion of the Public Trustee—

- (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.

(2) Subject to this Ordinance and the rules, the Public Trustee –

- (a) may act either alone or jointly with any person or body of persons in any capacity to which the Public Trustee may be appointed pursuant to this Ordinance; and
- (b) has all the same powers, duties, and liabilities, and is entitled to the same rights and immunities and is subject to the same control and orders of the court, as a private trustee acting in the same capacity.

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

(4) The Public Trustee must not accept -

- (a) any trust which involves the management or carrying on of any business, except in the cases in which the Public Trustee is authorised to do so by the rules;
- (b) any trust under a deed of arrangement for the benefit of creditors; or
- (c) the administration of any estate known or believed by the Public Trustee 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 if any such application is made the Public Trustee may accept and administer the estate unless the Public Trustee 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 vests in the Public trustee by virtue of this Ordinance and the right to transfer or call for the transfer of any stock forming part of the estate also vests in the Public Trustee in like manner as if vesting orders had been made for the purpose by the Supreme Court under the laws applicable to trustees.

**(2A)** As from such vesting any trustee entitled under the trust to administer the estate is discharged from all liability attaching to the administration except in respect of past acts.

**(3)** The Public Trustee has and may exercise any administrative powers and authorities of the Supreme Court that are conferred upon the Public Trustee by the rules, which 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 this section simple and inexpensive.

- (4)** If –
- (a) proceedings have been instituted in any court for the administration of an estate; and
  - (b) because 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 be administered by the Public Trustee instead of by the court,

the court may order that the estate be administered by the Public Trustee, and thereupon (subject to any directions by the court) this section applies as if the administration of the estate had been undertaken by the Public Trustee pursuant to this section.

### **Custodian trustee**

**6. (1)** If the Public Trustee consents, and whether or not the number of trustees has been reduced below the original number, the Public Trustee may 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;
- (b) by the testator, settlor or other creator of any trust; or
- (c) by the person having power to appoint new trustees.

- (2) If the Public Trustee is appointed to be custodian trustee of any trust—
- (a) the trust property must be transferred to the custodian trustee as 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 remains 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 to and without affecting the rights of any other persons, the custodian trustee is to have the custody of all securities and documents of title relating to the trust property, but the managing trustees are to have free access to them and are entitled to take copies thereof or extracts from them;
  - (d) the custodian trustee must 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 the custodian trustee is requested to concur is a breach of trust, or involves a personal liability upon the custodian trustee in respect of calls or otherwise, but, unless the custodian trustee so concurs, the custodian trustee is not liable for any act or default on the part of the managing trustees or any of them;
  - (e) subject to paragraph (ea), all sums payable to or out of the income or capital of the trust property must be paid to or by the custodian trustee;
  - (ea) the custodian trustee may allow the dividends and other income derived from the trust property to be paid to the managing trustees or to any person they direct, or into such bank and to the credit of such person as they direct, and in such a case the custodian trustee is exonerated from seeing to the application of the income and is not answerable for any loss or misapplication of it;
  - (f) the power of appointing new trustees, when exercisable by the trustees, is exercisable by the managing trustees alone, but the custodian trustee has the same power of applying to the court for the appointment of a new trustee as any other trustee;
  - (g) in deciding the number of trustees under the general law regarding trustees, the custodian trustee is not to be reckoned as a trustee;
  - (h) the custodian trustee, if acting in good faith, is not 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 of it 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. (1) The Public Trustee –
- (a) 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 the Public Trustee is authorised by the rules to accept; and
  - (b) 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.

(2) An appointment under subsection (1) may be made in the same cases, and in the same manner, and by the same persons or court, as if the Public Trustee were a private trustee, with this addition, that though the trustees originally appointed were 2 or more, the Public Trustee may be appointed sole trustee.

### **Power as to granting probate**

8. (1) If under the rules the Public Trustee is authorised to accept by that name probates of wills or letters of administration, the court that has 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 must 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, except that –

- (a) the consent or citation of the Public Trustee is not required for the grant of letters of administration to any other person; and
- (b) as between the Public Trustee and the widower, widow, or next-of-kin of the deceased, the widower, widow, or next-of-kin must 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, notwithstanding that that person has acted in the administration of the deceased's estate, may, with the sanction of the court, and after any notice to the persons beneficially interested the court directs, transfer such estate to the Public Trustee for administration either solely or jointly with the continuing executors or administrator, if any.

(3) The order of the court sanctioning a transfer under subsection (2), subject to this Ordinance, gives to the Public Trustee all the powers of the executor and administrator, and such executor and administrator is not in any way liable in respect of any act or default in reference to the estate subsequent to the date of the order, other than the act or default of the executor or administrator or of other persons for whose conduct the executor or administrator is in law responsible.

### **Liability of Government**

9. The Government of St. Helena is liable to make good all sums required to discharge any liability which the Public Trustee, if a private trustee, would be personally liable to discharge, unless the liability is one to which neither the Public Trustee nor any of officer of the Public Trustee has in any way contributed, and which neither the Public Trustee nor any officer of the Public Trustee could by the exercise of reasonable diligence have averted, in which case the Public Trustee is not, nor is the Government of St. Helena, subject to any liability.

### **Appointment of officers**

10. (1) The Governor must appoint a fit person to the office of Public Trustee, who is to hold office during the pleasure of the Governor, and receive such salary and fees,

and be appointed on such terms as the Governor decides.<sup>2</sup>

(2) The Governor may appoint such persons to be officers of the Public Trustee as the Governor 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 must receive remuneration for his or her services in a manner and to an extent decided by the Governor having regard to all the circumstances of the appointment.

### **Fees charged by Public Trustee**

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

(2) Any expenses which might be retained or paid out of the trust property if the Public Trustee were a private trustee must be so retained or paid, in addition to any fees chargeable, and must 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 any order in the matter that the court thinks just.

### **Actions and status of Public Trustee and officers**

13. (1) Neither the Public Trustee nor any officer of the Public Trustee may act under this Ordinance for reward, except as provided in this Ordinance.

(2) The Public Trustee may, subject to the rules, employ for the purposes of any trust, such legal practitioners, bankers, accountants, brokers or other persons the Public Trustee considers necessary.

(2A) In deciding the persons to be employed under subsection (1) in relation to any trust, the Public Trustee must have regard to the interests of the trust, but ~~subject to this~~ otherwise must, 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 that the Public Trustee is required or authorised to take, make, verify, give, or do, subject to subsection (3A).

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

**(3A)** Nothing in this Ordinance or the rules confers upon any person not otherwise entitled to it 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 duly qualified legal practitioner?

**(4)** Where any bond or security would be required from a private person upon the grant to the person of administration, or upon the person's appointment to act in any capacity, the Public Trustee, if administration is granted to the Public Trustee or if the Public Trustee is appointed to act in such capacity as aforesaid, does not need to give such bond or security, but is subject to the same liabilities and duties as if such bond or security had been given.

**(5)** The entry of the Public Trustee by that name in the books of a company does not constitute notice of a trust, and a company is not entitled to object to enter the name of the Public Trustee on its books only because 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 does not of itself constitute notice of a trust.

### **Power to make rules**

**14.** The Governor may 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 the Public Trustee is authorised to accept or undertake, and the security (if any) to be given by the Public Trustee and officers of the Public Trustee;
  - (b)* the transfer to and from the Public Trustee of any property;
  - (c)* the accounts to be kept and an audit of them;
  - (d)* the discretionary decisions which may be made by the Public Trustee;
  - (e)* prescribing the fees to be charged by the Public Trustee, and making provision for the fixing 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 are to be given.
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