

## PUBLIC TRUSTEE

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

Ordinance Nos, [22<sup>nd</sup> November , 1930 ]

1 of 1922  
11 of 1931  
59 of 1938

#### PRELIMINARY

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

Law Nos,  
44 of 1973  
25 of 1975

#### APPOINTMENT OF PUBLIC TRUSTEE AND DEPUTIES

Act Nos,

41 of 1983 [ 17<sup>th</sup> October , 1983 ]  
61 of 1988 [ 17<sup>th</sup> December , 1988 ]

Appointment of **2.** There may be appointed an officer to be called the Public Trustee of Sri Lanka, in this Ordinance and in all other written law referred to as the Public Trustee.

Public Trustee to be a corporation.

**3.** The Public Trustee shall be a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued under the above name like any other corporation sole.

Appointment and powers of Deputy Public Trustee.  
[ 2,61 of 1988 ]

**4.**

(1) There may be appointed a deputy or deputies to assist the Public Trustee.

(2) The act of appointment of any Deputy Public Trustee shall specify whether he is appointed as such for the whole of Sri Lanka or any part thereof (the area for which such Deputy Public Trustee is appointed being hereinafter referred to as "the area of his appointment").

(3) Any Deputy Public Trustee appointed under subsection (2) shall, subject to the general or specific orders of the Public Trustee within the area of his appointment be competent to discharge any of the duties and exercise any of the powers of the Public Trustee, and, when discharging such duties or exercising such powers, shall have the same privileges and be subject to the same liabilities as the Public Trustee.

(4) There may be appointed such legal officers and other staff as may be necessary to assist the Public Trustee or any Deputy Public Trustee in the administration of this Ordinance.!

#### POWERS, DUTIES, LIABILITIES, AND IMMUNITIES OF PUBLIC TRUSTEE

General powers **5.**  
and duties of  
Public Trustee.  
[ 2,41 of 1983 ]

(1) The Public Trustee shall, subject to the provisions of this Ordinance and rules made thereunder, be capable of being appointed and of acting under that name -

(a) as an ordinary trustee ;

(b) as collector of estates under an order to collect;

- (c) as a custodian trustee ;
- (d) as curator of the estate of a minor ;
- (e) as manager of the estate of a person of unsound mind;
- (ee) as manager of immovable property upon a contract on terms and conditions including fees as may be mutually agreed upon;
- (f) as attorney for persons absent from Sri Lanka for the purpose of receiving and paying money ;

[2,59 of 1938] (g) as the next friend or guardian for the action under Chapter XXXV of the Civil Procedure Code of any minor or person of unsound mind referred to in section 14 (1).

(2) Save as hereinafter expressly provided, the Public Trustee shall have the same powers, duties, and liabilities, and be entitled to the same rights and privileges, and be subject to the same control and orders of the court as any other trustee acting in the same capacity.

Applications to **6.**  
the court.

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

(2) Any order made by the court under subsection (1) shall have the effect of a decree of court.

(3) The Public Trustee may apply to the court for its direction or opinion on any question arising in the course of the administration of any trust, and the court may deal with any such application as the justice of the matter may require.

(4) The Judges of the Supreme Court may make rules regulating the procedure to be observed in all applications under this section, and, pending the making of such rules, such procedure shall be followed as shall be directed by the court.

(5) For the purpose of the calculation of stamp duty on any such proceedings, whenever the subject-matter in issue is of the value of one thousand five hundred rupees or over, such subject-matter shall be charged as of the value of one thousand five hundred rupees, and, whenever the subject-matter in issue is of the value of less than one thousand five hundred rupees, no stamp duty shall be charged in respect of any such proceedings, excepting stamp duty payable in respect of service of process.

Liability of  
Consolidated Fund  
for acts of Public  
Trustee.

**7.** All sums required to discharge any liability which the Public Trustee, if he were a private trustee, would be personally liable to discharge shall be a charge on the Consolidated Fund, 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 exercise of reasonable diligence have averted, and in that case the

Public Trustee shall not, nor shall the Consolidated Fund be subject to any liability.

Notice of  
action against  
Public  
Trustee.

**8.**

(1) If any suit be brought by a creditor against the Public Trustee, such creditor shall be liable to pay the costs of suit, unless he proves that not less than one month previous to the institution of the suit he had applied in writing to the Public Trustee stating the amount and other particulars of his claim, and had given such evidence in support thereof as, in the circumstances of the case, the Public Trustee was reasonably entitled to require and had required.

(2) If any such suit is decreed in favour of the creditor, he shall, nevertheless, unless he is a secured creditor or otherwise entitled to preference, be only entitled to payment out of the assets of the deceased equally and rateably with the other creditors.

(3) Nothing in section 461 of the Civil Procedure Code, shall apply to any suit against the Public Trustee in which no relief is claimed against him personally.

Public Trustee may  
decline any trust, but  
not on ground of  
small value.

**9.** Subject to the provisions of this Ordinance, the Public Trustee may decline, either absolutely or except on conditions which he may lay down 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.

Public Trustee  
not to accept  
certain trusts.

**10.** 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 authorized to do so by rules made under this Ordinance, or for the purpose of winding up an estate, nor any trust under a deed of arrangement for the benefit of creditors, nor any trust which involves the exercise, supervision, or control by him as trustee of any religious observance or ceremony or the decision of any questions as to the religious merit or character of any individual or institution.

Any Sri Lankan citizen proceeding  
for employment outside Sri Lanka,  
to nominate persons to whom  
compensation is to be paid in the  
event of his death.

**10A.**

[ 3.61 of 1988]

(1) Any Sri Lankan citizen proceeding for employment outside Sri Lanka may, register with the Public Trustee, the names of the persons to whom any compensation shall be payable in the event of his death while being so employed.

(2) Where a Sri Lankan citizen dies while being employed outside Sri Lanka, his employer may transmit to the Public Trustee, any sum payable as compensation in respect of such death, to be paid by the Public Trustee to the persons entitled thereto.

(3) On receipt of any sum under subsection (2) the Public Trustee may, distribute such sum to the persons nominated by the deceased under subsection (1) or in the absence of such

nomination, to the persons entitled thereto.

Public Trustee to be sole trustee. **11** The Public Trustee shall, except where he is appointed a custodian trustee, always be sole trustee, and it shall not be lawful to appoint the Public Trustee to be trustee along with any other person.

Public Trustee of minor, c. **12.** If any minor or person of unsound mind is entitled to any gift, legacy, or share of the assets of a deceased person, it shall be lawful for the Public Trustee to retain the same in his hands as trustee for such minor or person of unsound mind pending the order of court, or until claimed by a duly appointed trustee.

Executor or administrator may pay to official trustee, legacy, share, c, of minor or person of unsound mind. **13.**

(1) If any minor or person of unsound mind is entitled to any gift, legacy, or share of the assets of a deceased person, it shall be lawful for the person by whom such gift is made, or for the executor or administrator by whom such legacy or share is payable or transferable, or for any trustee of such gift, legacy, or share, to transfer the same by an instrument in writing to the Public Trustee, if he consents thereto.

(2) If any minor or person of unsound mind is entitled to any money which is in court, the court may, if it thinks fit, order, with the consent of the Public Trustee, that such money shall be transferred to the Public Trustee.

(3) The Public Trustee shall be deemed to be a suitable person to be appointed manager of the estate of a person of unsound mind under section 567 of the Civil Procedure Code, and a fit person to receive a certificate of curatorship in respect of the property of a minor under section 586 of that Code.

(4) On the appointment of the Public Trustee as manager of the estate of a person of unsound mind, or on the grant to him of a certificate of curatorship in respect of the property of a minor, all property to which such person of unsound mind or minor is entitled shall become vested in the Public Trustee as trustee for such person of unsound mind or minor respectively.

Appointment of Public Trustee as next friend or guardian ad litem of a minor or person of unsound mind in certain cases. **14**

[ 3,59 of 1938]

(1) The Public Trustee may be appointed as the next friend or guardian for the action -

(a) of any minor having an interest in any estate of which the Public Trustee is trustee, or of any minor in respect of whose property a certificate of curatorship has been duly granted to the Public Trustee ; or

(b) of any person of unsound mind having any interest in any estate of which the Public

Trustee is trustee or of any person of unsound mind of whose estate the Public Trustee is the duly appointed manager; and all the provisions of Chapter XXXV of the Civil Procedure Code shall apply accordingly, subject to the following modifications:-

(i) it shall not be necessary for the Public Trustee to support by affidavit any application made by him for his appointment as next friend or guardian for the action, as the case may be ;

(ii) it shall not be necessary for any person to aver or for the court to be satisfied that the proposed next friend or guardian for the action, as the case may be, is a fit or proper person or an adult of sound mind or full age ; and

(iii) it shall not be necessary for the minor or person of unsound mind to whom the application relates to appear before the court in person when any such application is made, unless the court otherwise directs.

(2) No appointment of the Public Trustee under this section shall be made without his consent.

(3) All costs incurred by the Public Trustee in any action as the next friend or guardian for the action of any minor or person of unsound mind shall be a charge upon the property, both movable and immovable, of that minor or person of unsound mind, as the case may be.

(4) In this section " person of unsound mind " means a person adjudged to be of unsound mind under the provisions of any written law for the time being in force.

Maintenance of minors and persons of unsound mind. **15.** When any money of any minor or person of unsound mind is in the hands of the Public Trustee, in the absence of any order of court, the Public Trustee may from time to time pay such sum of money to such person as he thinks fit, to be applied by such person for the maintenance, education, and advancement of such minor or person of unsound mind, or may himself so apply such sum.

Transfer to Public Trustee of proceeds of sales under section 4 of the Entail and Settlement Ordinance. **16.** When any money being the proceeds of a sale effected under the authority of section 4 of the Entail and Settlement Ordinance\* is in court, the court may, if it thinks fit, direct that such money shall be transferred to the Public Trustee, to be dealt with according to such directions as it may give from time to

time. (\*Entail and Settlement Ordinance is repealed by Act No. 20 of 1972.)

Property of convict may be vested in Public Trustee. **17.**

(1) Whenever a person has been sentenced by any court to a term of imprisonment of not less than three years, such court may, on the application of the person sentenced and with the consent of the Public Trustee and subject to the payment of the prescribed fees, order that the property of such person shall be vested in the Public Trustee for the purpose of its custody and management during the period of the imprisonment.

(2) Upon the making of any such order, the Public Trustee shall be entitled to institute or maintain any suit or proceeding for the recovery of such property, and it shall be the duty of the Public Trustee, and he is hereby authorized to keep and manage such property in such manner as will be for the best interests of such person and his dependants.

Entry of Public Trustee by that name in books of a company. **18.**

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.

Prescribed person may act for Public Trustee, except as to acts which can be done only by an attorney-at-law.

**22.\*** 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 authorized to take, make, verify, give, or do :

Provided that nothing in this Ordinance or in any rule made under this Ordinance shall confer upon any person not otherwise entitled thereto any right to appear, or act, or be heard in or before any court or tribunal, on behalf or instead of the Public Trustee, or to do any act whatsoever on behalf or on the instructions of the Public Trustee, which could otherwise be lawfully done only by an attorney-at-law. (Sections 19 to 21 have been repealed by Law No.44 of 1973, as amended by Law No, 25 of 1975.)

Power to examine on oath. **23.**

The Public Trustee may, whenever he desires, for the purposes of this Ordinance, to satisfy himself regarding any question of fact, examine upon oath, which he is hereby authorized to administer, any person who is willing to be so examined by him regarding such question.

#### THE PUBLIC TRUSTEE AS ORDINARY TRUSTEE

Appointment of Public Trustee to be trustee. **24.**

(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 authorized by the rules made under this Ordinance to accept, and may be so appointed whether the will or settlement or instrument creating the trust or duty was made or came into operation before or after the commencement of this Ordinance, and either as an

original or as a new trustee, in the same cases, and in the same manner, and by the same persons or court, as if he were a private trustee, with this modification that though the trustees originally appointed were two or more, the Public Trustee may be appointed sole trustee.

Retirement of original trustees. (2) Where the Public Trustee has been appointed a trustee of any trust, all existing trustees under the trust shall upon such appointment cease to be trustees.

Public

Trustee not to be new trustee where settlement forbids. (3) The Public Trustee shall not be so appointed as a new trustee where the will, settlement, or other instrument creating the trust or duty contains a direction to the contrary, unless the court otherwise order.

Notice of proposed appointment of Public Trustee. (4) Notice of any proposed appointment of the Public Trustee as a new trustee shall, where practicable, be given in the prescribed manner to all persons beneficially interested or to any existing trustee who are resident in Sri Lanka, 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 such person as aforesaid entitled to notice 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.

(5) Where, by the terms of an instrument of trust or a will, the consent of any person is requisite to the appointment of a trustee, and such person refuses to consent to the appointment of the Public Trustee to such office, or where the person whose consent is so requisite is a minor, or person of unsound mind, or is absent from Sri Lanka, or is under any other disability, then such appointment of the Public Trustee may be made without such consent, if the court so orders and directs.

Transfer of trusts to other trustees or persons by Public Trustee. **25.**

(1) Nothing in this Ordinance shall be deemed to prevent the transfer by the Public Trustee of any trust property vested in him to -

- (a) the original trustee (if any) ; or
- (b) any other lawfully appointed trustee ; or
- (c) any other person if the court so directs.

(2) Upon such transfer, such property shall vest in such trustee or other person, and shall be held by him upon the same trusts as those upon which it was held prior to such transfer, and the Public Trustee shall be exempt from all liability as trustee of such property except in respect of acts

done before such transfer :

Provided that, in the case of any transfer under this section, the Public Trustee shall be entitled to retain out of the property any fees leviable in accordance with the provisions of this Ordinance.

Application for grant of provisional possession of property by Public Trustee.

[ 4.61 of 1988]

- 25A.**
- (1) Where the Public Trustee makes an application for probate or letters of administration in respect of the estate of the deceased person, he may at the same time make an application for an order authorising him to take provisional possession of the movable and immovable property of the estate (in this section referred to as an " order for provisional possession ").
  - (2) The court may make an order for provisional possession of an estate at the stage when it enters an order nisi in the application by the Public Trustee for the issue of probate or letters of administration in respect of that estate. If the court at any stage discharges such order nisi, it shall also cancel the order for provisional possession.
  - (3) Where the Public Trustee takes possession of the movable and immovable property of an estate of a deceased person by virtue of an order for provisional possession, he shall hold such property in trust for the heirs of the estate.

Public Trustee to be competent to institute action as custodian trustee.

[ 4.61 of 1988]

**25B.** Where the Public Trustee has reason to believe that the managing trustee of any trust of which he has been appointed custodian trustee has, in the exercise of the powers of management or any other power of discretion vested in such trustees, committed a breach of such trust, he may institute an action in the District Court within the local limits of whose civil jurisdiction the whole or any part of the subject matter of the trust is held or situate, to obtain a decree

- (a) directing the removal of any trustee;
- (b) directing accounts and inquiries ;
- (c) declaring what proportion of the trust property or of the interest therein, shall be allocated to any particular object of the trust;
- (d) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged ;
- (e) settling a scheme for the management ' of the trust;
- (f) directing the specific performance of any act by any trustee;
- (g) appointing the Public Trustee as the sole trustee; and
- (h) granting such other or further relief as the nature of the case may warrant.

Substitution by court of Public Trustee for trustee

**37.\*** When it is proved to the satisfaction of the court that any private trustee has been guilty of such misconduct or mismanagement of the



trustee guilty of  
misconduct, c.

trust property as to render his continuance in office undesirable, the court may remove him from office and appoint the Public Trustee or some other fit and competent person in his place :

Provided that the Public Trustee shall not be appointed if it appears to the court that there is some other fit and competent person willing to carry out the terms of the trust who is entitled to be appointed by reason of the terms of a will or other instrument creating a trust. (\*Sections 26 to 36 have been repealed by Law No.44 of 1973, as amended by Law No. 25 of 1975.)

Deposit of will with  
Public Trustee.

**38.** The Public Trustee may accept the custody of the will of any living person, subject to the payment of the prescribed fees.

Investigation by Public **39.**

Trustee of condition  
and accounts of trusts,  
c.

(1) Any trustee or any beneficiary under any trust may apply to the court that the condition and accounts of such trust be investigated by the Public Trustee or by some other person appointed by him, and the court may, with the consent of the Public Trustee and after notice to such parties as it considers entitled to the same, make order accordingly.

(2) The Public Trustee or the other person making such investigation shall have the powers of an auditor under section 48 and that section shall apply accordingly. On the completion of the investigation, the Public Trustee or the other person shall forward to the applicant and to every trustee -

(i) a copy of the accounts,

(ii) his report thereon, and

(iii) a certificate signed by him to the effect either that the accounts exhibit a true view of the state of affairs of the trust and that he has inspected and verified the securities of the trust fund investments or that such accounts are deficient in such respects as he may specify in the certificate.

(3) The expenses of the investigation shall be such as may be agreed upon between the applicant and the Public Trustee, 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 shall be borne by the applicant or by the trustees personally or partly by them and partly by the applicant.

#### THE PUBLIC TRUSTEE AS COLLECTOR UNDER AN ORDER TO COLLECT

Administration of  
estate of person  
believed to be dead.

**40.**

(1) Whenever it is made to appear to the court that there is reasonable ground to suppose that any person who usually resided within the jurisdiction of such court has died intestate leaving property in Sri Lanka, the court may order and empower the Public Trustee to collect the estate of such person.

(2) Every such order shall be valid until revoked, and shall

empower the Public Trustee to -

- (a) collect, manage, and administer the movable property of such supposed deceased person ;
- (b) enter upon and receive the rents and profits and otherwise manage the immovable property; and
- (c) pay and discharge the debts and liabilities of such person;

in like manner as if he were certainly dead, and the Public Trustee had obtained letters of administration to his estate.

(3) The Public Trustee shall not proceed to any distribution of the assets without an order of the court specially authorizing him to make such distribution.

(4) Within fourteen days after any order to collect has been granted, the Public Trustee shall, unless the court otherwise orders, cause notice of the fact that such order has been granted to be published twice in some newspaper published in the town or place where such person resided, or if there is no such newspaper, then twice in some daily newspaper published in Sri Lanka.

#### THE PUBLIC TRUSTEE AS CUSTODIAN TRUSTEE

Custodian 41.  
Trustee.

(1) Subject to rules under this Ordinance, 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 the Trusts Ordinance ;
- (b) the management of the trust property and the exercise of any power or discretion exercisable by the trustees under the trust shall remain vested in the trustees other than the custodian trustee (which trustees are hereinafter referred to as the " managing trustees " ) ;
- (c) as between the custodian trustee and the managing trustees, and subject and without prejudice to the rights of any other persons, the custodian trustee shall have the custody of all securities and documents of title relating to

the trust property, but the managing trustees shall have free access thereto and be entitled to take copies thereof or extracts therefrom ;

(d) the custodian trustee shall concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into court), unless the matter in which he is requested to concur is a breach of trust, or involves a personal liability upon him in respect of calls or otherwise, but, unless he so concurs, the custodian trustee shall not be liable for any act or default on the part of the managing trustees or any of them ;

(e) all sums payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee :

Provided that the custodian trustee may allow the dividends and other income derived from the trust property to be paid to the managing trustees or to such person as they may direct, or into such bank to the credit of such person as they may direct, and in such case shall be exonerated from seeing to the application thereof, and shall not be answerable for any loss or misapplication thereof ;

(f) the power of appointing new trustees, when exercisable by the trustees, shall be exercisable by the managing trustees alone, but the custodian trustee shall have the same power of applying to the court for the appointment of a new trustee as any other trustee ;

(g) in determining the number of trustees for the purposes of the Trusts Ordinance, 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 shall apply in like manner as to the Public Trustee, to any banking or insurance company or other body corporate entitled by rules made under this Ordinance 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.

#### DISTRIBUTION OF ASSETS OF ESTATES

Distribution of assets. **42.**

(1) When the Public Trustee has given the prescribed notice for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he has notice of.

(2) He shall not be liable for the assets so distributed to any person of whose claim he had no notice at the time of such distribution.

(3) No notice of any claim which has been sent in and has been rejected or disallowed in part by the Public Trustee shall affect him unless proceedings to enforce such claim are commenced within three months after notice of the rejection or disallowance of such claim has been given in the prescribed manner, and unless such proceedings are prosecuted without unreasonable delay.

(4) Nothing in this section shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

(5) In computing the period of limitation for any suit, appeal, or application under the provisions of any law for the time being in force, the period between the date of submission of the claim of a creditor to the Public Trustee and the date of the final decision of the Public Trustee on such claim shall be excluded.

Paying over to the Treasury of accumulations in the hands of Public Trustee.

**43.** When any moneys payable to a beneficiary under a trust have been in the hands of the Public Trustee for a period of twelve years or upwards in consequence of the Public Trustee having been unable to trace the person entitled to receive the same, such moneys shall be paid over to the Deputy Secretary to the Treasury by the Public Trustee to be credited to the Consolidated Fund:

Provided that no such moneys shall be so paid over if any action or proceeding is pending in respect thereof in any court.

Mode of proceeding by claimant to recover money so paid over. **44.**

(1) If any claim is made to any moneys so paid over, and such claim is established to the satisfaction of the Secretary to the Treasury, the Secretary to the Treasury shall order the payment to the claimant of the amount in respect of which the claim is established.

(2) If such claim is not established to the satisfaction of the Secretary to the Treasury, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such moneys, apply by petition to the court, and, after taking such evidence as it thinks fit, such court shall make such order on the petition in regard to the payment of such moneys as it thinks fit.

(3) The court may further direct by whom all or any part of the costs of such proceedings shall be paid.

#### FEES CHARGEABLE BY PUBLIC TRUSTEE

Fees and expenses to be charged by Public Trustee.  
[ 3,41 of 1983]

**45.**

(1) There shall be charged in respect of the duties of the Public Trustee such fees, whether by way of percentage or otherwise, as may be prescribed.

(2) The fees under this section may be at different rates for different properties or classes of properties or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Ordinance (including such sum as the Secretary to the Treasury may determine to be required to insure the public revenue against loss under this Ordinance).

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

(4) Any expenses which might be retained or paid out of the trust fund, if the Public Trustee were a private trustee, shall be so retained or paid, and any fees leviable under this Ordinance shall be retained or paid in like manner as and in addition to such expenses.

[ 4,59 of 1938]

(5) Rules made under this Ordinance may provide that interest shall be charged on all or any of the fees due under this section and may specify the circumstances in which and the rate at which such interest shall be charged.

(6) The preceding provisions of this section shall not apply in a case where the Public Trustee is appointed manager of immovable property under paragraph (ee) of section 5.

Disposal of fees.

**46.** The Public Trustee shall transfer and pay to the Deputy Secretary to the Treasury in such manner and at such times as the Minister may prescribe all fees received by him under this Ordinance, and the same shall be carried to the credit of the Consolidated Fund.

#### AUDIT

Audit of Public Trustee's accounts. **47.**

(1) The accounts of the Public Trustee shall be audited at least once annually, and at any time if the Minister so direct, by the prescribed person and in the prescribed manner.

(2) The auditor shall examine such accounts, and shall forward

to the Minister a statement thereof in the prescribed form, together with a report thereon and a certificate signed by him, showing -

- (a) whether the accounts contain a full and true account of everything which ought to be contained therein ; and
- (b) whether the books, which by any rules made under this Ordinance are directed to be kept by the Public Trustee, have been duly and regularly kept; and
- (c) whether the trust funds and securities have been duly kept and invested and deposited in the manner prescribed by this Ordinance or any rules made thereunder ;

or (as the case may be) that such accounts are deficient, or that the Public Trustee has failed to comply with this Ordinance or the rules made thereunder, in such respects as may be specified in such certificate.

Auditor's power to summon witnesses and call for documents. **48.**

(1) Every auditor shall have the powers of a civil court under the Civil Procedure Code -

- (a) to summon any person whose presence he may think necessary to attend him from time to time; and
- (b) to examine any person on oath to be by him administered; and
- (c) to issue a commission for the examination on interrogatories or otherwise of any person ; and
- (d) to summon any person to produce any document or thing, the production of which appears to be necessary for the purposes of such audit or examination.

(2) Any person who, when summoned, refuses, or without reasonable cause neglects, to attend or to produce any document or thing, or attends and refuses to be sworn or to be examined, shall be deemed to have committed an offence within the meaning of section 190 of the Penal Code.

Public Trustee may be trustee of temple property. **49.**  
[ 5.61 of 1988]

(1) Notwithstanding anything to the contrary in the Buddhist Temporalities Ordinance, the Public Trustee may

- (a) hold movable property in trust for the benefit of a temple. The income derived from any such property shall vest in the trustee or Controlling Viharadhipathi of that temple in accordance with section 20 of the Ordinance;
- (b) manage any immovable property vested in the trustee or Controlling Viharadhipathi of a temple,

being immovable property which is twenty acres or over in extent on contract containing such terms and conditions as may be agreed upon by the Public Trustee and such trustee or Controlling Viharadhipathi.

(2) In this section, the expressions "trustee", "Controlling Viharadhipati" and " temple " shall have the same meanings respectively, as in the Buddhist Temporalities Ordinance.

(3) The provisions of this section shall come into operation on such date as may be appointed by the Minister, by Order published in the Gazette.

#### MISCELLANEOUS

Right of person interested to inspection and copies of accounts.

**50.** Every beneficiary under a trust which is being administered by the Public Trustee, and every person interested in the administration of any estate which is in the charge of the Public Trustee, shall, subject to such conditions and restrictions as may be prescribed, be entitled, at all reasonable times, to inspect the accounts of such trust, and the report and certificate of the auditor, and, on payment of the prescribed fee, to be furnished with copies thereof or extracts there from, and nothing in the Trusts Ordinance shall affect the provisions of this section.

False evidence. **51.**

(1) Whoever, during any examination authorized by this Ordinance, makes upon oath a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

(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 particular, shall be guilty of the offence of giving false evidence.

Rules. **52.**  
[ 6.61 of 1988]

(1) The Minister shall make rules for carrying into effect the objects of this Ordinance, and in particular for all or any of the following purposes, that is to say :-

(a) establishing the office of Public Trustee and prescribing the trusts or duties he is authorized to accept or undertake, and the security, if any, to be given by the Public Trustee, his deputies, and his officers ;

(b) the transfer to and from the Public Trustee of any property;

(c) the accounts to be kept and an audit thereof ;

(d) the establishment and regulation of any branch office ;

(e) excluding any trusts from the operation of this Ordinance 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 Ordinance shall be given;

(h) the investment of trust funds.

(i) the matters on which rules are required by this Ordinance to be prescribed

(2) Every rule under this Ordinance shall be laid as soon as conveniently may be before Parliament, and may at any time within forty days of their being so laid before Parliament, or at any of the three meetings of Parliament, succeeding such date, by resolution of Parliament, be disallowed, amended, or otherwise dealt with as may be directed by the said resolution, but without prejudice to anything that may have been done thereunder.

Interpretation. **53.** In this Ordinance unless the context otherwise requires -

" assets" includes all the property, movable and immovable, of a deceased person, which is chargeable with and applicable to the payment of his debts and legacies, or available for distribution among his heirs and next of kin ;

" expenses" includes costs and charges ;

" letters of administration " means letters of administration of the estate and effects of a deceased person, whether general or with a copy of the will annexed, or limited either in time or otherwise ;

" prescribed " means prescribed by rules under this Ordinance ;

" private trustee" means a trustee other than the Public Trustee ;

" trust" includes an executor ship or administrator -ship ; and the expression " trustee" shall be construed accordingly ; and the expression " trust property " shall include all property in the possession or under the control wholly or partly of the Public Trustee by virtue of any trust.

Other expressions have the same meaning as in the Trusts Ordinance.