
Fifth Session First Parliament Republic of Trinidad
and Tobago



HOUSE OF REPRESENTATIVES

Act No. 21 of 1981

AN ACT relating to trustees, the administration of
trusts and the office of Public Trustee.

[Assented to 30th July, 1981]

ENACTED by the Parliament of Trinidad and Tobago Enactment
as follows:—

1. (1) This Act may be cited as the **Trustee Act, 1981**. Short title
and commence-
ment

(2) This Act shall come into operation on a date
to be fixed by the President by proclamation in the
Gazette.

PART I

INTERPRETATION

Interpretation

2. In this Act—

“authorised investments” means investments authorised by the instrument, if any, creating the trust for the investment of money subject to the trust, or by law;

“bank” has the meaning assigned by section 2 (a) of the Banking Act, 1964;

“contingent right” as applied to land includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest, or possibility is or is not ascertained; also a right of entry, whether immediate or future, and whether vested or contingent;

“convey” and “conveyance” as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seized or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance;

“Court” means the High Court;

“land” means the surface of the earth, the airspace above it and the things, other than chattels, below it, and includes—

(a) buildings on land and parts of buildings whether the division is vertical, horizontal, or made in any other way;

(b) mines and minerals, whether or not held apart from the surface;

(c) land covered by water;

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(d) legal estates in land, whether or not they give a right to possession of the soil;

(e) equitable interests in land;

“pay” and “payment” as applied in relation to stocks and securities and in connection with the expression “into court” include the deposit or transfer of the same in or into court;

“property” includes any thing in action and any interest in land, chattels or rights which are treated commercially as property;

“Public Trustee” means the holder of the office established by section 3(1);

“registered land” has the meaning assigned by section 2 of the Land Registration Act, 1981 No. 1981;

“rights” includes estates and interests;

“sale” includes an exchange;

“securities” include stocks, funds, and shares; and so far as they relate to payments into court have the same meaning as in the enactments relating to funds in the court, and “securities payable to bearer” includes securities transferable by delivery or by delivery and endorsement;

“statutory trusts” has the meaning assigned by section 17 of the Land Law and Conveyancing Act, 1981 No. 1981;

“stock” includes fully paid up shares, and so far as relates to vesting orders made by the court under this Act, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein;

“transfer” in relation to stock or securities, include the performance and execution of every deed, power of attorney, act and thing on the part of the transferor to effect and complete the title in the transferee;

“trust”, except where expressly provided otherwise, does not include the duties of a mortgagee; but, subject to that provision, “trust” includes an implied or constructive trust and the duties incident to the office of a personal representative, and extends to cases where the trustee has a beneficial interest in the property held on trust;

“trust corporation” means the Public Trustee or a corporation either appointed by the court in any particular case to be a trustee, or entitled by rules made under section 15 to act as custodian trustee;

“trust funds” includes any funds in the hands of a trustee, whether at the time in a state of investment or not;

“trustee” means a person who holds property on trust, and includes a personal representative;

“unregistered land” has the meaning assigned by section 2 of the Land Registration Act, 1981.

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PART II

PUBLIC TRUSTEE

Office and
functions

3. (1) There shall be established 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 the above name like any other corporation sole, but any instruments sealed by him are not, by reason of his using a seal, rendered liable to a higher stamp duty than if he were an individual.

(3) The office of Public Trustee is a public office within the meaning of the Civil Service Act, 1965, and the provisions of the said Act apply accordingly. ^{1965 No. 29}

(4) A public officer may be appointed to exercise the duties and office of the Public Trustee in conjunction with any other office.

(5) Any other public officer may be appointed to assist the Public Trustee in his office or as his agent or delegate in conjunction with the duties of any other office.

(6) Where the Public Trustee is the head of a Department in the public service, his powers extend to the clerks and officers in his Department without any special appointment of such clerks or officers to assist him in the discharge of his duties and powers under this Act.

(7) Unless a new person is appointed to hold the office of the Public Trustee from the commencement of this Act, the person who immediately before the commencement of this Act is performing the functions of the office of Public Trustee shall be deemed to have been lawfully appointed to, and shall continue to hold or act in, the office as if he had been appointed under this section.

4. (1) Subject to and in accordance with the provisions of this Part and rules made under section 15, the Public Trustee may, if he thinks fit— ^{General powers and duties}

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

(2) Subject to the provisions of this Part and to the rules made under section 15, 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 Part, and he has all the same powers, duties, and liabilities, and is entitled to the same rights and immunities and is 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 section 15, 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.

(5) Nothing in this Part affects the operation of the provisions of the Mental Health Act, 1975, as they apply to the Public Trustee.

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Administration of
small 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 by the court of an estate, the gross capital value whereof is proved to the satisfaction of the Public Trustee to be less than one hundred 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.

(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 Part, 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 Part VI, and that Part shall apply accordingly.

(3) 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.

(4) The Public Trustee shall not exercise the right of himself transferring the stock without the leave of the court.

(5) 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 on him by rules made under section 15 subject to such conditions as may be imposed by the said rules.

(6) Rules shall be made under section 15 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.

(7) Where proceedings have been instituted in 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 applies as if the administration of the estate had been undertaken by the Public Trustee in pursuance of this section.

6. (1) Subject to rules made under section 15, 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 Part VI;

- (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 persons 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) any 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 section 38 of the Land Law and Conveyancing Act, 1981,^{1981 No.} 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;
- (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 apply in like manner as to the Public Trustee to any bank or insurance company or other body corporate entitled by

rules made under section 15 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 as
ordinary trustee**

7. (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 the rules made under section 15 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 commencement of this Part, and either as an original or as a new trustee, or as an additional trustee, in the same cases, and in the 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.

(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 51, notwithstanding that there are not more than two trustees, and without such consents as are required by that section.

(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 to the contrary, 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 State and whose addresses are known to the persons proposing to make the appointment, or, if such beneficiaries are minors, 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.

8. (1) If, in pursuance of any rule made under section 15, the Public Trustee is authorised to accept by that name probates of wills or letters of administration, the court may grant such probates 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.

Grant of probate
or letters of
administration

(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 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 executor or administrator, if any.

(3) The order of the court sanctioning such transfer shall, subject to the provisions of this Part, 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.

9. The State is 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 is not, nor is the State, subject to any liability.

Transitional provisions

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10. Subject to such regulations as may be made, all property, funds, books, records, documents and accounts held at the commencement of this Act by the Public Trustee appointed under the Public Trustee Ordinance shall be deemed to be transferred to and to be held by any new Public Trustee appointed to take office at the commencement of this Act.

Fees

11. (1) The Minister may by order, subject to affirmative resolution of the House of Representatives, prescribe fees to be charged in respect of execution of the duties, and exercise of the powers, of the Public Trustee, and such fees shall be collected and accounted for by such persons and in such manner, and shall be paid to such account, as may be prescribed.

(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, and the fees shall be retained or paid in the like manner as and in addition to such expenses.

(3) Such fees shall be applied as an appropriation in aid of moneys provided for expenses under this Part, and so far as not so applied shall be paid into the Consolidated Fund.

(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 other expenses incidental to the working of this Part (including such sum as may from time to time be determined to be required to insure the State against loss under this Part) and no more.

(5) The incidence of the fees and expenses under this section as between capital and income shall be determined by the Public Trustee.

Appeals

12. (1) 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 fit.

(2) Subject to rules of court, an application under this section to the court shall be made to a judge in chambers.

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

(2) The Public Trustee may, subject to the rules made under section 15, employ for the purposes of any trust such solicitors, bankers, accountants, and 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 Part or in any rule made under section 15 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 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 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 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, does not of itself constitute notice of a trust.

Investigation and
audit of trust
accounts

14. (1) Subject to rules made under section 15 and unless the court otherwise orders, the condition and accounts of any trust shall, on the application being made to the court and notice thereof given in the prescribed manner by any trustee or beneficiary, be investigated and audited by such independent 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.

(2) 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 a trustee or beneficiary shall not be appointed under this section to make an investigation or audit.

(3) 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 explanation 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.

(4) Every beneficiary under the trust shall, subject to rules made under section 15, 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.

(5) 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.

(6) The remuneration of the auditor and the other expenses of the investigation and audit shall be such as may be prescribed by rules made under section 15, 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.

(7) 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.

(8) 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.

(9) 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 is liable, on conviction on indictment, to imprisonment for two years, and, on summary conviction to imprisonment for six months, and in either case to a fine in lieu of or in addition to such imprisonment.

(10) Nothing in this section prejudices the duty of trustees to have accounts of trust property examined or audited under section 36(4).

15. (1) Without prejudice to the generality of ^{Rules} section 82, the Minister may make rules for carrying into effect the objects of this Part, and in particular for all or any of the following purposes (that is to say)—

(a) establishing the office of Public Trustee and prescribing the trusts or duties he is authorised to accept or undertake;

- (b) the transfer to and from the Public Trustee of any property;
- (c) the accounts to be kept and the audit thereof;
- (d) the establishment and regulation of any branch office;
- (e) excluding any trusts from the operation of this Part or any part thereof;
- (f) the classes of corporate bodies entitled to act as custodian trustees;
- (g) the form and manner in which notices under this Part shall be given;
- (h) such other matters and things as to which rules under this Part are to be made or which may be deemed necessary for the better carrying into effect of the provisions of this Part.

(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, is guilty of an offence.

PART III

INVESTMENTS AND APPORTIONMENTS

General powers
of investment

16. (1) Subject to the provisions of this Part, a trustee may invest any trust funds in his hands in the manner following, that is to say—

- (a) where the capital value of such funds does not exceed one hundred thousand dollars, in such securities as may be prescribed from time to time;
- (b) where the capital value of such funds exceeds one hundred thousand dollars, in such securities or other forms of investment, including those prescribed under paragraph (a), as the trustee in his discretion selects;

and may also from time to time vary such investment.

(2) For the purposes of subsection (1), but subject to subsection (3), "other forms of investment" includes—

- (a) the purchase of any freehold or leasehold (provided there is an unexpired term of not less than sixty years) estate in land;

- (b) improvement of land, whether by demolition and rebuilding, redevelopment or otherwise;
- (c) provision of a residence or place of business for a beneficiary;
- (d) acquisition of capital assets, including works of art.

(3) Nothing in this Part prejudices the operation of the Insurance Act, 1980, so far as it applies to investment of trust funds. 1980 No. 6

17. (1) A trustee may under the powers of this Act invest in securities notwithstanding that they may be redeemable and that the price exceeds the redemption value. Redeemable stocks

(2) A trustee may—

- (a) retain until redemption any redeemable stock, fund or security purchased in accordance with this Act;
- (b) effect redeemable bond insurance policies against redemption by drawing of bonds at a price less than current or cost price and may, in his discretion and without obtaining the consent of any other person, pay the premiums on such policies—
 - (i) out of the income of the bonds or out of the income of any other property subject to the same trusts; or
 - (ii) out of the capital of the bonds or out of the capital of any other property subject to the same trusts; or
 - (iii) partly out of such income and partly out of such capital.

(3) This section operates without prejudice to the generality of section 16(1)(b).

18. (1) Subject to subsection (2), a trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorised investments, but a discretion that investments shall be retained or made in the name of the Bearer securities

trustee is not, for the purposes of this subsection, to be deemed to be such an express prohibition.

(2) Securities to bearer retained or taken as an investment by a trustee (not being a trust corporation) shall, until sold, be deposited by him for safe custody and collection of income with a banker or banking company.

(3) A trustee is not responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property.

(4) This section operates without prejudice to the generality of section 16(1)(b).

Mortgages

19. (1) A trustee having any power to invest in—

(a) real securities may accept the security in the form of a charge by way of legal mortgage and may convert an existing mortgage into such a charge;

(b) the mortgages or bonds of any company may invest in the debenture stock of such company.

(2) A trustee lending money on the security of any property on which he can lawfully lend may contract that such money shall not be called in during any period not exceeding thirty years from the time when the loan was made, provided interest be paid within a specified time not exceeding thirty days after every half-yearly or other day on which it becomes due (and, where the period during which interest is to be paid exceeds five years, the rate of interest may be varied), and provided there be no breach of any covenant by the mortgagor contained in the instrument of mortgage or charge for the maintenance and protection of the property.

(3) On a sale of land for an estate in fee simple, the trustees may, where the proceeds are liable to be invested, contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by a charge by way of legal mortgage of the land sold, with or without the security of any other property, such charge or mortgage, if any buildings are

comprised in the mortgage, to contain a covenant by the mortgagor to keep them insured against loss or damage by fire to the full value thereof.

(4) In a case coming within subsection (3), the trustees are not bound to obtain any report as to the value of the land or other property to be comprised in such charge or mortgage, or any advice as to the making of the loan, and are not liable for any loss which may be incurred by reason only of the security being insufficient at the date of the charge or mortgage.

(5) The powers conferred by this section are exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.

(6) Where the loan referred to in subsection (1), or the sale referred to in subsection (2), is made under the order of the court, the powers conferred by those subsections respectively apply only in and as far as the court may by order direct.

20. (1) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement—

Company securities

- (a) for the reconstruction of the company;
- (b) for the sale of all or any part of the property and undertaking of the company to another company;
- (c) for the acquisition of the securities of the company, or of control thereof, by another company;
- (d) for the amalgamation of the company with another company;
- (e) for the release, modification, or variation of any rights, privileges or liabilities attached to the securities or any of them;

in like manner as if they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities; and the trustees are not responsible for any loss occasioned by any act or thing so done in good faith, and may retain

any securities so accepted as aforesaid for any period for which they could have properly retained the original securities.

(2) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in such company, they may as to all or any of such securities, either exercise such right and apply capital money subject to the trust in payment of the consideration, or renounce such right, or assign for the best consideration that can be reasonably obtained the benefit of such right or the title thereto to any person, including any beneficiary under the trust, without being responsible for any loss occasioned by any act or thing so done by them in good faith: Provided that the consideration for any such assignment shall be held as capital money of the trust.

(3) The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.

Deposits at bank

21. (1) A trustee may, pending the negotiation and preparation of any mortgage or charge, or during any other time while an investment is being sought, pay any trust money into a bank to a deposit or other account, and all interest, if any, payable in respect thereof shall be applied as income.

(2) A trustee may apply capital money subject to a trust in payment of the calls on any shares subject to the same trust.

General duties as to investments

22. (1) Every power conferred by the preceding sections shall be exercised according to the discretion of the trustee, but subject to—

- (a) where required, the need to obtain proper advice under section 23;
- (b) any consent or discretion required by the instrument, if any, creating the trust with respect to investment of trust funds;
- (c) the matters to which he must have regard under subsection (2).

(2) In the exercise of his powers of investment, a trustee shall have regard to—

- (a) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust;
- (b) the suitability to the trust of investments of the description of investment proposed and of the investment proposed as an investment of that description;
- (c) the respective interests of all the beneficiaries under the trust and, in particular, where he selects high income-producing investments and high capital appreciation investments, the need to preserve a fair balance between such investments.

23. (1) Before exercising any power conferred by section 16(1)(b), or any power of investment conferred by the instrument, if any, creating the trust additional to or wider than the power conferred by section 16(1)(a), the trustee shall obtain and consider proper ^{Advice} advice on the question whether the investment is satisfactory having regard to the matters mentioned in section 22(2).

(2) A trustee retaining any investment made in exercise of such a power shall determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice as aforesaid, and shall obtain and consider such advice accordingly.

(3) For the purposes of this section, "proper advice" means the advice, given or subsequently confirmed in writing, of a person who is reasonably believed by the trustee to be qualified by his ability in and practical experience of financial matters and, in relation to any particular proposed form of investment, by his knowledge and experience of such form of investment; and such advice may be given by a person notwithstanding that he gives it in the course of his employment as an officer or servant.

(4) This section does not apply—

- (a) to one of two or more trustees where he is the person giving the advice required to his co-trustee or co-trustees;

- (b) where the powers of a trustee are lawfully exercised by an officer or servant competent under subsection (3) to give proper advice.

Retention of investments

24. (1) A trustee is not liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the trust instrument or by the general law.

(2) Where the holding of a particular property is the purpose, or one of the purposes, of the creation of the trust, the trustees are bound, subject to any order of the court, by any term of the trust stipulating that any specified property shall remain part of the trust property, but they cease to be so bound if either—

- (a) the terms of the trust provide that the stipulation is to last for a specified time and that time has elapsed; or
- (b) the holding of the specified property ceases for any other reason to be the purpose, or one of the purposes, of the trust.

(3) A purchaser from the trustees takes free from the trust notwithstanding that the disposition is in breach of such a stipulation binding the trustees, and whether or not the purchaser has notice of the stipulation or of the breach or of the circumstances constituting the breach.

Loans

25. (1) A trustee lending money on the security of any property on which he can properly lend is not chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the court that—

- (a) in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality

where the property is situate or elsewhere; and

- (b) the amount of the loan does not exceed two-third parts of the value of the property as stated in the report; and
- (c) the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) Where a trustee validly lends money by way of investment in—

- (a) bonds, stocks or any other evidence of indebtedness issued or guaranteed by the Government of Trinidad and Tobago; or
- (b) mortgages guaranteed by the National Housing Authority under section 12 of the Housing Act, 1962;

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the amount of the loan may, notwithstanding the provisions of subsection (1)(b), be equal to the value of the security.

(3) A trustee lending money on the security of any leasehold property is not chargeable with breach of trust only upon the ground that in making such loan he dispensed either wholly or partly with the investigation of the lessor's title, to the extent he is not required, in the absence of a special contract, to investigate such title.

(4) A trustee is not chargeable with breach of trust only upon the ground that in effecting the purchase, or in lending money upon the security, of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if, in the opinion of the court, the title accepted be such as a person acting with prudence and caution would have accepted.

(5) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorised investment for the smaller sum, and the trustee is liable only to make good the sum advanced in excess thereof with interest.

(6) This section applies to transfers of existing securities as well as to new securities and to investments made before as well as after the commencement of this Act.

Apportionments

26. (1) Subject to subsection (2), a trustee may, but is under no duty to, make apportionments as between capital and income in respect of—

- (a) wasting, hazardous or unauthorised securities;
- (b) future, reversionary or other non-income producing property;
- (c) the gross estate of a deceased person;
- (d) any loss occurring on the sale of mortgaged property;
- (e) the acquisition or sale of shares cum-dividend or ex-dividend;
- (f) rents, annuities, dividends and other income apportionable under the Apportionment Ordinance on the death of the settlor or other date when the trust arises;

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or in any other circumstances where it is unreasonable or impracticable to require such apportionments.

(2) In deciding whether or not to exercise his power to make apportionments under subsection (1), the trustee shall have regard to the grounds upon which a court may make an order under subsection (3).

(3) Nothing in subsection (1) prevents any beneficiary from applying to the court for an order requiring such apportionment in any case where it is established to the satisfaction of the court that—

- (a) there has been a substantial failure by the trustee to act impartially towards the beneficiaries as a whole; or
- (b) such apportionment is both reasonable and practical in all the circumstances of the case; or
- (c) such apportionment is otherwise necessary or desirable in all the circumstances of the case in order to do justice to the beneficiaries as a whole;

and the court may make such order subject to such terms and conditions, if any, as it thinks fit to impose.

PART IV

GENERAL POWERS AND DUTIES OF TRUSTEES

27. (1) Where a trust for sale or a power of sale of ^{Power of sale} property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.

(2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof, whether the division is horizontal, vertical, or made in any other way.

(3) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(4) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(5) No purchaser, upon any sale made by a trustee, is at liberty to make any objection against the title upon any of the grounds aforesaid.

(6) This section applies to sales made before or after the commencement of this Act, but does not apply to a sale of land by the trustees upon the statutory trusts.

Power to give
receipts

28. (1) The receipt in writing of a trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power is a sufficient discharge to the person paying, transferring, or delivering the same and effectually exonerates him from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for—

(a) the proceeds or other capital money arising under a trust for sale of land, but subject to section 50 of the Land Law and Conveyancing Act, 1981;

(b) capital money arising under Part III of the said Act.

(3) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

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Power to compound
liabilities

29. A personal representative, or two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee, where by the instrument, if any, creating the trust, or by statute, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit—

(a) accept any property, real or personal, before the time at which it is made transferable or payable; or

(b) sever and apportion any blended trust funds or property; or

(c) pay or allow any debt or claim on any evidence that he or they think sufficient;

(d) accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed;

(e) allow any time of payment of any debt; or

(f) compromise, compound, abandon, submit to arbitration, or otherwise settle any

debt, account, claim or thing whatever relating to the testator's or intestate's estate or to the trust;

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

30. (1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession. Power to raise money

(2) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees upon the statutory trusts.

31. (1) No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, is concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof. Protection of purchasers

(2) Subsection (1) does not affect in any way the operation of sections 22 and 44 of the Land Law and Conveyancing Act, 1981. 1981 No.

32. (1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being. Devolution of powers or trusts

(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, are capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.

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(3) This section takes effect subject to the restriction as to payment of capital money imposed by section 39 of the Land Law and Conveyancing Act, 1981, in regard to a sole trustee, not being a trust corporation.

(4) In this section "personal representative" does not include an executor who has renounced or has not proved.

Duty to insure

33. A trustee shall insure and keep insured against loss or damage by fire, flood, earthquake, hurricane, storm, tempest, explosion, riots, malicious damage and strikes any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding the full replacement value of the building or property, and pay, at his discretion, the premiums for such insurance out of the capital or income thereof or out of the capital or income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income.

Application of insurance money

1981 No.

34. (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust or to a settlement within the meaning of the Land Law and Conveyancing Act, 1981, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf or under any power, statutory or otherwise, or in performance of any covenant or of any obligation, statutory or otherwise, or by a tenant for life impeachable for waste, be capital money for the purposes of the trust or settlement, as the case may be.

(2) If any such money is receivable by any person other than the trustees, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, to the trustees, or, if there are no trustees capable of giving a discharge therefor, into court.

(3) Any such money—

(a) if it was receivable in respect of land settled upon the statutory trusts, or any building or works thereon, shall be

deemed to be capital money for the purposes of section 37 of the Land Law and Conveyancing Act, 1981, and shall be invested or applied by the trustees, or, if in court, under the direction of the court, accordingly;

- (b) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;
- (c) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust, and, in the case of money which is deemed to be capital money for the purposes of section 37 of the Land Law and Conveyancing Act, 1981, be subject to the provisions of that section with respect to the application of capital money by the trustees of the settlement.

(5) Nothing contained in this section prejudices or affects the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any statute or otherwise.

(6) This section applies to policies effected either before or after the commencement of this Act, but only to money received after such commencement.

35. Trustees may deposit any documents held by them relating to the trust, or to the trust property, with any bank or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

Reversionary
interests, valua-
tions and audit

36. (1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may—

- (a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;
- (b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments;
- (c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;
- (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release;

without being responsible in any such case for any loss occasioned by any act or thing done by them in good faith.

(2) The trustees are not under any obligation and are not chargeable with any breach of trust by reason of any omission—

- (a) to place any distringas notice or apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as aforesaid is derived, payable or charged; or
- (b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested;

unless and until required in writing to do so by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken:

Provided that nothing in this subsection relieves the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession.

(3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any statute, from time to time (by duly qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith is binding upon all persons interested under the trust.

(4) Trustees shall—

(a) where the trust fund exceeds one million dollars in value, at least once in every three years;

(b) where the trust fund does not exceed one million dollars in value, at least once in every six years;

cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

(5) Nothing in subsection (4) prevents the trustees from having the accounts examined or audited more frequently, where they consider that this is necessary or desirable having regard to the nature of the trust, any special dealings with the trust property or the wishes of the beneficiaries or any other reason.

37. (1) Trustees or personal representatives may, instead of acting personally, and whether there is any legal or moral necessity or not, employ and pay an agent, whether a solicitor, barrister, banker, stock-broker, or other person, to transact any business or do ^{Power to employ agents}

any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money (but not including the general management of the trust, the general administration of the testator's or intestate's estate, the decision whether to exercise any power, the exercise of any discretion or the supervision of any agent appointed under this section), and are entitled to be allowed and paid all charges and expenses so incurred.

(2) Without prejudice to the general power of appointing agents conferred by subsection (1)—

- (a) a trustee appointing a solicitor or barrister to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust may permit the solicitor to have the custody of, and to produce, a deed having in the body thereof or endorsed thereon a receipt for such money or valuable consideration or property, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration;
- (b) a trustee is not chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the production of any such deed by the solicitor or barrister has the same statutory validity and effect as if the person appointing the solicitor or barrister had not been a trustee;
- (c) a trustee appointing a banker, solicitor or barrister to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance may permit the banker, solicitor or barrister to have the custody of and to produce the policy of insurance with a receipt signed by the trustee, and a trustee is not chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.

(3) Subsection (2) applies whether the money or valuable consideration or property was or is received before or after the commencement of this Act.

(4) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting insurances of, or managing or cultivating, or otherwise administering any property, real or personal, moveable or immovable, subject to the trust or forming part of the testator's or intestate's estate, in any place outside the State or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes.

(5) A trustee or personal representative is not responsible for the default of any agent or attorney employed under this section if the agent or attorney was selected and authorised in good faith as a person competent and suitable to do what the trustee or personal representative employed him to do, unless the default of the agent or attorney is such as might have been prevented by the trustee or personal representative exercising the diligence in the supervision of his agent or attorney that would be exercised by a reasonably man of business:

Provided that nothing in this section exempts a trustee or personal representative from any liability which he would have incurred if this Act and any enactment replaced by this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of a banker, solicitor, barrister, stockbroker or other agent or attorney, for a period longer than is reasonably necessary to enable that agent to pay or transfer the same to the trustee or personal representative.

38. Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a Power to concur with others

testator or intestate, the trustees or personal representatives may (without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

Power to delegate trusts

39. (1) Notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate for a period not exceeding twelve months the execution or exercise of all or any of the trusts, powers and discretions vested in him as trustee either alone or jointly with any other person or persons.

(2) The persons who may be donees of a power of attorney under this section include a trust corporation but not (unless a trust corporation) the only other co-trustee of the donor of the power.

(3) An instrument creating a power of attorney under this section shall be executed and registered in accordance with section 168 of the Land Law and Conveyancing Act, 1981.

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(4) Before or within seven days after giving a power of attorney under this section the donor shall give written notice thereof (specifying the date on which the power comes into operation and its duration, the donee of the power, the reason why the power is given and, where some only are delegated, the trusts, powers and discretions delegated) to—

- (a) each person (other than himself) if any, who under any instrument creating the trust has power (whether alone or jointly) to appoint a new trustee; and
- (b) each of the other trustees, if any;

but failure to comply with this subsection does not, in favour of a person dealing with the donee of the power, invalidate any act done or instrument executed by the donee.

(5) The donor of a power of attorney given under this section is liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.

(6) For the purposes of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer but not including the power of delegation conferred by this section.

(7) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.

(8) This section applies to a personal representative as it applies to a trustee, except that subsection (4) applies as if it required the notice there mentioned to be given to each of the other personal representatives, if any, except any executor who has renounced probate.

40. (1) Where a personal representative or trustee is liable for—

(a) any rent, covenant, or agreement reserved by or contained in any lease; or

(b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rentcharge; or

(c) any indemnity given in respect of any rent, covenant or agreement referred to in either of the foregoing paragraphs;

satisfies all liabilities under the lease or grant which may have accrued and been claimed up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed

Indemnity against
rents and
covenants

to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof and thereafter—

- (i) he may distribute the residuary real and personal estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the said lease or grant;
- (ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.

(2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will, or other instrument, if any, creating the trust.

(3) In this section, “lease” includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; “grant” applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; “lessee” and “grantee” include persons respectively deriving title under them.

41. (1) With a view to the conveyance to or distribution among the persons entitled to any real or personal property, the trustees or personal representatives, may give notice by advertisement in the *Gazette*, and in a daily newspaper, and such other like notices, including notices elsewhere than in the State, as would, in any special case, have been directed by a court in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than twenty-eight days, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

Protection by
advertisements

(2) At the expiration of the time fixed by the notice the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates, to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees or personal representatives had then notice and are not, as respects the property so conveyed or distributed, liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this section—

- (a) prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person, other than a purchaser, who may have received it; or
- (b) frees the trustees or personal representatives from any obligation to make searches or obtain official certificates of search similar to those which an intending purchaser would be advised to make or obtain.

(3) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

42. A trustee or personal representative acting for the purposes of more than one trust or estate is not, in the absence of fraud, affected by notice of any instru-

Protection from
notice

ment, matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate.

Implied indemnity

43. (1) Subject to subsection (2), a trustee is chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and is answerable and accountable only for his own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for any banker, broker or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other similar loss, unless the same happens through his own wilful default.

(2) Subsection (1) does not exempt a trustee or personal representative from any liability which he would have incurred if this section and any enactment replaced by this section had not been passed, arising out of or in connection with the employment of any agent or attorney under powers granted by section 37.

(3) A trustee may reimburse himself or pay or discharge out of the trust property all expenses incurred in or about the execution of the trusts or powers.

Power of maintenance

44. (1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property—

(a) during the minority of any such person, if his interest so long continues, the trustees may pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education, or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is—

(i) any other fund applicable to the same purpose; or

(ii) any person bound by law to provide for his maintenance or education; and

- (b) if such person on attaining the age of eighteen years has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) to him, until he either attains a vested interest therein or dies, or until failure of his interest.

(2) Trustees having power to act under subsection (1)(a) shall keep under review the question of whether to do so, and in deciding whether to do so shall have regard to—

- (a) the age of the minor and his requirements;
- (b) the circumstances of the case generally;
- (c) in particular, what other income, if any, is applicable for his maintenance, education or benefit;

and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(3) During the minority of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in authorised investments, and shall hold those accumulations as follows—

- (a) if such person—
 - (i) attains the age of eighteen years, or marries under that age, and his interest in such income during his minority or until his marriage is a vested interest; or
 - (ii) on attaining the age of eighteen years or on marriage under that age becomes entitled to the property from which such income arose in fee simple or absolutely;

the trustees shall hold the accumulations in trust for such person absolutely, but

without prejudice to any provision with respect thereto contained in any settlement by him made under any statutory powers during his minority, and so that the receipt of such person after marriage, and though still a minor, is a good discharge; and

- (b) in any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes, and so that, if such property is land held upon the statutory trusts, such accumulations shall be held upon the same trusts as if the same were capital money arising therefrom;

but the trustees may, at any time during the minority of such person if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

(4) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing in *loco parentis* to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient) be such rate as is fixed by rules of court.

(5) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the minority of the annuitant shall be held in trust for the annuitant or his personal representative absolutely.

45. (1) Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may,

in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and such payment or application may be made notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs, so, however, that—

- (a) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property; and
- (b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share; and
- (c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.

(2) Trustees having power to act under subsection (1) shall keep under review the question of whether to do so, and in deciding whether to do so shall have regard to—

- (a) the requirements of every person for whose advancement or benefit they could pay or apply any capital money;
- (b) the circumstances of the case generally;
- (c) in particular, what other money, if any, is applicable for the advancement or benefit of such persons.

Protective trusts

46. (1) Where any income, including an annuity or other periodical payment, is directed to be held on protective trusts for the benefit of any person (in this section called "the principal beneficiary") for the period of his life or for any less period, then, during that period (in this section called the "trust period") the said income shall, without prejudice to any prior interest, be held on the following trusts, namely—

- (a) upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advancement under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;
- (b) if the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons, that is to say—
 - (i) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any; or
 - (ii) if there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he had died intestate, be entitled to the trust property

or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be;

as the trustees think fit.

(2) The trustees, in exercise of their discretion under subsection (1)(b)—

(a) need not apply for the purposes stated therein the whole or any part of the income in any year;

(b) may apply for those purposes any income accrued but unapplied in any previous year.

(3) Trustees having power to act under subsection (1)(b) shall keep under review the question of whether to do so, and in deciding whether to do so, and in doing so, shall have regard to—

(a) the requirements of every person mentioned therein;

(b) the circumstances of the case generally;

(c) in particular, what money, if any, is applicable for the maintenance, support or benefit of such persons.

(4) This section has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.

(5) Nothing in this section operates to validate any trust which would, if continued in the instrument creating the trust, be liable to be set aside.

47. (1) Subject to section 54, any trustee being—

Remuneration

(a) a solicitor or other person engaged in any profession or business is entitled to be paid all usual professional or proper charges for business transacted, time expended and acts done by him or any partner of his in connection with the trust, including acts which a trustee not being in any profession or business could have done personally;

(b) a trust corporation is entitled to be paid remuneration in accordance with its usual terms and conditions as to acceptance of trusts current at the date of its appointment as trustee;
and such charges or remuneration shall be paid out of capital or income or partly out of capital and partly out of income as the trustee thinks appropriate.

(2) Such charges or remuneration may, on the application of any beneficiary or co-trustee, be reviewed by the court as to their fairness and reasonableness and, on such review, the court may make such order as to their variation and as to their payment as it thinks fit.

(3) Any charges or remuneration to which a trustee on the death of any person is entitled under this section or any express provision in the will creating the trust rank as administration expenses and are entitled to priority accordingly.

PART V

APPOINTMENT AND DISCHARGE OF TRUSTEES

48. (1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the State for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or is a minor, then, subject to the restrictions imposed by section 38 of the Land Law and Conveyancing Act, 1981, on the number of trustees—

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust;
or

(b) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, or, where all the trustees wish to retire and to be discharged from the trust, the retiring trustees;

Power to appoint
new or additional
trustees

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may, by writing, appoint one or more other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased, remaining out of the State, desiring to be discharged, refusing, or being unfit or being incapable, or being a minor, as aforesaid.

(2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and the provisions of this section apply accordingly, but subject to the restrictions imposed by section 38 of the Land Law and Conveyancing Act, 1981, on the 1981 No. number of trustees.

(3) Where a corporation being a trustee is or has been dissolved, either before or after the commencement of this Act, then for the purposes of this section and of any enactment replaced thereby, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.

(4) The power of appointment given by subsection (1) or any similar previous enactment to the personal representatives of a last surviving or continuing trustee are and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.

(5) But a sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, have and shall be deemed always to have had power, at any time before renouncing probate, to exercise the power of appointment given by this section, or by any similar previous enactment, if willing to act for that purpose and without thereby accepting the office of executor.

(6) Where a sole trustee, other than a trust corporation, is or has been originally appointed to act

in a trust, or where, in the case of any trust, there are not more than three trustees (none of them being a trust corporation) either original or substituted and whether appointed by the court or otherwise, then and in any such case—

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or

(b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being;

may, by writing, appoint another person or other persons (whether or not being the persons exercising the power) to be an additional trustee or additional trustees, but it is not obligatory to appoint any additional trustee, unless the instrument, if any, creating the trust, or any statutory enactment, provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.

(7) Every new trustee appointed under this section as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, has the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(8) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee including a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(9) Where a trustee is incapable, by reason of mental illness within the meaning of the Mental Health Act, 1975, of exercising his functions as trustee and is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by virtue of subsection (1)(b), unless leave to make the appointment has been given by the authority having jurisdiction under Part VII of the Mental Health Act, 1975.

49. (1) On the appointment of a trustee for the whole or any part of trust property—

Supplementary provisions as to appointments

- (a) the number of trustees may, subject to the restrictions imposed by section 38 of the Land Law and Conveyancing Act, 1981, on the number of trustees, be increased; and
- (b) a separate set of trustees, not exceeding four, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed, then, save as hereinafter provided, one separate trustee may be so appointed; and
- (c) it is not obligatory, save as hereinafter provided, to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but, except where only one trustee was originally appointed, and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee is not discharged from his trust unless there will be either a trust corporation or at least two individuals to act as trustees to perform the trust; and
- (d) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.

(2) Nothing in this Act authorises the appointment of a sole trustee, not being a trust corporation, where the trustee, when appointed, would not be able

to give valid receipts for all capital money arising under the trust.

Evidence as to
a vacancy

50. (1) A statement, contained in any instrument coming into operation after the commencement of this Act by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the State for more than twelve months or refuses or is unfit to act, or incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession, is, in favour of a purchaser of a legal estate, conclusive evidence of the matter stated.

(2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, is valid.

Retirement with-
out new appoint-
ment

51. (1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, then, if such trustee as aforesaid by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, the trustees desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

Vesting of trust
property

52. (1) Where by a deed a new trustee is appointed to perform any trust, then—

(a) if the deed contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, vests in the

persons who by virtue of the deed become or are the trustees for performing the trust, the deed operates, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate, interest or right to which the declaration relates; and

- (b) if the deed is made after 1st May, 1939, and does not contain such a declaration, the deed, subject to any express provision to the contrary therein contained, operates as if it had contained such a declaration by the appointor extending to all the estates, interests and rights with respect to which a declaration could have been made.

(2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, then—

- (a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustee, and by the other person, if any, empowered to appoint trustees, the deed, without any conveyance or assignment, operates to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates; and
- (b) if the deed is made after 1st May, 1939 and does not contain such a declaration, the deed, subject to any express provision to the contrary therein contained, operates as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interests and rights with respect to which a declaration could have been made.

(3) An express vesting declaration, whether made before or after the commencement of this Act, notwithstanding that the estate, interest or right to be vested is not expressly referred to, and provided that

the other statutory requirements were or are complied with, operates and shall be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2), as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons.

(4) This section does not extend to—

- (a) land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;
- (b) subject to subsection (5), any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under an Act of Parliament.

(5) Where after the commencement of this Act—

- (a) any instrument of assignment of any such property as is mentioned in subsection (4)(b) states that the transferee is to take the said property as trustee; or
- (b) the owner of any such property aforesaid executes an instrument declaring himself to be trustee thereof;

in the books kept by the company or other body there shall be entered—

- (i) against the name of the transferee when his name is entered in the books; or
- (ii) against the name of the owner on production to the company or other body of the declaration of trust;

as the case may be, the words “as trustee” and any property the subject of such assignment or declaration of trust thereupon ceases to be property to which, by the said subsection (4)(b), this section does not extend.

(6) No entry in any book made in accordance with subsection (5) operates to give notice of the terms of any trust to any company or other body by whom

that book is kept or to any person inspecting that book or to require any such company, body or person to inquire as to the terms of any trust.

(7) For the purposes of registration of the deed—

- (a) under Part IV of the Land Registration ^{1981 No.} Act, 1981, the person or persons making the declaration, expressly or impliedly, shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act;
- (b) where it relates to registered land, the said person or persons shall be deemed the transferor or transferors, and the transfer shall be deemed to be made by him or them under a power conferred by this Act.

PART VI

POWERS OF THE COURT

53. (1) The court may, whenever it is expedient to appoint a trustee or trustees and it is found inexpedient, difficult or impracticable to do without the assistance of the court, make an order appointing—

Appointment of trustees by the court

- (a) a trustee or trustees where none has been appointed previously;
- (b) a new trustee or new trustees in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

(2) In particular and without prejudice to the generality of subsection (1), the court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, or is incapable by reason of mental illness within the meaning of the Mental Health Act, 1975, of exercising his functions as trustee, or is bankrupt, or is a corporation which is in liquidation or has been dissolved, or who for any other reason whatsoever appears to the court to be

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(3) An order under this section, and any consequential vesting order or conveyance, does not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(4) Nothing in this section gives power to appoint an executor or administrator.

Authorisation of remuneration

54. The court may, in any case in which the circumstances appear to it so to justify, authorise any trustee, other than the Public Trustee, to charge such remuneration for his services as trustee as the court may think fit.

Powers of trustees appointed by the Court

55. Every trustee appointed by a court of competent jurisdiction has, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Vesting orders of land

56. (1) Subject to subsection (2), where—

(a) the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power; or

(b) a trustee entitled to or possessed of any land or estate or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person—

(i) is under disability; or

(ii) is out of the jurisdiction of the court; or

(iii) cannot be found, or, being a corporation, has been dissolved,
or

(c) it is uncertain who was the survivor of two or more trustees jointly entitled to or

- (d) it is uncertain whether the last trustee known to have been entitled to or possessed of any estate or interest in land is living or dead; or
- (e) there is no personal representative of a deceased trustee who was entitled to or possessed of any estate or interest in land, or where it is uncertain who is the personal representative of the deceased trustee who was entitled or possessed of any estate or interest in land; or
- (f) a trustee jointly or solely entitled to or possessed of any estate or interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or estate or interest or release of the right, to convey the land or estate or interest or to release the right, and has wilfully refused or neglected to convey the land or estate or interest or release the right for twenty-eight days after the date of the requirement;
- (g) land or any estate or interest therein is vested in a trustee whether by way of mortgage or otherwise, and it appears to the court to be expedient;

the court may make an order (in this Act referred to as a "vesting order") vesting the land or estate or interest therein in any such person in any such manner and for any such estate or interest as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct.

- (2) Where an order made under subsection (1)—
 - (a) is consequential on the appointment of a trustee, the land or estate or interest therein shall be vested for such estate or interest as the court may direct in the persons who on the appointment are the trustees; and
 - (b) relates to a trustee entitled or formerly entitled jointly with another person, and

such trustee is under disability or out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved, the land, estate or interest or right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint.

(3) Where any vesting order relates to registered land and would have had the effect of vesting an estate or interest in any person if it had related to unregistered land, it shall, upon lodgment with the Land Registrar, be registered by him under Part X of the Land Registration Act, 1981, as if it were an instrument of transfer executed by the proprietor in favour of that person.

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(4) Until such vesting order is so registered, it has no effect as against a purchaser from the proprietor of the said land.

Contingent rights
of unborn
persons

57. Where any estate or interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of that estate or interest on any trust, the court may make an order—

- (a) releasing the land or estate or interest therein from the contingent right; or
- (b) vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

Minor mortgagee

58. Where any person entitled to or possessed of any estate or interest in land, or entitled to a contingent right in land, by way of security for money, is a minor, the court may make an order vesting or releasing or disposing of the estate or interest in the land or the right in like manner as in the case of a trustee under disability.

Personal repre-
sentative of
mortgagee

59. Where—

- (a) a mortgagee of land has died without

receipt of the rents and profits thereof;
and

- (b) the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that person consents to an order for the reconveyance of the land;

the court may make an order vesting the land in such person in such manner and for such estate or interest as the court may direct, where—

- (i) a personal representative or devisee of the mortgagee is out of the jurisdiction of the court or cannot be found, or, being a corporation, has been dissolved; or
- (ii) a personal representative or devisee of the mortgage on demand made by or on behalf of a person entitled to require a conveyance of the land has stated in writing that he will not convey the same or does not convey the same for the space of twenty-eight days after a proper instrument of conveying the land has been tendered to him by or on behalf of the person so entitled; or
- (iii) it is uncertain which of the several devisees of the mortgagee was the survivor; or
- (iv) it is uncertain whether the personal representative of the mortgagee or the survivor of several devisees of the mortgagee is living or dead; or
- (v) there is no personal representative to a mortgagee who has died intestate as to the land, or where the mortgagee has died, and it is uncertain who is his personal representative or devisee.

60. Where any court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any estate or interest in the land, or entitled to a contingent right therein, and is party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be

Sale or mortgage
of land

deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Act, and the court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate or interest as the court thinks fit in the purchaser or mortgagee or in any other person.

Specific
performance

61. Where a judgment is given for the specific performance of a contract concerning any estate or interest in land, or for the sale or exchange of any estate or interest in land, or generally where any judgment is given for the conveyance of any estate or interest in land either in cases arising out of the doctrine of election or otherwise, the court may declare—

- (a) that any of the parties to the action are trustees of any estate or interest in the land or any part thereof within the meaning of this Act; or
- (b) that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his lifetime a party to the contract or transaction concerning which the judgment is given, are the estates or interests of persons who, on coming into existence, would be trustees within the meaning of this Act;

and thereupon the court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

Effect of vesting
order

62. Subject to section 56(4), a vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a trustee, have the effect—

- (a) as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate or interest as the court directs; or
- (b) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and

had duly executed all proper conveyances of the land for such estate or interest as the court directs;

and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

63. In all cases where a vesting order can be made Person to convey under any of the foregoing provisions, the court may, if it is more convenient, appoint a person to convey the land or any interest therein or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

64. (1) Subject to subsection (2), where—

Stock and things
in action

- (a) the court appoints or has appointed a trustee, or where the trustee has been appointed out of court under any statutory or express power; or
- (b) a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person to stock or to a thing in action—
 - (i) is under disability; or
 - (ii) is out of the jurisdiction of the court; or
 - (iii) cannot be found, or, being a corporation, has been dissolved; or
 - (iv) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been made to him by the person so entitled; or

- (v) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action for twenty-eight days next after an order of the court for that purpose has been served on him;
- (c) it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead; or
- (d) stock is standing in the name of a deceased person whose personal representative is under disability; or
- (e) stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the court to be expedient;

the court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover the thing in action, in any such person as the court may appoint.

(2) Where—

- (a) an order made under subsection (1) is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and
- (b) the person whose right is dealt with by an order made under subsection (1) was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the court may appoint.

(3) In all cases where a vesting order can be made under this section, the court may, if it is more convenient, appoint some proper person to make or join in making the transfer, so, however, that the person appointed to make or join in making a transfer of stock shall be some proper officer of the bank, or the company or society whose stock is to be transferred.

(4) The person in whom the right to transfer or call for the transfer of any stock vested by an order of the court under this Act, may transfer the stock to himself or any other person, according to the order, and all companies shall obey every order under this section according to its tenor.

(5) After notice in writing of an order under this section it shall not be lawful for any company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(6) The court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under the provisions of this Act is to be exercised.

(7) The provisions of this Act as to vesting orders apply to shares in ships registered under the Acts or other law relating to merchant shipping as if they were stock.

65. The powers conferred by this Act as to vesting Charity property orders may be exercised for vesting any estate or interest in land, stock, or thing in action in any trustee of a charity or society over which the court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the court under its general or statutory jurisdiction.

66. Where a minor is beneficially entitled to any Maintenance property the court may, with a view to the application of the capital or income thereof for the maintenance, education, or benefit of the minor, make an order—

- (a) appointing a person to convey such property; or
- (b) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the court may think fit.

67. Where a vesting order is made as to any Vesting orders conclusive evidence land under this Act founded on an allegation—

- (a) of the personal incapacity of a trustee or mortgagee; or
- (b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved; or
- (c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor; or
- (d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage is living or dead; or
- (e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested;

the fact that the order has been so made is conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section does not prevent the court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

Variation of trusts

68. (1) Subject to subsection (2), where property is held on trusts arising under any will, settlement or other disposition, the court may if it thinks fit by order approve or authorise on behalf of—

- (a) any person having, directly or indirectly, an estate or interest, whether vested or contingent, under the trusts who by reason of minority or other incapacity is incapable of assenting; or
- (b) any person (whether ascertained or not) who may become entitled, directly or indirectly, to an estate or interest under

the trusts as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons, so, however, that this paragraph shall not include any person who would be of that description, or a member of that class, as the case may be, if the said date had fallen or the said event had happened at the date of the application to the court; or

(c) any person unborn; or

(d) any person in respect of any discretionary interest of his under protective trusts where the interest of the principal beneficiary has not failed or determined;

any arrangement, scheme or transaction (by whomsoever proposed, and whether or not there is any other person beneficially interested who is capable of assenting thereto) varying or revoking all or any of the trusts, or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts.

(2) Except by virtue of subsection (1)(d), the court shall not approve or authorise an arrangement, scheme or transaction on behalf of any person unless the carrying out thereof would be for the benefit of that person.

(3) In subsection (1)(d), "protective trusts" means the trusts specified in section 46(1)(a) and (b) or any like trusts, "the principal beneficiary" has the same meaning as in the said section 46(1) and "discretionary interest" means an interest arising under the trust specified in section 46(1)(d) or any like trust.

(4) The question whether the carrying out of any arrangement, scheme or transaction would be for the benefit of any person falling within subsection (1)(a) shall be determined by order of the authority having jurisdiction under Part VII of the Mental Health Act, 1975, if that person is a patient within the meaning of the said Part.

1975 No. 30

(5) The court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.

(6) An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

Applications
for orders

69. (1) An order under this Act for the appointment of a new trustee or concerning any estate or interest in land, stock, or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2) An order made under this Act concerning any estate or interest in land, stock, or thing in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

Judgment in
absence of trustee

70. Where in any action the court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the court, and that he cannot be found, the court may hear and determine the action and give judgment therein against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Costs charged on
trust estate

71. The court may order the costs and expenses of and incidental to any application for an order under this Act or for any order or declaration in respect of any property subject to a trust, or of and incidental to any such order or declaration, or any document enacted or act performed in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court may seem just.

Personal liability
of trustee

72. (1) If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may

be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same.

(2) In this section, "trustee" includes a person who has ceased to be a trustee and the personal representative of a deceased trustee.

73. (1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, if it thinks fit, notwithstanding that the beneficiary was a minor at the date of the said breach, make such order as to the court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him.

Impounding a beneficiary's interest

(2) This section applies to breaches of trust committed as well before as after the commencement of this Act.

74. (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into court; and the same shall, subject to rules of court, be dealt with according to orders of the court.

Payment into court

(2) The receipt or certificate of the proper officer is a sufficient discharge to trustees for the money or securities so paid into court.

(3) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the court may order the payment into court to be made by the majority without the concurrence of the other or others.

(4) Where any such money or securities are deposited with any banker, broker, or other depository, the court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court.

(5) Every transfer, payment and delivery made in pursuance of any such order is valid and takes effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid, or delivered.

PART VII

CHARITABLE AND OTHER PURPOSE TRUSTS

Recreational charities

75. (1) Subject to subsection (4), it is and shall be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare, but this shall not be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.

(2) The requirement in subsection (1) that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless—

(a) the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and

(b) either—

(i) those persons have need of such facilities by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances; or

(ii) the facilities are to be available to members of the public at large.

(3) Subject to the said requirement, subsection (1) applies in particular to the provision of facilities at village halls, community centres and women's institutes, and to the provision and maintenance of grounds and buildings to be used for the purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.

(4) Nothing in this section—

(a) shall be taken to restrict the purposes that are to be regarded as charitable independently thereof; or

- (b) applies to make charitable any trust, or validate any disposition of property if, before the commencement of this Act, that property or any property representing or forming part of it, or any income arising from such property, has been paid or conveyed to, or applied for the benefit of, persons entitled by reason of the invalidity of the trust or corporation; or
- (c) affects any order or judgment made or given (whether before or after the passing of this Act) in legal proceedings begun before that day; or
- (d) requires anything properly done before that day, or anything done or to be done in pursuance of a contract entered into before that day, to be treated for any purposes as wrongful or ineffectual;
- (e) except for the purposes of taxation, requires anything to be treated for the purposes of any enactment as having been charitable at a time before the date of the passing of this Act, so as to invalidate anything done or any determination given before that date.

76. (1) Subject to subsection (2), the circumstances in which the original purposes of a charitable gift can be altered to allow the property given or part of it to be applied *cy-près* are as follows—

Occasions for applying property *cy-près*

- (a) where the original purposes, in whole or in part—
 - (i) have been as far as may be fulfilled; or
 - (ii) cannot be carried out, or not according to the directions given and to the spirit of the gift; or
- (b) where the original purposes provide a use for part only of the property available by virtue of the gift; or
- (c) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively

used in conjunction, and to that end can suitably, regard being had to the spirit of the gift, be made applicable to common purposes; or

- (d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable, regard being had to the spirit of the gift, or to be practical in administering the gift; or
- (e) where the original purposes, in whole or in part, have, since they were laid down—
 - (i) been adequately provided for by other means; or
 - (ii) ceased, as being useless or harmful to the community or for other reason, to be in law charitable; or
 - (iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the spirit of the gift.

(2) Subsection (1) does not affect the conditions which must be satisfied in order that property given for charitable purposes may be applied *cy-près*, except in so far as those conditions require a failure of the original purposes.

(3) In authorising property comprised in a charitable gift to be applied *cy-près*, the court has the power to alter—

- (a) the purposes for which the property given may be applied;
- (b) the provisions and conditions governing the application of the property for those purposes;

so as to secure that the property is applied as beneficially as is possible, consistently with the spirit of the gift.

(4) In ascertaining the spirit of a gift for the purpose of subsection (1) or (3), the court may take into account the conduct, and any habits or actions, of the donor and any written or oral declaration made by him at any time in relation to the gift.

(5) References in subsections (1) and (2) to the original purposes of a gift shall be construed, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.

(6) It is hereby declared that a trust for charitable purposes places a trustee under a duty, where the case permits and requires the property or some part of it to be applied *cy-près*, to secure its effective use for charity by taking steps to enable it to be so applied.

77. (1) Property given for specific charitable purposes which fail shall be applicable *cy-près* as if given for charitable purposes generally, where it belongs—
Application
cy-près of gifts
of donors unknown
or disclaiming

- (a) to a donor who, after such advertisements and inquiries as are reasonable, cannot be identified or cannot be found; or
- (b) to a donor who has executed a written disclaimer of his right to have the property returned.

(2) For the purposes of this section property shall be conclusively presumed (without any advertisement or inquiry) to belong to donors who cannot be identified, in so far as it consists—

- (a) of the proceeds of cash collections made by means of collecting boxes or by other means not adapted for distinguishing one gift from another; or
- (b) of the proceeds of any lottery, competition, entertainment, sale or similar money-raising activity, after allowing for property given to provide prizes or articles for sale or otherwise to enable the activity to be undertaken.

(3) The court may direct that property not falling within subsection (2) shall for the purposes of this

section be treated (without any advertisement or inquiry) as belonging to donors who cannot be identified, where it appears to the court either—

- (a) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property; or
- (b) that it would be unreasonable, having regard to the nature, circumstances and amount of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.

(4) Where property is applied *cy-près* by virtue of this section, the donor shall be deemed to have parted with all his interest at the time when the gift was made, but where property is so applied as belonging to donors who cannot be identified or cannot be found, and is not so applied by virtue of subsection (2) or (3)—

- (a) the scheme shall specify the total amount of that property;
- (b) the donor of any part of that amount shall be entitled if he makes a claim not later than six months after the date on which the scheme is made, to recover from the charity for which the property is applied a sum equal to that part, less any expenses properly incurred by the trustees of the charity after that date in connection with claims relating to his gift;
- (c) the scheme may include directions as to the provision to be made for meeting any such claim.

(5) For the purposes of this section, charitable purposes shall be taken to fail where any difficulty in applying property to those purposes make that property or the part not applicable *cy-près* available to be returned to the donors.

(6) In this section, except in so far as the context otherwise requires, references to a donor include persons claiming through or under the original donor,

and references to property given include the property for the time being representing the property originally given or property derived from it.

(7) This section applies to property given for charitable purposes, notwithstanding that it was so given before the commencement of this Act.

78. (1) Where—

Imperfect trusts

(a) property is given for the purposes so described that, consistently with the terms of the gift, the property could all or substantially be used for charitable purposes but could equally well be used wholly or partly for purposes which are not charitable; and

(b) the gift would, but for this section, be invalid;

the gift shall have effect (whether or not it contains any indication of a charitable intention) as a gift for such charitable purposes as may be determined by order of the court in accordance with subsection (2).

(2) Where the terms of the gift and the surrounding circumstances appear to the court to show a predominant intention on the part of the donor to further a particular charitable purpose, the court shall, in making an order under subsection (1), have regard, so far as practicable, to that intention.

(3) Where—

(a) property is disposed of by way of successive gifts so that a gift is dependent upon a prior gift; and

(b) the prior gift has been made the subject of a scheme under this section;

any gift dependent upon the prior gift shall have the like effect as it would have had if the prior gift had at all times been for the purposes determined by that scheme.

PART VIII

GENERAL PROVISIONS

79. (1) This Act, except where otherwise expressly Application of Act
provided, applies to trusts including, so far as this

Act applies thereto, executorships and administratorships constituted or created either before or after the commencement of this Act.

(2) The powers and duties conferred by this Act on trustees are in addition to the powers conferred and duties imposed by the instrument, if any, creating the trust, but those powers and duties, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

(3) This Act does not affect the legality or validity of anything done before the commencement of this Act, except as otherwise hereinbefore expressly provided.

Indemnity

80. This Act, and every order purporting to be made under this Act, is a complete indemnity to all persons for any acts done pursuant thereto, and it is not necessary for any person to inquire concerning the priority of the order, or whether the court by which the order was made had jurisdiction to make it.

**Rules of court
1962 No. 12**

81. Rules of court may be made by the Rules Committee under section 76 of the Supreme Court of Judicature Act, 1962, for regulating the practice and procedure in respect of proceedings of any kind under this Act.

Prescribed matters

82. The Minister may make rules or regulations governing any matter to be prescribed under this Act or respecting any matter necessary or convenient to carry out effectively the intent and purposes of this Act.

**Repeals and
amendments
First
Schedule**

83. (1) The enactments specified in the first column of the First Schedule are repealed to the extent specified in the second column thereof.

**Second
Schedule**

(2) The enactments specified in the first column of the Second Schedule are amended in the manner specified in the second column thereof.

(3) All statutes of general application of the Imperial Parliament relating to the subject-matter of

this Act and still in force in the State by virtue of section 12 of the Supreme Court of Judicature Act, 1962 No. 12 1962, are repealed to the extent that they so relate.

84. References in any document to any provision repealed by this Act shall be construed as references to the corresponding provision of this Act. Adaptation of references

(Section 83)

FIRST SCHEDULE

REPEALS

FIRST COLUMN <i>Enactment</i>	SECOND COLUMN <i>Extent of Repeal</i>
Trustee Ordinance, Ch. 8. No. 3	The whole Ordinance.
Public Trustee Ordinance, Ch. 8. No. 4	The whole Ordinance.
Trustee (Amendment) Act, No. 15 of 1974	The whole Act.

(Section 83)

SECOND SCHEDULE

AMENDMENTS

FIRST COLUMN <i>Enactment</i>	SECOND COLUMN <i>Extent of Amendment</i>
Remedies of Creditors Ordinance, Ch. 6. No. 2	In section 46 substitute the words "Trustee Act, 1981" for the words "Trustee Ordinance".
Slum Clearance and Housing Ordinance, Ch. 37. No. 2	In section 21(4) substitute the words "Trustee Act, 1981" for the words "Trustee Ordinance".
Independence Development Loans Act, No. 6 of 1964	In section 2(d) substitute the words "under section 16 of the Trustee Act, 1981" for the words "by section 3 of the Trustee Ordinance" and "Act No. of 1981" for the marginal note.
Crown Liability and Proceedings Act, No. 17 of 1966	In section 41(1)(h) substitute the words "Trustee Act, 1981" for the words "Public Trustee Ordinance" and "Act No. of 1981" for the first marginal note.
Mental Health Act, No. 30 of 1975	In section 37(2) substitute the words "Act, 1981" for the word "Ordinance" and "Act No. of 1981" for the marginal note.
	In section 38(2) and (3) substitute the words "Succession Act, 1981" for the words "Wills and Probate Ordinance" and in subsection (2) "Act No. of 1981" for the marginal note.

Passed in the House of Representatives this 22nd day of April, 1981.

R. L. GRIFFITH
Acting Clerk of the House

Passed in the Senate this 16th day of June, 1981.

M. CARRINGTON
Acting Clerk of the Senate