

LAWS OF GUYANA

PUBLIC TRUSTEE ACT

CHAPTER 13:01

Act

15 of 1910

Amended by

9 of 1912

16 of 1918

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1929 Ed.
c. 245
1953 Ed.
c. 48

CHAPTER 13:01
PUBLIC TRUSTEE ACT

15 of 1910 **An Act to provide for the appointment of a Public Trustee.**

[10th SEPTEMBER, 1910]

Short title. **1. This Act may be cited as the Public Trustee Act.**

Interpretation. **2. In this Act—**

“Court” means the High Court or any judge thereof;

“estate” includes every description of movable and immovable property, goods, chattels, money, securities for money, and all writings relating to or evidencing any right or title to any property, and all rights of action and claims;

“private executor or administrator” means an executor or administrator other than the Public Trustee;

“private guardian or committee, or receiver” means a

guardian or committee, or receiver, other than the Public Trustee;

“trust” includes every case where any person acts as executor, guardian, committee, administrator, receiver, or sequestrator, and every case where any person is appointed by the Court, or under any Act, to administer the property of another person for his benefit;

c. 12:02 “will” has the same meaning as in the Wills Act.

APPOINTMENT OF PUBLIC TRUSTEE

Office. 3. (1) There shall be a Public Trustee for the purposes of this Act.

(2) The Public Trustee shall be a body corporate under that name with perpetual succession, and may sue and be sued thereunder.

Official Receiver to be Public Trustee till other appointment made. c. 12:22 4. Unless and until some person is appointed to be the Public Trustee, the Official Receiver appointed under the Official Receiver Act shall be the Public Trustee, and anyone lawfully discharging the duties of Official Receiver under that Act, shall have all the rights, powers and liabilities, and may discharge any of the duties, of the Public Trustee.

POWERS AND DUTIES OF PUBLIC TRUSTEE

General powers and duties. 5. (1) Subject to and in accordance with this Act, the Public Trustee may, if he thinks fit—

(a) act in the administration of the estates of deceased persons;

(b) act as executor or administrator of a will;

- (c) act as guardian or committee, or receiver, of the property of any infant or other person under disability, as the case may be; and
- (d) take possession of and administer the estate of any person who is absent from Guyana and who is not fully represented by any attorney in Guyana, and who has left debts unpaid.

(2) Subject to this Act, 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 Act, and shall have all the same powers, duties and liabilities, and be entitled to the same rights and immunities and be subject to the control and orders of the Court, as a private person 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 a 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 when acting under section 11, or except in the cases in which he may be authorised to do so by rules made hereunder, or any trust under a deed of arrangement for the benefit of creditors.

(1) In the administration of estates

Administration
of estates.

6. (1) Anyone, who, in the opinion of the Public Trustee, would be entitled to apply to the Court for the appointment of an administrator of the estate of a deceased person, may apply to the Public Trustee to administer the

estate, and 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 by him and deposited in the Deeds Registry to administer the estate, he shall have the same power as if he had been appointed by a last will of the deceased person to be executor.

(3) For the purposes of the administration the Public Trustee may exercise those administrative powers and authorities of the High Court which may be conferred upon him by rules under this Act, subject to the conditions imposed by the rules.

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

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

(2) As Executor

Appointment
as executor.

7. The Public Trustee, by that name or any other sufficient description, may be appointed executor of a will by the testator, in the same manner as if he were a private

executor and in that case he shall have the same powers as if he were a private executor.

(3) *As Guardian, or Committee, or Receiver*

As guardian
and committee.

8. The Public Trustee may, by that name or any other sufficient description, be appointed by will or by order of the Court guardian, or committee, or receiver, of the property of any infant or other person under disability, in the same manner as if he were a private person and in those cases he shall have the same powers as if he were a private guardian, or committee, or receiver.

(4) *In the Administration of Absentee's Estates*

Creditor may
apply to Public
Trustee to
administer
estate of
absentee.

9. (1) Any creditor of a person absent from Guyana and not represented by any attorney in Guyana appointed under a duly registered power of attorney, may apply to the Public Trustee to take possession of and administer the estate of the absent person.

(2) Upon the application being made, and upon the Public Trustee being satisfied that the person is so absent and unrepresented as aforesaid, and that the applicant is *bona fide* his creditor, the Public Trustee may take possession of the estate; but the Public Trustee shall not take possession of the estate unless he is satisfied that the assets thereof are probably sufficient to defray the cost of taking possession thereof and administering it.

Absentee to be
communicated
with if possible.

10. The Public Trustee before taking possession under this Act of the property of an absent person who is known and with whom he can communicate, shall communicate in writing with that person, and shall not interfere, except in case of an emergency which in his opinion makes it necessary to take possession of the estate for the protection of the creditors of the absentee, and in that case he shall take immediate possession.

Proceedings on taking possession of estate of absent owner.

11. (1) Where the Public Trustee takes possession of the estate or property of the absent person, he shall give immediate intimation thereof by notice published in the *Gazette* and in one newspaper at least three times, with an interval of a week between each publication.

(2) The Public Trustee shall use due diligence to ascertain where the absent person is and his place of residence and address, and, if they can be ascertained, shall use due diligence to inform him that the Public Trustee has so taken possession, and shall require him to appoint an attorney in Guyana to represent his interests.

(3) Where the place of residence and address of the person cannot be ascertained, the Public Trustee shall apply to the Court for directions.

(4) Where the person refuses or neglects, without sufficient cause, to appoint an attorney in Guyana within a reasonable time after being required to do so, the Public Trustee shall apply to the Court for directions.

(5) Where the Public Trustee applies to the Court under this section, the Court, if satisfied—

- (a) that the place of residence and address of the person cannot be ascertained; or
- (b) that he has been afforded sufficient opportunity to enable him to appoint an attorney in Guyana and neglects to do so,

shall direct that the estate or property shall be forthwith realised, and after the expiration of the time fixed by the Court the Public Trustee shall deal with the proceeds and

distribute them amongst the creditors of the person in the same manner as if he had been adjudged insolvent.

(6) Where the Court is not so satisfied, or where the person is under any disability, the Court shall give any directions the circumstances may require.

(7) Until the Public Trustee receives directions from the Court, he shall administer the estate or property according to the usual legal course of administration in Guyana by attorneys of absent parties:

Provided that, where it appears that the owner has committed an act of insolvency or that the claims on the estate exceed the assets, the Public Trustee shall forthwith apply to the Court, and the Court, if satisfied of the fact, shall thereupon adjudge the estate to be insolvent, and it shall then be administered not under this Act but under, and in accordance with, the Insolvency Act as if the owner thereof had been adjudged insolvent.

c. 12:21

FINANCIAL PROVISIONS

General revenue chargeable with liability incurred by Public Trustee.

12. (1) The State shall be liable to make good all sums required to discharge any liability which the Public Trustee, if he were a private trustee, executor, or administrator, would be personally liable to discharge, except where the liability is one to which neither he nor any of his officers has in any way contributed, and which neither he nor any of his officers could, by the exercise of reasonable diligence, have averted, and in that case the Public Trustee shall not, nor shall the State, be subject to any liability.

(2) All sums payable in pursuance of this section are hereby charged on and shall be paid out of the Consolidated Fund.

Publication of list of moneys

13. (1) The Public Trustee shall, in the months of

unclaimed for
six months.

February and August in each year, prepare and publish a list of all moneys in his hands which have been unclaimed for six months and upwards, and shall publish therewith a notice calling on all persons desiring to claim any of those moneys to establish their claim within five years from the date when the moneys came into the hands of the Public Trustee, and that date shall be expressed and set forth in the notice.

(2) If no claim to any of the moneys is made and established within the time specified, they shall be paid to the Accountant General.

Right of
persons to
moneys paid to
Accountant
General barred.

(3) All moneys paid over by the Public Trustee to the Accountant General, as provided by this section, shall become the property of the State and all right, title, and interest of every person in and to them shall be barred:

Provided that nothing herein contained shall be construed as in any way affecting the power of the National Assembly to authorise the payment of any sum of money paid over to the Accountant General under this Act to anyone whom they may consider to have an equitable claim thereto, notwithstanding that all claims to payment of the money may be barred in law.

Moneys paid to
Accountant
General under
Indian Labour
Act.
c. 98:02

(4) The last preceding subsection shall apply to all moneys paid over by the Official Receiver to the Accountant General under section 229 of the Indian Labour Act, and which remain unclaimed for five years.

Moneys
received by
Public Trustee
to be paid into
bank.

14. (1) All moneys received by the Public Trustee or Official Receiver on behalf of any trusts or estates administered by him, or received from an assignee in insolvency, shall, as soon after the receipt thereof as is practicable, be paid into the bank or banks from time to time directed by the Minister responsible for finance.

Payments to be
made as

(2) All payments by the Public Trustee or Official

directed by the Minister. Receiver of those moneys shall be made in the manner from time to time directed by the Minister responsible for finance in general instructions or regulations.

Sales at public auction. **15.** (1) Where it becomes necessary to sell at public auction any property belonging to an estate, trust, or company, which is being administered by the Official Receiver or Public Trustee under any Act other than an Act relating to insolvency, the property may be sold by the Official Receiver or Public Trustee personally, or by any officer or clerk of his department authorised by him.

(2) The Official Receiver and Public Trustee may charge a commission of three per cent on the proceeds of the sale.

SUPPLEMENTAL PROVISIONS

Appeal to the Court. **16.** (1) A person aggrieved by any act or omission or decision of the Public Trustee in relation to any trust or administration may apply to the Court, and the Court may make any order in the matter it thinks just.

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

Powers of Public Trustee. **17.** (1) The Public Trustee shall not, nor shall any of his officers, act under this Act for reward, except as hereby provided.

(2) The Public Trustee, subject to the rules made under this Act, may employ for the purposes of any trust or administration the attorneys-at-law, bankers, accountants, and brokers, or other persons, whom he considers necessary.

(3) Where a bond or security would be required from a private individual 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 that capacity, shall not be required to give bond or security, but shall be subject to the same liabilities and duties as if he had done so.

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

RULES

Rules.

18. Subject to negative resolution of the National Assembly, the Minister shall make rules for carrying into effect the objects of this Act, and in particular for all or any of the following purposes:

- (a) prescribing the trusts, administrations, or duties the Public Trustee is authorised to accept or undertake, and the security, if any, to be given by him and his officers;
- (b) the transfer to and from him of any property;
- (c) the accounts to be kept and an audit thereof;
- (d) the establishment and regulation of any branch office;
- (e) excluding any trusts or administrations from the operation of

this Act, or any part thereof;

- (f) the form and manner in which notices under this Act shall be given; and
- (g) the fees, whether by way of percentage or otherwise, to be charged in respect of the duties of the Public Trustee.

SUBSIDIARY LEGISLATION

R. 12/7/1911
Res. Of Leg.
Co. XX1/1956
4 of 1972

PUBLIC TRUSTEE RULES

made under section 18

Citation.

1. These Rules may be cited as the Public Trustee Rules.

TRUSTS AND ADMINISTRATIONS

Authorised trusts.

2. The Public Trustee may if he thinks fit accept and undertake any trust, administration or duty which he is authorised to accept or undertake under the Act, with the following provisos:—

- (a) He shall be bound to accept any appointment made by the Court under the Act.
- (b) When an application is made to administer the estate of a deceased person as provided by section 6 of the Act the Public Trustee is authorised to undertake such administration—
 - (i) where all the heirs join in the application;
 - (ii) where the heirs are unknown;
 - (iii) where the heirs are absent from Guyana and unrepresented;
 - (iv) where the heirs are under

disability;

(v) where their whereabouts are unknown; or

(vi) in any case in which the Court would in the opinion of the Public Trustee be empowered to appoint an administrator under the Deceased Persons Estates' Administration Act.

c. 12:01

(c) Save and except as provided by section 5(4) of the Act, and by this rule he shall not accept or undertake any trust, administration or duty which involves the management or carrying on of any business except where such management or carrying on is necessary only for the beneficial winding up of such business.

Application.

3. (1) Any application to the Public Trustee under section 6(1) or 9(1) of the Act shall be in writing and addressed to the Public Trustee at his office.

(2) On receipt of the application the Public Trustee may require to be supplied to him such evidence as to the particulars and value of the estate, the names of the persons interested or indebted to the estate and such other information relating thereto as he may consider it advisable to obtain in any particular case, and he may if he thinks fit call upon any such persons to state any objection they may have to his undertaking the administration of such estate.

Deposit of
guarantee may
be required.

4. The Public Trustee may require as a condition to his accepting the administration of any trust or estate that a deposit should be made with him of, or a guarantee given to his satisfaction for, the amount of any expenses which he may

[Subsidiary]

Public Trustee Rules

be likely to be put to, and any costs he may incur or be ordered to pay by reason of his undertaking the administration of any such trust or estate.

Withdrawal.

5. The Public Trustee may at any time for good and sufficient reason withdraw from the administration of any trust or estate.

Appointment
by the Court.

6. The last three preceding rules shall not apply when the Public Trustee is appointed by the Court

SECURITY

Security by
Public Trustee.

7. Security shall be given by the Public Trustee and such of his officers as the Minister responsible for finance may direct for the due performance of their duties, and for the due accounting for and payment of all moneys received by them in pursuance of the Act and these Rules. The security shall be for such sum and shall be given in such manner and form as the said Minister may order in each case, and the said Minister may at any time require the amount or nature of any such security to be varied.

ACCOUNTS

Separate
account.

8. A separate account shall be kept of every trust or estate administered by the Public Trustee.

c. 12:01

9. The provisions of section 46 of the Deceased Persons Estates Administration Act shall not apply to the Public Trustee when administering any estate under section 6 or 7 of the Act.

Inspection of
register and the
taking of copies
of any entry.

10. Upon an application in writing by or with the authority of any person interested in the trust property, the Public Trustee—

(a) shall permit the applicant or his

attorney-at-law or other authorised agent to inspect and take copies of any entry in any register relating to the trust or estate and (so far as the interest of the applicant in the trust property is or may be affected thereby) of any account, notice or other document in the custody of the Public Trustee;

- (b) shall at the expense of the applicant supply him or his attorney-at-law or other authorised agent with a copy of any such entry, account, or document as aforesaid, or of any extract therefrom;
- (c) shall give to such applicant or his attorney-at-law or other authorised agent such information respecting the trust or estate and the trust property as shall be reasonably requested in the application, and shall be within the power of the Public Trustee.

(2) Subject as aforesaid the Public Trustee shall observe strict secrecy in respect of every trust or estate in course of administration by him.

AUDIT

Auditing of accounts.

11. When the Public Trustee acts in any trust or administration by virtue of any appointment by the Court he shall be an accounting party to the Court, and his accounts shall be audited, and any securities held by him verified in accordance with any rules or orders of the Court now in force or which may from time to time be made or issued with

[Subsidiary]

Public Trustee Rules

respect to accounting parties to the Court.

In other cases the accounts of the Public Trustee shall be audited and the securities held by him verified from time to time by the Director of Audit.

Professional
assistance.

12. Subject to the provisions of any particular trust, and when he is acting by virtue of any appointment by the Court, subject to any rules or orders of the Court, the Public Trustee may take and use professional advice and assistance in regard to legal and other matters and may act on credible information (though less than legal evidence) as to matters of fact.

Statutory
declaration.

13. The Public Trustee may at any time require a statutory declaration or other sufficient evidence that a person is alive and is the person to whom any money or property is payable or transferable, and may refuse payment or transfer until such declaration or evidence is produced.

Realisation of
small estates
when insolvent.
[4 of 1972]

14. When the Public Trustee undertakes the administration of any estate, under section 6 or 7 of the Act, the value of which does not in his opinion exceed \$1000 and such estate in his opinion is insolvent, it shall be competent for him to realise such estate and distribute the proceeds amongst the creditors in the order and priority prescribed by any Act or rules for the time being regulating the administration of insolvent estates.

Application for
direction of the
Court.

c. 3:02

15. The Public Trustee may apply to the Court for the opinion, advice and direction of the Court on any question respecting the management or administration of the property under his charge and save as hereinafter provided, the provisions of section 37 of the High Court Act shall apply to any such application.

Hearing by
single judge.

16. Any such application unless the Court otherwise directs may be heard and dealt with by a single judge and

may be heard in chambers.

Signature
sufficient.

17. It shall be sufficient if the application is signed by the Public Trustee without counsel or attorney-at-law.

Expenses to be
paid.

18. When the Public Trustee takes possession of the estate of an absentee under section 11 of the Act he shall, before delivering up the same to the absentee or any attorney appointed by him as provided by the Act, be entitled to be paid all expenses he may have properly incurred in connection with the estate and all fees to which he may be entitled.

Authorisation
of deputy.

19. The Public Trustee may in writing authorise any deputy to exercise and perform either generally or in relation to a particular case and subject to such conditions and restrictions (if any) as the Public Trustee may impose, all or any of the powers and duties of the Public Trustee under rule 10, and may also in writing authorise any deputy to appear on his behalf in any Court to do or perform some particular act or deed in such writing specified which the Public Trustee may be required to do or perform in the course of the administration of any trust or estate.

FEES

Commissions
and fees.

20. The following commissions and fees shall be charged in respect of the duties of the Public Trustee:

- (a) from and out of all moneys realised or received by him for or on account of any estate or trust there shall be paid a commission—
 - (i) where the gross assets do not exceed ten thousand dollars, at the rate of eight dollars on

every hundred dollars received or realised;

- (ii) where the gross assets exceed ten thousand dollars, at the rate of eight dollars on every hundred dollars received or realised up to that amount and at the rate of five dollars on every hundred dollars received or realised for the sum in excess of that amount:

	\$	c.
(b) on application to inspect the accounts of any trust or estate	0	25
(c) copies of accounts or documents relating to any trust or estate per folio	0	25
(d) for any certificate	1	00
(e) on application to take possession of the estate of an absentee—		
(i) when the value of the estate is less than \$500	5	00
(ii) when the value of the estate is more than \$500	10	00

(The amount of this fee shall be returned to the creditor making the application out of any moneys received on account of the estate or paid by the absentee for the purpose as provided by these rules.)