



**SAMOA**

## **PUBLIC TRUST OFFICE ACT 1975**

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**PUBLIC TRUST OFFICE ACT 1975**

**1975**

**No. 19**

**AN ACT** to consolidate and amend the enactments relating to the Public Trustee and the Public Trust Office of Samoa.

*[Assent and commencement date: 23 December 1975]*

**PART 1  
PRELIMINARY**

**1. Short title**— This Act may be cited as the Public Trust Office Act 1975.

**2. Interpretation**— In this Act, unless the context otherwise requires:

“Act” includes Ordinance;

“administration” includes probate of the will of a deceased persons, and letters of administration of the estate of a deceased person, granted with or without the will annexed, for general, special or limited purposes, and in the case of the Public Trustee includes an order to administer and an election to administer;

“administrator” means any person to whom administration is granted; and includes an executor before and after probate has been granted; and also includes the Public Trustee in any case where he or she is deemed to be an executor or administrator by reason of having filed an election to administer;

“Common Fund” means the Common Fund constituted under section 24;

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- “Commonwealth country” means a country that is a member of the Commonwealth of Nations;
- “Court”, in relation to any matter, means a Court having jurisdiction in that matter; and includes a Judge of that Court;
- “estate” means any property administered or held, managed or controlled by the Public Trustee, whether as administrator or other trustee or as guardian, committee, manager, liquidator, receiver, agent or attorney, or in any other capacity;
- “*Gazette*” means the Samoa *Gazette*;
- “instrument” includes an Act of Parliament;
- “Investment Board” means the Public Trust Office Investment Board as constituted by this Act;
- “land” includes all estates and interests, whether freehold or chattel, legal or equitable, in real property;
- “Minister” means the Minister in charge of the Public Trust Office;
- “newspaper” means a newspaper circulating in Samoa;
- “owner”, in relation to any property, includes any person having any estate or interest in the property;
- “property” includes real and personal property and any estate or interest in any property real or personal, and any debt, and a thing in action, and any other right or interest;
- “Public Trustee” means the Public Trustee as constituted by this Act.
- “seal” means the seal of the Public Trustee;
- “senior management level officer” means officer and employee positions designated as senior management level officers by the Investment Board acting on the advice of the Public Trustee, and such officer and employee positions shall be deemed officers and employees for the purposes of this Act;
- “State” means the Independent State of Samoa;
- “Supreme Court” means the Supreme Court of Samoa; and includes a Judge of that Court;
- “trust” does not include the duties incidental to an estate conveyed by way of mortgage, but with this exception it extends to implied and constructive trusts, and to cases where the trustee has a beneficial

interest in the trust property, and to the duties incidental to the office of a personal representative, and “trustee” has a corresponding meaning.

## **PART 2 CONSITUTION AND ORGANISATION**

**3. Public Trust Office** – There shall be an office to be called the Public Trust Office.

**4. Public Trustee** – (1) The Head of State, acting on the advice of Cabinet shall appoint the Public Trustee who shall administer the Public Trust Office.

(2) Before advising the Head of State on an appointment to be made under subsection (1), Cabinet shall consult the Investment Board concerning the appointment.

(3) The criteria for the selection and procedures for the appointment of a Public Trustee shall be in accordance with the applicable law and Government policies.

(4) The Public Trustee shall be appointed for 3 years but is eligible for reappointment.

(5) The salary and allowances of the Public Trustee shall reflect Cabinet policies and be determined in writing by the Investment Board.

(6) Subject to Cabinet directives, the Investment Board shall prepare a contract of employment for the Public Trustee to include the following:

- (a) terms and conditions of employment; and
- (b) the grounds and procedure for termination.

(7) The Public Trustee is a corporation sole with perpetual succession and a seal of office.

**4A. General responsibilities of the Public Trustee** – (1) Under the direction of the Minister, the Public Trustee is responsible for the effective and efficient management of the Public Trust Office.

(2) As soon as practicable, but not later than 3 months after the end of each financial year, the Public Trustee must provide a report to the Minister and the Investment Board on the operations of the Public Trust Office.

**4B. Appointment of Assistant Public Trustees – (1)** The Investment Board, acting on the advice of the Public Trustee, shall appoint Assistant Public Trustees for a contractual period of 3 years.

(2) The remuneration, salary, and other terms and conditions of appointment of the Assistant Public Trustees are to be set out in a contract made between the Investment Board and the Assistant Public Trustees.

(3) On the occurrence of a vacancy in the office of the Public Trustee or due to the absence from duty of the Public Trustee, the Investment Board may appoint an Assistant Public Trustee who shall have and may exercise all the powers, duties and functions of the Public Trustee during such vacancy or absence.

**5. Appointment of other officers, employees and agents – (1)** The Investment Board, acting on the advice of the Public Trustee, may appoint such senior management level officers as are necessary.

(1A) Subject to subsection (1), the Public Trustee may appoint such officers and employees of the Public Trust Office as are necessary.

(1B) A person who is an officer or employee of the Public Trust Office is entitled to lodge a grievance with the Public Trustee and to have that grievance determined.

(1C) The regulations shall set out the subject matter in relation to which a grievance may be lodged and the procedure for determining grievances.

(2) The Public Trustee may appoint such agents or representatives of the Public Trust Office (whether within or beyond Samoa) as may be necessary.

(3) It is not necessary for the agent or representative to be an officer of the Public Trust Office or of the Government service, or to require the agent or representative to devote his or her whole time to his or her duties as such agent or representative.

(4) A person who is appointed under this section, whether or not he is placed under any other direction or control or inspection or supervision, shall be subject to the direction, control, supervision and inspection of the Public Trustee.

**6. Delegation by Public Trustee –(1)** Subject to subsections (1A) and (1B), the Public Trustee may, with the



written consent of the Investment Board, by signed instrument, delegate to an officer or employee of the Public Trust Office all or any of the Public Trustee's powers or functions under this or any other Act including this power of delegation.

(1A) The Public Trustee can only delegate the power to use the seal of the Public Trust Office to an Assistant Public Trustee.

(1B) In exercising powers or functions under a delegation, the delegate shall comply with any directions of the Public Trustee.

(2) Subject to any general or special directions given or conditions attached by the Public Trustee, the officer or employee to whom any functions, powers, authorities, discretions, rights or duties are delegated or sub-delegated under this section may exercise, perform or discharge them in the same manner and with the same effect as if they had been conferred or imposed on him or her directly by this section and not by delegation or sub-delegation:

**PROVIDED THAT** the officer or employee shall, in respect of all matters delegated or sub-delegated, continue to be under the direction, control, supervision and inspection of the Public Trustee and of every officer or employee by or through whom the matters were delegated.

(3) An officer or an employee of the Public Trust Office purporting to act in the course of his or her employment pursuant to any delegation or sub-delegation under this section is presumed to be acting in accordance with the terms of the delegation or sub-delegation in the absence of proof to the contrary, and no person, Court, or Judge shall be concerned to inquire whether or not the delegation or sub-delegation has been made; and all things done or omitted by any such officer or employee in the course of his or her employment shall have the same consequences and effect as if the same had been done or omitted by the Public Trustee.

(4) A delegation or sub-delegation under this section may be made to a specified officer or employee or to officers or employees of a specified class.

(5) A delegation or sub-delegation under this section may be revoked or suspended at will, and no such delegation or sub-delegation shall prevent the exercise, performance and discharge of any function, power, authority, discretion, right or duty by the Public Trustee or by the officer or employee by whom it was sub-delegated.

(6) A delegation or sub-delegation shall, until revoked, continue in force according to its tenor, even if the Public Trustee, officer or employee by or through whom it was made has ceased to hold office, and shall continue to have effect as if made by the successor in office of that Public Trustee, officer or employee.

(7) If authority to administer any state or property has been delegated or sub-delegated to an officer or employee of the Public Trust Office, he or she may, within the limits of the delegation or sub-delegation, deal with and dispose of the assets thereof.

(8) Without restricting subsections (1) to (7), the powers of delegation and sub-delegation conferred by this section include the power to authorise any officer or employee of the Public Trust Office to do the following:

- (a) make any affidavit, oath or declaration required to be made by the Public Trustee under the rules of any Court or otherwise, or sign any document to be filed in any Court, or verify any account, or personally attend in any Court instead of the Public Trustee;
- (b) subject to subsection (1), execute transfers and assurances of any real or personal property on behalf of the Public Trustee;
- (c) give or sign any notice, consent, certificate, instrument or other document that the Public Trustee is empowered to give or sign under the provisions of this Act or any other Act or otherwise.

**7. Judicial notice of certain seals, appointments and signatures** –Judicial notice shall be taken, without further proof, of:

- (a) the seal of the Public Trustee;
- (b) the appointment and signature of each member of the Investment Board, and of the person for the time being holding the office of Public Trustee or his or her deputy.

## **Division 1 – Contracts**

**8. Contracts by the Public Trustee – (1)** A contract which if made by private persons, and any power which if exercised by private persons, must be made or exercised by deed may, if made or exercised by the Public Trustee under any authority vested in him or her in that behalf, be in writing and executed under seal by the Public Trustee or his or her deputy.

(2) A contract which if made by private persons, and any power which if exercised by private persons, must be in writing signed by the parties to the contract or the persons exercising the power may, if made or exercised by the Public Trustee under any authority vested in him or her in that behalf, be in writing signed by the Public Trustee or his or her deputy or by any other officer or employee of the Public Trust Office to whom authority to make the contract or exercise the power has been delegated under this Act.

(3) A contract which if made by private persons, and any power which if exercised by private persons, may be made or exercised by parol only without being reduced into writing, may, if made or exercised by the Public Trustee under any authority vested in him or her in that behalf, be made or exercised by parol, by the Public Trustee or his or her deputy or by any other person by the Public Trustee's direction acting on his or her behalf.

## **Division 2 – Public Trust Office Investment Board**

**9. Constitution and powers of Investment Board – (1)** There shall be a Board called the Public Trust Office Investment Board which shall control the investment of money which is from time to time in the Common Fund of the Public Trust Office and available for investment.

(2) The Investment Board comprises 5 members who are to be selected in accordance with applicable law relating to the management of public bodies.

(2A) The members of the Investment Board shall be appointed by the Head of State, acting on the advice of Cabinet, and may be removed from office by Cabinet.

(2B) Cabinet shall appoint one of the members to be Chairperson, and may appoint a Deputy Chairperson.

(2C) No person may be appointed or continue to hold office as a member of the Investment Board, while that person is a full-time salaried officer or employee of the Public Trust Office.

(2D) Unless the Investment Board decides otherwise, the Public Trustee must attend all Board meetings but has no voting rights.

(3) A member of the Investment Board who is not a full-time salaried employee of the Government may be paid such remuneration and allowances as may be determined by Cabinet.

(4) The Investment Board shall sit at such times and places as it thinks fit.

(5) At a meeting of the Investment Board, the quorum shall be 3 members.

(6) The Chairperson shall preside at all meetings of the Board at which he or she is present and in his or her absence from any meeting of the Board, the Deputy Chairperson if any, shall preside at the meeting and if there is no Deputy Chairperson appointed, or the Deputy Chairperson is absent from the meeting, the members shall appoint one of the members to preside at that meeting.

(7) A member present at a meeting has one deliberative vote on each issue. In each case of equality of votes on any issue at a meeting, the Chairperson of that meeting has a casting vote.

(8) If a member of the Board is temporarily incapacitated by illness, absence, or other sufficient cause from attending any meeting of the Board:

(a) *(repealed by Act 2012, No.15)*

(b) for a member, any person nominated for the purpose by the Minister,—

may attend that meeting as a deputy of such member.

(9) The fact that any such deputy so attends and acts at any such meeting is conclusive proof of his or her authority to do so, and no person shall be concerned to inquire whether the occasion has arisen which authorises or requires him or her to do so.

(10) No deputy shall act as Chairperson of the Board.

(11) All minutes or resolutions of the Investment Board, or any copy thereof, if purporting to be signed by the Chairperson of the meeting at which the minutes are confirmed or the resolution is passed, shall, in the absence of proof to the contrary, be sufficient evidence of the minutes or resolutions, and that they were duly and properly confirmed or passed, and that the person signing them was the Chairperson of that meeting.

(12) Subject to this Act and to any regulations made under it, the Investment Board may determine its own procedure.

(13) The Board may appoint any member of the staff of the Public Trust Office as a secretary in its meeting.

**10. Passing of resolutions of Investment Board by entries in minute book** – (1) Anything that may be done by resolution passed at a meeting of the Investment Board may be done by the Investment Board without a meeting by means of an entry in its minute book signed by at least 4 of its members.

(2) Any such entry may be signed on behalf of a member by a member's deputy if at the time of the signing thereof the deputy would have been entitled to attend and act at the meeting of the Investment Board in the absent of the member if a meeting had then been held, and the fact that a deputy signs an entry shall, in the absence of proof to the contrary, be sufficient evidence that he or she was so entitled.

(3) For the purposes of this section, a memorandum pasted or otherwise permanently affixed in the minute book and purporting to have been signed for the purpose of becoming an entry therein is deemed to be an entry in the minute book, and any such entry may consist of several documents in like form each signed by members or their deputies.

(4) The Public Trustee shall report to and lay before the Investment Board at each meeting all entries made in the minute book in accordance with the section since the last previous meeting of the Investment Board.

**11. Investment Board may delegate powers of making and controlling investments** – (1) The Investment Board may delegate to the Public Trustee the following powers:

- (a) the power to invest money which is from time to time in the Common Fund and available for investments authorised by this Act or by any other Act for the investment of money comprising or forming part of the Common Fund;
- (b) the power to approve any valuation required by this Act or any other Act or otherwise to be approved by the Investment Board;
- (c) such of its other powers of control in respect of the investment of money from time to time in the Common Fund and available for investment as it thinks fit.

(2) The delegation is revocable at will, and no such delegation prevents the exercise of any power by the Investment Board.

(3) The delegation may be made subject to such restrictions and conditions as the Investment Board thinks fit, and may be made either generally or in relation to any particular case.

(4) The exercise of any power or the approval of any valuation by the Public Trustee shall be as full and effectual for all purposes as if the exercise or approval had been by the Investment Board.

### **Division 3 – Secrecy In Respect Of Estates**

#### **12. Officers to make declaration of fidelity and secrecy –**

(1) A member of the staff of the Public Trust Office, an agent of the Public Trustee, and a member of the Investment Board, shall:

- (a) maintain and aid in maintaining the secrecy of all matters coming to his or her knowledge appertaining to the business of the Public Trust Office or to the affairs of any estate under administration in the Public Trust Office or in relation to the affairs of any person concerned in any such estate, except as may be authorised by law to a person directly interested and entitled to information, or for the purpose of assisting to carry out the powers and functions of the Public Trustee and his or her own proper duties; and
- (b) make and subscribe such declaration of fidelity and secrecy as may be prescribed, which declaration shall be made before the Public Trustee.

(2) A person who, wilfully, acts in contravention of this section or of the true intent of any such declaration commits an offence and is liable to a fine not exceeding 2 penalty units or to imprisonment for a term not exceeding 6 months.

## **PART 3 ACCOUNTS AND INVESTMENTS**

### **Division 1 – Accounts**

**13. The Public Trustee's Account** – (1) For the purposes of this Act, there shall be established at the ANZ Bank of Samoa an account to be known as the Public Trustee's Account.

(2) In addition to the above-mentioned account, the following accounts may be established by the Public Trustee for the purposes of this Act:

- (a) an account at the Post Office, to be known as the Public Trustee's Account;
- (b) such accounts at the ANZ Bank of Samoa as the Public Trustee may from time to time think fit or as the Investment Board may direct.

(3) Money paid into or lodged to the credit of any of the accounts mentioned in or authorised by subsection (2) is, for the purposes of this Act, taken to be paid into or lodged with the Public Trustee's Account established under subsection (1); and all references in this Act or in any other Act to the Public Trustee's Account are taken to refer to and include references to those accounts.

(4) Each of the accounts mentioned in or authorised by subsection (2) is to be operated on only by cheque signed by the Public Trustee or the Deputy of the Public Trustee and by some other officer of the Public Trust Office authorised by the Public Trustee so to do; but the Public Trustee may require that all or any of such cheque be countersigned by another officer of the Public Trust Office authorised by the Public Trustee so to do.

**14. Payments to Public Trustee's Account** –A person into whose hands or under whose control any money comes which is payable to the Public Trustee shall pay the money to the Public Trustee's Account as soon as practicable after its receipt:

**PROVIDED THAT** an officer, employee or agent of the Public Trust Office may make, out of any money in his or her hands, any payment which he or she is directed or authorised by the Public Trustee to make.

**15. Estate accounts** –(1) Nothing in this Act or in the Public Finance Management Act 2001 prevents the Public Trustee from opening, or keeping open, or operating upon, a separate account in connection with any business carried on by him or her for the benefit of any estate being administered by him or her, and the receipts of that business may be deposited in and the outgoings

of that business may be paid from that account, and the Public Trustee is entitled to delegate to any officer of the Public Trust Office or to any manager or other person employed in connection with that business the power to operate upon that account either alone or in conjunction with any other person or persons.

(2) Despite anything in this Act or any other Act, the Public Trustee, in any case where he or she considers it expedient in administering any estate or in the interests of any beneficiary or beneficiaries therein, may open the Post Office Savings Bank or in the ANZ Bank of Samoa Savings Bank an account in the name of the Public Trustee, which account shall show the name of the estate or beneficiary or beneficiaries concerned; and the Public Trustee may operate on the account for the benefit of the estate or of any beneficiary or beneficiaries interested therein in such manner and to such extent as he or she may determine.

**16. Payment of salaries and expenses** – The Public Trustee shall, out of money appropriated by Parliament for the purpose, pay all salaries and other outgoings, charges and expenses lawfully incurred or payable in administering the Public Trust Office:

**PROVIDED THAT** there shall be charged on the Public Trustee's Account and be statutory expenditure any payments which may lawfully be made by the Public Trustee in administering any estate or in investing or managing the Common Fund.

**17. Balance sheet, etc.** – (1) The Public Trustee shall, after the close of each year ending with 31 December, prepare:

- (a) a Balance Sheet, showing the assets and liabilities of the Public Trust Office at the end of that year, and showing also the amount of the grants (if any) made from the Treasury Fund during that year pursuant to section 20 and the amount of the repayments (if any) during that year of any such grants;
- (b) a Profit and Loss Account, setting out the revenue and expenditure of the Public Trust Office during that year; and
- (c) a Profit and Loss Appropriation Account showing (among other things) the amount of the profit made or of the loss sustained during that year and



the appropriation of that profit or the disposal of that loss.

(2) In preparing the aforesaid accounts, the Public Trustee may charge against the Profit and Loss Account or the Profit and Loss Appropriation Account, as may be considered proper by the Public Trustee in his or her discretion, outgoings or items of expenditure incurred over, or relating to a period either before or after, the year for which the accounts are prepared, and also any sum or sums which the Public Trustee in his or her discretion may consider necessary or advisable to be reserved for the purpose of meeting any requirement, commitment, loss or liability of the Public Trustee, whether present or future, actual or contingent, specific or general; and any sum or sums so reserved shall be transferred to an Assurance and Reserved Fund or a General Legal Expenses Reserve Fund or such other Reserve Fund as the Public Trustee thinks fit to constitute, and, subject as hereinafter appears in this Act, may be used for the purpose of meeting any requirement, commitment, loss or liability in respect of which the sum or sums were reserved or for the general purposes of the Public Trust Office.

(3) The Public Trustee shall send the Balance Sheet, Profit and Loss Account, and Profit and Loss Appropriation Account to the Controller and Auditor General who shall, after auditing them, transmit them, together with such report thereon as he or she thinks fit, to the Minister, and the Minister shall lay copies thereof before the Legislative Assembly within 28 days after the date of the receipt thereof by the Minister if the Assembly is then in session, and, if not, within 28 days after the date of the commencement of the next ensuing session.

**18. Application of profits** –(1) If the Profit and Loss Appropriation Account of the Public Trust Office for any financial year which ends with 31 December after this Act comes into force discloses a surplus, the amount thereof shall be transferred, as the Public Trustee shall determine, to the Assurance and Reserve Fund or to the General Legal Expenses Reserve Fund or to any other Reserve Fund or Funds which the Public Trustee may think fit to constitute pursuant to the provisions of section 17(2), or shall be apportioned among any 2 or more of the Funds in such proportions as the Public Trustee may think fit.

(2) Any deficiency in the Profit and Loss Appropriation Account in any year shall be provided out of the Assurance and Reserve Fund.

(3) There shall be payable, out of money in the Assurance and Reserve Fund appropriated by Parliament for the purpose, such amounts as the Investment Board thinks fit, in the acquisition, building and furnishing of the officer premises, and in the purchase of office appliances and other things which the Public Trustee deems requisite for the efficient conduct of the Public Trust Office, or as the Public Trustee considers necessary for the purpose of providing suitable and reasonable amenities for or otherwise ministering to the welfare and well-being of the staff thereof.

(4) All officer, premises and property of any kind purchased before the commencement of this Act out of the profits of the Public Trust Office shall constitute investments of the Assurance and Reserve Fund.

**19. General Legal Expenses Reserve Fund** – There may from time to time be paid, out of the General Legal Expenses Reserve Fund, such costs, charges, expenses and money as may be incurred or payable by the Public Trustee in obtaining any legal opinions of general interest to the Public Trust Office, or as may be awarded against the Public Trustee, or incurred by the Public Trustee, and which costs, charges, expenses and money cannot fairly, in the Public Trustee's opinion, be charged against any particular estate or estates or other fund or funds.

**20. Payment of deficiency**– (1) If the balances in the Public Trustee's Account are at any time insufficient to meet the Public Trustee's liabilities and commitments, the Minister responsible for Public Enterprises may, subject to appropriation of funds under an Appropriation Act, grant to the Public Trustee such sum or sums as may be provided to meet the deficiency, in whole or in part.

(2) If the Minister for Public Enterprises determines that any money granted to the Public Trustee under subsection (1) shall be repaid to the Treasury Fund, the Public Trustee shall comply with such determination as soon as there are balances in the Public Trustee's Account available for the repayment.

(3) If a grant under subsection (1) is not required to be repaid under subsection (2), the grant shall be transferred into the Assurance and Reserved Fund or the General Legal Expenses Reserve Fund or any other Reserve Fund constituted under subsection 17(2) as the Public Trustee acting on the instructions of the Investment Board directs.

**21. Loss occasioned by negligence of officer** – If by reason of the negligence or wrongful act of any member of the staff of the Public Trust Office any loss is incurred or any extra payment has to be made, the amount involved may, with the approval of the Minister, be charged on and paid from the Profit and Loss Account or the Profit and Loss Appropriation Account or any Reserve Fund that may have been established for that purpose, as may be considered proper by the Public Trustee in his or her discretion, and be statutory expenditure.

**22. Annual report to be submitted to Minister and Legislative Assembly** – (1) The Public Trustee shall cause to be prepared and submitted to the Minister as soon as possible after 31 December in each year a report of the operations of the Public Trust Office during the financial year ended on that date.

(2) The Minister shall lay copies of the report before the Legislative Assembly within 28 days after the date of receipt thereof by the Minister, if the Assembly is then in session, and, if not, within 28 days after the date of the commencement of the next ensuing session.

**23. Rights and powers of Minister for Public Enterprises** – The Minister for Public Enterprises and any officer of the Treasury authorised by him or her shall at all times have access to all the books, accounts, documents and papers in the Public Trust Office and the Public Trustee shall at all times provide to the Minister for Public Enterprises all such information as the Minister for Public Enterprises requires.

## **Division 2 – Investments**

**24. Common Fund** – (1) Subject to sections 15 and 25, all capital money for the time being held by the Public Trustee, however arising, whether before or after the commencement of

this Act, and whether directed to be invested or not, shall, unless expressly forbidden to be so invested, constitute one common fund (in this Act referred to as the Common Fund) and shall be invested as provided by section 26. Any investments made from the Common Fund shall not be made on account of or belong to any particular estate.

(2) A power or direction to invest money in one or some only of the classes of securities mentioned in section 26 shall not be deemed to be an express prohibition against investment in the Common Fund, and the money shall form part of the Common Fund, unless there is an express direction to the contrary.

(3) Nothing in this section prevents the Public Trustee from applying money belonging to any estate which for the time being forms part of the Common Fund for any purpose involved in the exercise of any power or authority conferred upon him or her by or under this Act or any other Act or law or by any will, deed, Court order or other instrument.

(4) Subject to the provisions of this Act, the interest payable to the respective estates the money for which constitutes the Common Fund shall be at a rate or rates to be determined from time to time by order made by the Head of State, acting on the advice of Cabinet, and interest at such rate or rates shall be credited to the respective estates half-yearly, namely on 30 June and on 31 December in each year, or at such other time or times in each year (whether at longer or shorter periods than half-yearly periods) as the Public Trustee may determine, either generally or in any particular case or class of cases. Any such determination may be made to take effect on the date thereof or on such day before or after that date as is specified therein.

(5) The Head of State, acting on the advice of Cabinet, may make regulations as he or she thinks proper as to the payment or non-payment of interest on money belonging to any estate, and as to the period from which interest, if allowed, is to be computed.

**25. Special investments not guaranteed** – (1) If money is available for investment but under this Act does not form part of the Common Fund, the Public Trustee shall invest the money under any directions applicable thereto, or, if there are not such directions, then in investments which for the time being are authorised by law for the investment of trust funds.

(2) Investments made under this section are not entitled to the protection afforded by section 29 to investments of the Common Fund, and any loss or deficiency on any the investments, or of the money received therefrom or arising from a realisation thereof, shall be borne by the estate to which the investments or money belongs or would belong if received or realised.

(3) Forthwith upon the receipt by the Public Trustee of any such money, the Public Trustee shall make all reasonable efforts to find an investment or investments therefor under the special directions in the trust instrument, or if there are no such directions then under the provisions of the law relating to trustees, and, if the whole of the money cannot be so invested within one calendar month from the date of receipt thereof, the Public Trustee may, until the money can be so invested, temporarily appropriate and allocate as an investment for the money, or any part thereof, one of more existing investments of the Common Fund of the same nature and kind as is required by subsection (1).

(4) An investment of the Common Fund while so appropriated and allocated as a special investment is not entitled to the protection afforded by section 29 to investments of the Common Fund.

**26. Investments of the Common Fund – (1)** Money in the Common Fund may be invested in the manner following:

- (a) in any of the debentures, stock, bonds, funds or other securities of the Government of Samoa or of New Zealand or of the United Kingdom of Great Britain and Northern Ireland or of Australia or of any State of Australia;
- (b) in advances by way of first mortgage on the security of any real estate held in fee simple in Samoa to an amount not exceeding nine-tenths of the estimated value of that estate according to a valuation approved by the Investment Board;
- (c) on deposit in the ANZ Bank of Samoa or in the ANZ Bank of Samoa Savings Bank or in the Post Office Savings Bank;
- (d) on deposit in any development bank in Samoa;
- (e) in advances by way of mortgage on the security of any of the debentures, stock, bonds, funds or other securities referred to in paragraph (a), if

investment in the debentures, stock, bonds, funds and other securities would constitute a lawful investment of the money; and any advances by way of mortgage under the authority of this paragraph may be for an amount not exceeding nine-tenths of the estimated value of the debentures, stock, bonds, funds or other securities according to a valuation approved by the Investment Board or nine-tenths of the nominal value thereof (whichever is the less), and may be on such terms and conditions as the Public Trustee may determine;

(f) in payments pursuant to section 27, and in advances to estate and beneficiaries under section 32 or 33.

(2) The Public Trustee in investing money under this section may provide that the money, with interest thereon, be repaid to the Public Trustee by periodical instalments extending over such period, and subject to such terms and conditions, as the Public Trustee thinks fit.

(3) All loans and advances made by the Public Trustee (or his or her predecessors) to any person that are not in strict compliance with subsection (1) are treated in all respects as a registered mortgage on any land, debentures, stock, bonds, funds or other securities owned, legally or beneficially by the person to whom the money has been lent or advanced.

**27. Public Trustee may buy in securities and apply Common Fund money for the purpose –** (1) In any case where any power of sale conferred upon the Public Trustee as mortgagee or lender under or in respect of any mortgage or other security securing payment of money forming part of the Common Fund is exercised or becomes exercisable, the Public Trustee may, if he or she considers it expedient so to do, buy in, purchase or otherwise acquire the land or other property affected by the mortgage or security, whether on a sale through the Registrar of the Supreme Court or otherwise; and may if he or she considers it expedient so to do expend or apply money of the Common Fund for the purpose of doing so.

(2) All land or other property so bought in, purchased or otherwise acquired may at any time or times thereafter be managed, stocked cultivated, leased, exchanged, sold or

otherwise disposed of by the Public Trustee in such manner and at such times and upon such terms and conditions in all respects as the Public Trustee from time to time thinks fit, and until sold, realised or otherwise disposed of shall constitute investments of the Common Fund for the purpose of securing repayment of money of the Common Fund expended or applied as aforesaid.

**28. Temporary advances to Public Trustee – (1)** In order that money in the Common Fund may be kept closely invested, the Public Trustee may, with the approval of the Minister, obtain advances from the Treasury or any bank or corporation by pledging securities held by him or her in respect of investments of the Common Fund.

(2) An advance shall be for such period and at such rate of interest as are approved by the Minister:

**PROVIDED THAT** on the expiration of the period the advance may be renewed for the same or any shorter period, and so on from time to time.

(3) In this section, “advance” includes accommodation by way of overdraft.

**29. Deficiency in Common Fund to be made good out of Treasury Fund –** If the Common Fund is insufficient to meet the lawful claims thereon, such sums as may be necessary to meet the deficiency shall be charged on and be paid out of the Treasury Fund and be statutory expenditure.

**30. Public Trustee may act as agent for investment of money in Common Fund – (1)** The power given to the Public Trustee by section 36 to act as agent is taken to include the power to act as agent for the investment of money in the Common Fund for such period and on such terms and conditions as, consistently with any regulations for the time being in force under this Act, are agreed on between the Public Trustee and the principal.

(2) Despite section 24, the rate of interest that may be paid by the Public Trustee on money for the time being invested in the Common Fund pursuant to this section shall be such as the Minister of Finance fixes by notice in the *Gazette*.

(3) Any such notice may fix different rates for different classes of investments, as defined in the notice or according to the amount or period of any such investment.

(4) Any such notice shall, according to the tenor thereof, take effect on the date thereof or on such earlier or later date as may be specified therein.

**31. Repayment of money invested in the Common Fund by or on behalf of infant** –(1) If a person under the age of 21 years pays or has, before the commencement of this Act, paid any money to the Public Trustee as agent for the investment thereof in the Common Fund for the use and benefit of the principal or of any other person under the age of 21 years, the Public Trustee may pay to that principal or other person the money, or the interest thereon, in the same manner as if that principal or other person receiving the same were of full age, and the receipt of the principal or other person shall be a sufficient discharge for all money paid to him or her as aforesaid, notwithstanding his or her incapacity or inability in law to contract or act for himself or herself.

(2) The Public Trustee, acting in good faith under the authority of this section, shall be absolutely discharged from liability for any payments made by him or her under the authority, but any person to whom the money ought to have been paid shall have remedy for the recovery thereof against the person to whom the money has been paid.

### **Division 3 – Advances to Estates**

**32. Advances to estates** – (1) If, in any estate in the Public Trust Office, there is any real or personal property (whether capital or income), but there is no money or not sufficient money available in the estate for the purpose of meeting the payment of:

- (a) expenses properly incurred by the Public Trustee in the administration of the estate; or
- (b) money required or desired to be paid out of or on account of the estate, whether to the persons entitled thereto or to a share or interest therein, or to creditors or otherwise howsoever; or
- (c) money required or needed to carry into effect any power or discretion which is vested in the Public



Trustee by this or any other Act or otherwise howsoever, and which the Public Trustee, – the Public Trustee may, with the approval of the Investment Board, advance to the estate such sums or sums of money out of the Common Fund, as may be necessary for the purposes mentioned.

(2) No greater amount shall so advanced than the value of the real and personal property in the estate, as estimated by the Public Trustee and approved by the Investment Board.

(3) The sums so advanced, with all interest thereon, shall be a charge upon the real and personal property comprise in the estate, and shall bear interest at a rate to be proposed by the Public Trustee. Any such charge shall rank next in priority to any mortgage or other charge which is registered against or secured on the real and personal property and of which the Public Trustee has noticed at the time of the making of the advance.

(4) An interest rate proposed by the Public Trustee under this section:

- (a) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act; and
- (b) shall be prescribed by regulations.

#### **Division 4 – Advances to Beneficiaries**

**33. Advances to beneficiaries** – (1) Subject to the provisions of this section, if any person entitled to a share in any estate administered in the Public Trust Office desires an advance against his or her share, the Public Trustee may, with the approval of the Investment Board, make advances out of the Common Fund to that person not exceeding in the whole two-thirds of the value of his or her share as estimated by the Public Trust and approved by the Investment Board.

(2) All such advances with interest thereon at such rate as is fixed from time to time by the Public Trustee shall by force of this Act and without any instrument of assignment be a first charge on the share against which the advances are made.

(3) A certificate under seal stating the amount owing for advances and interest on any specified date, the person to whom the advances were made, and the share against which they were made, is, according to its tenor, sufficient evidence of the facts stated in the certificate until the contrary is proved.

(4) This section does not apply to the share of any persons which is for the time being subject to any contingency or is not indefeasibly vested in interest.

(5) When an advance is made to a person under this section, the money so advanced together with all interest, costs, charges and expenses due in connection therewith shall, in the absence of express agreement, be repayable on demand and may be recovered from that person in any Court of competent jurisdiction.

(6) The Public Trustee may at any time, without notice, sell, mortgage, charge, or otherwise deal with the share against which the advances are made for the purpose of obtaining repayment of the money so advanced, together with all such interest, costs, charges and expenses accrued thereon.

(7) If any such person is beneficially entitled to a share or interest in more than one estate administered in the Public Trust Office, the Public Trustee may exercise the powers conferred by subsection (6) in respect of the share or interest of the person in all or any of the estates.

#### **Division 5 – Advances To Be Treated As Mortgages**

**34. Where land is affected advances to be treated as mortgages** – (1) If the Public Trustee advances money to an estate under his or her administration or to any beneficiary in the estate under section 32 or 33, and the assets comprising the estate or the share of the beneficiary therein include an interest in land, the advance is treated in all respects as a registered mortgage of that interest in land.

(2) A certificate under seal, setting out the amount of the advance, shall be accepted by all persons as sufficient evidence thereof, without further proof.

#### **Division 6 – Renewals of Mortgages**

**35. Public Trustee may arrange extensions or renewals of Common Fund investments** – The Public Trustee as mortgagee or lender in the case of any mortgage or other security securing money which forms part of the Common Fund may arrange with the mortgagor or borrower for an extension or renewal of the mortgage or other security for such term and subject to such

conditions and at such rate of interest as the Public Trustee thinks fit, whether or not the rate is lower than the rate prescribed in that mortgage, even if a higher rate of interest might be obtainable for a new loan or that, by reason of any decrease in the value of the property in respect of which the investment was made or of any change in the class of securities in which the Common Fund may be invested, or for any other reason, any such extension or renewal is not an investment authorised by this Act or any other Act in respect of money which forms part of the Common Fund.

#### **PART 4**

### **ACQUISITION OF RIGHT TO ADMINISTER ESTATES**

**36. Duties for which Public Trustee may be appointed** –If a Court, Judge, corporation (whether public or private), public officer, association or person, whether in or out of Samoa, can now or hereafter:

- (a) appoint an executor, administrator, trustee, guardian, committee, manager, agent, attorney or liquidator, or make any other appointment of a fiduciary nature; or
- (b) create any trust and appoint a trustee for the purposes thereof under and subject to such powers, provisions, and conditions as are expressed and implied,–

any of such appointments may be made of the Public Trustee if he or she consents thereto.

**37. Appointment of Public Trustee by executors, administrators and trustees** – (1)With the consent of the Supreme Court, and subject to the approval of the Public Trustee being obtained thereto:

- (a) executors, whether appointed before or after the coming into operation of this Act, may, unless expressly prohibited, before or after taking out probate, appoint the Public Trustee sole executor; and
- (b) other administrators, with or without a will annexed, whether appointed before or after the coming into operation of this Act may, unless expressly

prohibited, appoint the Public Trustee sole administrator.

(2) If an executor or administrator with a will annexed appoints the Public Trustee executor or administrator pursuant to the provisions of subsection (1), the Public Trustee shall, by virtue of the appointment, be also the sole trustee in all cases where the executor or administrator was trustee, or where there was no trustee appointed by the trust instrument or in existence at the date of the appointment of the Public Trustee as aforesaid. This subsection applies to all appointments hereafter made under this Act or heretofore made under any Act repealed by this Act.

(3) If there are more trustees, or persons having power to appoint a trustee, or executors, or administrators than one, any one trustee, or any one of those persons having power to appoint a trustee, or any one executor (whether before or after proving a will), or any one administrator, may apply to the Supreme Court to have the Public Trustee appointed sole trustee, executor, or administrator, if the Public Trustee consents thereto.

(4) On any application to the Supreme Court under this section, the Court has the power to make such order as it thinks fit.

**38. Public Trustee entitled on application to administration of intestate estates** – (1) When a person, whether domiciled in Samoa or elsewhere, dies (whether before or after the commencement of this Act) in Samoa or elsewhere intestate, leaving property situated in Samoa, the Public Trustee may, if he or she thinks fit to apply therefor, obtain a grant of administration of that person's estate.

(2) The Public Trustee is entitled as of right to the grant of administration:

**PROVIDED THAT:**

- (a) if some other person in Samoa, being a person who if it were not for this section would be entitled to the grant of administration, applies for a grant of administration, then the Court may grant administration to that person; and
- (b) it is not necessary for the Public Trustee to give notice of the application to any such person, or for the Court to require him or her to do so.

**39. Public Trustee may be appointed sole trustee where appointment of 2 or more trustees provided for** – (1) Even if a will, codicil, deed or other instrument may provide for or direct the appointment of 2 or more trustees, trustees appointed under any such will, codicil, deed or other instrument, or any other person or persons having the power to appoint new trustees thereof, whether so appointed or empowered before or after the coming into operation of this Act, may, unless expressly prohibited, appoint the Public Trustee as sole trustee under the will, codicil, deed or other instrument (if he or she consents to the appointment) without obtaining the consent of the Supreme Court, and the Public Trustee may in any such case lawfully act as such sole trustee:

(2) In this section, “trustee” does not include personal representatives as such.

**40. Judge may consent to Public Trustee’s appointment if any person whose consent is required, refuses or is unable to consent** – If the consent of a person is required to the appointment of an administrator or other trustee and the person refuses to consent to the Public Trustee being appointed, or where the person to consent is absent from Samoa, or is not of full age or full mental capacity or is under any other disability, an appointment of the Public Trustee may be made without that consent if a Judge of the Supreme Court consents thereto.

**41. Public Trustee not to accept joint appointment** – Under no circumstances shall the Public Trustee accept appointment jointly with any other person or persons:  
**PROVIDED THAT** nothing in this section prevents the Public Trustee from acting:

- (a) with an advisory trustee or advisory trustees: or
- (b) as custodian trustee with managing trustees.

**42. Public Trustee on appointment to have same rights, etc., as a private person** – Subject to the express provisions of this Act or any other Act, the Public Trustee, when appointed or acting under this Act or any other Act in any of the capacities mentioned in sections 36 to 39, has the same rights, powers, duties and immunities as a private person acting in any of those capacities would have.

**43. Property, rights, etc., to vest in Public Trustee on appointment** – When the Public Trustee is duly appointed executor, administrator or trustee, all property, functions, powers, authorities, discretions, and rights vested in or conferred by the trust instrument on the executor, administrator or trustee appointed thereunder shall, on such appointment without any conveyance or assignment or the execution of any other instrument, become vested in and exercisable by the Public Trustee as fully and effectually as if he or she had been named as such executor, administrator or trustee under the instrument, and a certificate by the Public Trustee that any property (whether real or personal) forms part of the estate in respect of which the Public Trustee is so appointed as executor, administrator or trustee shall be accepted by all Courts, officers and persons as sufficient evidence of that fact without further proof.

**44. Power of Public Trustee to administer if no application made for probate or administration** – (1) If a person dies testate, and application for probate or letters of administration with the will annexed is not made in Samoa within 3 months after the date of the death of that person, the Public Trustee may apply for an order to administer with the will annexed, and the Court shall make the grant unless the person entitled to probate or letters of administration with the will annexed applies therefor, or show to the satisfaction of the Court that the delay in making that application has been and still is unavoidable or accidental.

(2) On such an application no costs shall be awarded against the Public Trustee.

(3) On the application of any person entitled to probate or letters of administration with the will annexed who was out of Samoa when the grant to the Public Trustee was made and who has not renounced or refused probate or letters of administration, or on the application of the attorney of that person, the Court may grant probate or letters of administration to that person or to his or her attorney as the case may be, in such manner and subject to such limitations or conditions as the Court thinks proper.

(4) No such application as is last mentioned shall be made until after 14 days' notice in writing of the intention to apply has been left at the office of the Public Trustee at Apia.

(5) Immediately on the grant of any probate or letters of administration pursuant to the provisions of subsection (3):

- (a) all the functions, powers, authorities, discretions, rights and duties of the Public Trustee (except the rights reserved by this subsection) in relation to the testator's estate, and all liability of the Public Trustee under any contract entered into by the Public Trustee, or otherwise, affecting or relating to the estate, shall pass to the person obtaining probate or letters of administration, and no claim shall thereafter lie against the Public Trustee in respect of any such liability; and
- (b) subject to and on the allowance and payment to the Public Trustee of all money due for commission, necessary outlay, disbursements, costs, charges and expenses affecting the estate, including the costs of the Public Trustee of and incidental to the application for probate or letters of administration, and consequent thereon, such portion of the estate of the testator as is then unadministered by the Public Trustee shall vest in the person obtaining probate or letters of administration.

**45. Provisions relating to applications for grants of administration** – An application by or on behalf of the Public Trustee for probate of a will, or for an order to administer with a will annexed (whether for general, limited or special purposes) or for any other grant of administration (whether intestate or testate), may be filed in any office of the Supreme Court at the discretion of the Public Trustee, and on any such application, whether the person was domiciled or died in Samoa or elsewhere, in the absence of evidence to the contrary, no further proof of the death or testacy or intestacy of any person shall be required than an affidavit that, after due inquiries, the Public Trustee is satisfied that the person has died either testate or intestate, as the case may be.

**46. Public Trustee may be appointed guardian or next friend of infant** – (1) The Public Trustee (if he or she consents) may, by deed or will or an order of the Court (whether on the

application of the Public Trustee or of any other person), be appointed to be a guardian, of the person of an infant under any law in force for the time being relating to the guardianship and custody of infants.

(2) The Public Trustee shall be capable of being appointed and may, with his or her consent, be appointed by order of the Court as next friend or as guardian ad litem of an infant.

**47. Public Trustee may act as agent for resealing in Samoa**— The Public Trustee may act as agent for the purposes of resealing in Samoa any probate or letters of administration granted outside Samoa.

**48. Public Trustee may be appointed receiver** – The Public Trustee, with his or her consent and for such remuneration as is prescribed or as in the absence of any prescription, is agreed on, may be appointed receiver under any Act or instrument providing for the appointment of a receiver, or in the exercise of the general jurisdiction of the Court.

**49. Public Trustee may be appointed to represent parties in legal proceedings** – (1) The Public Trustee (if he or she consents) may be appointed or directed by any Court to represent any party, or any person or class of persons interested, in any proceedings.

(2) The Public Trustee is entitled to be represented in the proceedings, and the costs; and expenses of any such representation as between solicitor and client, together with a fee to be prescribed for the Public Trustee's services, are to be paid to the Public Trustee out of any estate or funds or property the subject of the proceedings, or otherwise as the Court thinks fit.

(3) The amount of a fee required to be paid under subsection (2) for the Public Trustee's services:

(a) shall be proposed by the Public Trustee;

(b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

(4) The requirements under subsection (3) do not apply to fees and costs ordered by a Court.



**50. Public Trustee may act as arbitrator or umpire – (1)**

The Public Trustee (if he or she consents thereto) may be appointed arbitrator or umpire under any submission to arbitration.

(2) The remuneration for so acting is to be prescribed or, if not prescribed is to be agreed on.

**51. Public Trustee propounding will or applying for administration entitled to costs – (1)** On an application by the Public Trustee whether in common or in solemn form, for probate of any will, or for administration with a will annexed, the Public Trustee is entitled to his or her costs out of the estate, and is not liable for the costs of any other person.

(2) If the beneficiaries entitled under any intestacy cannot agree as to the person to be appointed administrator, and the Public Trustee, at the request of any one or more of those beneficiaries applies for an administration, he or she is entitled to his or her costs out of the estate and is not liable for the costs of any other person, whether he or she is or is not appointed administrator.

**52. Registrar to notify Public Trustee of lodging of caveat**

– When a caveat is lodged against an application by the Public Trustee for probate or other administration, the Registrar shall forthwith notify the Public Trustee of the lodging of the caveat, and of the name of the solicitor or other person lodging the same.

**53. Trustees may delegate powers to Public Trustee – (1)**

If the trustees of a trust estate are empowered to delegate all or any of their functions, powers, authorities, discretion and rights to any person, they may delegate the same to the Public Trustee with his or her consent, and in any such case the Public Trustee may exercise all the functions, powers, authorities, discretions and rights so delegated.

(2) The charges of the Public Trustee for carrying out the functions, powers, authorities, discretions and rights delegated under subsection (1), are to be prescribed by regulations.

**54. Powers exercisable by Public Trustee pending grant of probate or administration –(1)** If a person dies or has

heretofore died, whether testate or intestate (and even if some person other than the Public Trustee is appointed executor or is entitled to letters of administration), the Public Trustee may, if he or she thinks fit, until administration is granted, exercise with respect to the estate of the deceased person all such powers and authorities and do all such acts and things as he or she would have or could exercise or do if the deceased had died intestate and the Public Trustee had obtained administration.

**PROVIDED THAT** the Public Trustee:

- (a) shall not sell, lease, exchange, mortgage or partition any portion of the property unless the property is ordered to be sold, leased, exchanged, mortgaged or partitioned by a Judge of the Supreme Court on the application of the Public Trustee, which order a Judge of the Supreme Court is hereby authorised to make;
  - (b) may sell, without obtaining an order of a Judge of the Supreme Court, any portion of the personal estate that is of a perishable nature or is liable to deteriorate or is for any other reason liable to decrease unduly in value if detained; and the decision of the Public Trustee as to whether any portion of the personal estate is of a perishable nature or is liable to deteriorate or is for any reason liable to decrease unduly in value if retained shall be conclusive and binding upon all persons whomsoever.
- (2) All costs, charges and expenses incurred by the Public Trustee under this section are to be a first charge upon the property of the deceased person.
- (3) A person who afterwards applies for administration of the estate of the deceased person shall, before he or she is entitled to a grant thereof, first pay costs, charges, commissions and expenses incurred by or payable to the Public Trustee.
- (4) The Public Trustee acting under this section is taken not to be or to be liable as an executor *de son tort*.

**55. Notice to person entitled to obtain probate or letters of administration** – (1) Before the Public Trustee first acts under section 54, the Public Trustee shall give notice, in writing or by telegram to any person in Samoa known to him or her who is of

full age and full mental capacity and would be entitled to obtain administration, that he intends to so act unless that person forthwith proceeds to apply for administration.

(2) If that person does not, within a period of 21 days after the posting of the notice or the dispatching of the telegram, give notice, in writing or by telegram, to the Public Trustee that the person intends to apply for administration, or if that person gives such notice but fails for 14 days thereafter so to apply, or makes such application and it fails, then, unless the Court otherwise orders, the Public Trustee may proceed to exercise all or any of the powers and authorities conferred by section 54.

(3) If more persons than one are entitled to take out administration, it is sufficient to give notice to one of those persons only.

(4) Nothing in this section, if it is not actually known to the Public Trustee that there is in Samoa a person entitled to obtain administration or in any case of emergency (of which emergency the Public Trustee shall be the sole judge), prevents the Public Trustee from exercising the powers and authorities given by section 54 without giving such notice as aforesaid.

**56. Public Trustee may oppose application for administration** – (1) If a person dies leaving real or personal property situated in Samoa and any person other than the Public Trustee makes application for administration of the estate of the deceased person and the Public Trustee believes that there are substantial and reasonable grounds for opposing the grant, but there is no person in Samoa beneficially interested in opposing the grant who is of full age and full mental capacity, the Public Trustee may:

- (a) if he or she thinks it expedient, lodge a caveat against the application for administration;
- (b) thereupon forthwith apply *ex parte* to a Judge in Chambers for directions, and the Judge may, if he or she thinks fit, direct the Public Trustee to represent the persons who may be prejudicially affected by the grant and in his or her corporate name oppose the grant on their behalf.

(2) All costs, charges and expenses incurred by the Public Trustee acting pursuant to any such directions under subsection (1) shall be paid out of the estate.

**57. Validity of acts by Public Trustee under administration granted in error – (1)** Without prejudice to any protection otherwise afforded, if:

- (a) under the belief in good faith that a person has died testate or intestate, the Public Trustee—
  - (i) has obtained a grant of administration of an estate; or
  - (ii) is administering an estate under statutory powers; or
  - (iii) is appointed for acting as trustee under a will,

—  
and afterwards it is found, that the person is living or did not die intestate, or that a will exists which revokes or alters the will which the Public Trustee has proved or under which he or she becomes administrator, or under which he or she is administering or is acting as trustee; or

- (b) the authority of the Public Trustee to administer is for any other reason revoked or rendered of no effect, —

then even if the person is living, or the deceased did not die intestate, or made a will revoking or altering the provisions of the will of which the Public Trustee is administrator or under which he is appointed or acting as trustee, or that the administration under which the Public Trustee has been acting is for any other reason revoked or rendered of no effect, all acts and things done or omitted by the Public Trustee, whether before or after the commencement of this Act, shall be as good, valid and effectual as if he or she had been lawfully appointed or entitled to act as such executor, administrator or trustee.

(2) In any such case, nothing in this section affects or prejudices any right of any person against any other person to whom the Public Trustee has transferred any property or paid any money.

(3) The onus of proving that the Public Trustee has not acted in good faith in respect of any of the matters referred to in this section shall be upon any person who alleges it.

**58. Payment of legacies of infants to Public Trustee – (1)** With the consent of the Public Trustee, a trustee:

- (a) may pay to the Public Trustee any money, being the whole amount, or the whole remaining amount, of any legacy or share in any estate to which an infant is entitled, whether indefeasibly or contingently, under a will, instrument, trust or intestacy; and
  - (b) shall direct the Public Trustee by writing in a form approved by the Public Trustee to account for the legacy or share according to the provisions of the will instrument, trust or intestacy.
- (2) The direction shall declare that:
- (a) the amount therein stated is the whole amount or (as the case may be) the whole remaining amount to which the infant is so entitled, and how much of the amount is capital and how much thereof is income and how much (if any) of the capital and income has been expended, whether for the maintenance, education, advancement or benefit of the infant or otherwise; and
  - (b) for money to which the infant is contingently entitled, the person or persons who will become entitled to the money or so much as remains if the infant failing to become indefeasibly entitled, and the shares and interests of those persons; and
  - (c) any other matters as the Public Trustee may require,

—  
and the direction shall be certified correct by the trustee; and the Public Trustee shall not be under any obligation to inquire into the accuracy of the direction nor shall the Public Trustee incur any liability through acting upon any statement contained in the direction.

(3) Upon subsections (1) and (2) being complied with in any case, the direction shall vest in the Public Trustee all the powers of the trustee in respect of the legacy or share, whether conferred by the will or trust instrument or by statute or in any other manner howsoever; and in addition the Public Trustee shall be entitled to exercise in respect of the legacy or share the powers conferred upon the Public Trustee by this Act.

(4) The trustee shall, at the time of completing the direction referred to subsections (1) to (3), provide to the Public Trustee where applicable a true copy of the will or trust instrument

affecting the legacy or share; and the Public Trustee shall act in pursuance of the trusts therein contained.

(5) This section extends to all wills, trusts, trust instruments, entices and transactions, whether they took effect before or after the commencement of this Act.

### **Division 1 – Protection of Infants and Persons Under Disability in Certain Cases**

**59. Money or damages to which infants and others entitled to be paid to Public Trustee** –(1) In any cause or matter in any Court in which money or damages are claimed by or on behalf of a person who is not of full age or full mental capacity, no money or damages received or awarded in the cause or matter, whether by way of compromise, payment into Court, or otherwise, and whether before or after the trial, shall be paid to the plaintiff, or to the next friend or guardian ad litem or solicitor of the plaintiff.

(2) All money or damages so received or awarded are, unless the appropriate Court having jurisdiction in the cause or matter otherwise orders, to be paid to the Public Trustee, and are subject to any special or general directions of that Court, to be held and applied by him or her in such manner as he or she thinks fit for or towards the maintenance or education (including past maintenance or education) or the advancement or benefit of that person.

(3) All money so paid to the Public Trustee shall be invested by him or her in the Common Fund or (despite section 24) in such other investments as are authorised by law for the investment of trust funds, or partly in the Common Fund and partly in such other investments as aforesaid, as the Public Trustee shall deem fit having regard to the circumstances of the persons for whose benefit the money is so held.

(4) A certificate by the Public Trustee showing the receipt of any money paid to him or her pursuant to subsection (2) is, in any Court or proceedings whatsoever, sufficient evidence of the facts stated in the certificate without any further proof.

(5) Nothing in this section prejudices the lien of a solicitor for his or her costs.

(6) The plaintiffs costs in any such cause or matter or incident to the claim therein or consequent thereon shall either be fixed by

the Court or taxed as between party and party and as between solicitor and client, and (in the case of taxation) the taxing officer shall certify the respective amounts thereof and the difference (if any). No costs other than those so fixed or certified shall be payable to the plaintiff's solicitor.

(7) When the money or damages received or awarded are paid to the Public Trustee, he or she shall be given notice of the taxation, if any, and is entitled to appear and be heard thereon.

## **Division 2 – Benefit Funds**

### **60. Administration by Public Trustee of benefit funds –**

(1) If a fund is raised by public or private subscriptions for the benefit or relief of any person or class of persons, the following provisions apply:

- (a) the fund may be placed in the Public Trust Office to be administered by the Public Trustee and to be invested in the Common Fund;
- (b) the Public Trustee may recognize as a committee any persons whom he or she believes to have organised the appeal for the subscriptions or to have been appointed or authorised or recognised as a committee by a substantial number of the subscribers;
- (c) the Public Trustee, after conferring with the committee, if any, may apply to the Supreme Court for directions as to the administration of the fund, and for that purpose shall submit a scheme of administration;
- (d) the Court may approve the scheme with or without modification as the Court thinks fit;
- (e) the Public Trustee shall administer the fund in accordance with the scheme as approved;
- (f) on the application of the Attorney-General, or of the Public Trustee, or of any member of the committee, or of any person claiming an interest in the fund, the Court at any time may vary the scheme so far as it relates to the powers of the Public Trustee in respect of the fund and the mode of administering the fund, or give directions on

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any point or question relating to the scheme or the fund;

- (g) the Public Trustee shall obey all such directions;
- (h) if the fund was raised for the benefit of 2 or more persons, any scheme under this section may provide that the income and capital of the fund or any specified part thereof may be applied by the Public Trustee in his or her discretion for or towards the maintenance or education (including past maintenance or education) or advancement or benefit or those persons or of any one or more of them to the exclusion of the other or others of them in such shares and of them to the exclusion of the other or others of them in such shares and proportions and generally in such manner as the Public Trustee thinks fit, and in pursuance of any such provision the Public Trustee may so apply money even if only one of those persons remains alive.

(2) This section applies to funds raised as aforesaid either before or after the commencement of this Act, and to any funds raised as aforesaid which at the commencement of this Act are being administered in the Public Trust Office.

(3) Despite subsections (1) and (2), if the fund does not exceed \$4,000:

- (a) the Public Trustee, instead of applying to the Supreme Court for directions as to the administration of the fund, may, with the consent of the committee (if any) or the majority of the members thereof, settle a scheme of administration;
- (b) the scheme so settled may be incorporated in a declaration of trust by the Public Trustee, who, for the purpose of the trust instrument, shall be deemed to be the settlor of the trust;
- (c) any statements or recitals in any such trust instrument shall be sufficient evidence of the truth thereof, and the provisions of the declaration of trust shall be final and binding on all persons whether beneficially interested thereunder or otherwise:



**PROVIDED THAT** the Public Trustee may, if he or she thinks fit so to do, and with the consent of the surviving members of the committee (if any) in Samoa or a majority of them, at any time modify the scheme so far as it relates to the powers of the Public Trustee in respect of the fund and the mode of administering the fund, and the declaration of trust shall be amended accordingly.

### **Division 3 – Notices**

**61. Notice of orders placing property in Public Trust Office to be served on Public Trustee** – When a Court, on the application of any person other than the Public Trustee, makes any order directing any, payment to be made to the Public Trustee or into the Public Trust Office or appoints the Public Trustee as administrator or other trustee or as manager, guardian or committee, the person who obtains the order forthwith thereafter shall serve a sealed copy thereof upon the Public Trustee, and deliver to the Public Trustee a statement of the property affected by the order, showing where that property is situated and by whom it is held, so far as the same is known to that person; and in default thereof, unless the default was due to accident or was unavoidable, that person shall be liable to a fine not exceeding 1 half of a penalty unit.

**62. Registrar of Courts to see that orders sent to Public Trustee** – When an order is made by a Court, the Registrar of the Court:

- (a) shall see that a copy of the order is delivered or posted by registered letter to the Public Trustee, together with a statement of the property affected by the order, and showing where the property is situated, and in whose possession it is, as far as the Registrar can ascertain; and
- (b) shall at the time of the making of the order, ascertain by such ways and means as he or she thinks best, the property affected by the order, and where the property is situated, and in whose possession it is; and
- (c) may make such inquiries and take such action as he or she considers necessary for the purpose of enabling him or her to comply with this section.

**63. Rejection of appointment of Public Trustee to be notified to interested person** – (1) If any appointment of the Public Trustee as administrator or other trustee or as guardian, committee, agents or attorney is rejected, the Public Trustee shall send notice thereof to such persons as the Public Trustee thinks fit.

(2) If any property has become, by virtue of an appointment which is rejected, vested in the Public Trustee, then by virtue of a rejection as aforesaid the property:

- (a) ceases to be vested in the Public Trustee; and
- (b) becomes vested in such persons as would have been entitled thereto if the appointment had not been made, –

and the Public Trustee may execute all such instruments and do all such things as may be necessary to give effect to the rejection.

**64. Certificate by Public Trustee to be evidence of acceptance or rejection** – A certificate by the Public Trustee that he or she has accepted or rejected any such appointment shall be conclusive evidence of that acceptance or rejection.

## PART 5 ELECTIONS TO ADMINISTER AND CERTIFICATES OF ADMINISTRATION

**65. Power of Public Trustee to elect to administer small estates without grant of administration** – (1) If:

- (a) a person had died intestate or testate, where in or out of Samoa and whether before or after the commencement of this Act, leaving property situated in Samoa, the gross value of which as estimated by the Public Trustee does not at the time of the election hereinafter mentioned exceed \$75,000; and
- (b) no person has obtained a grant of administration in Samoa, –

the Public Trustee, in any case where he or she would be entitled to obtain such a grant, may, instead of obtaining such a grant, file in the Supreme Court an election under seal to administer the estate of the deceased person.

(2) On any such election being filed, the Public Trustee is taken to be the executor of the will or the administrator of the estate, as the case may be, in like manner and to the same extent in all respects as if administration had been duly granted to him or her.

(3) The election shall set out the name, residence and occupation of the deceased, so far as the same are then known to the Public Trustee, and the date of the death of the deceased, and the property situated in Samoa of the deceased as then known.

(4) The election shall contain in every case where the deceased died intestate, a statement to that effect, and, in every case where the deceased died testate, a statement that after due inquiries the Public Trustee believes that the document annexed to the election is the testator's last will (or an exemplification thereof where administration has been granted out of Samoa) and that the will has been validly executed according to the law governing the execution of wills.

(5) The election may be filed in the office of the Supreme Court at Apia, or in any other office of the Supreme Court as may, either generally or in respect of particular estates, be determined by the Public Trustee.

(6) If after filing the election, the gross value of the property situated in Samoa to be administered is found to exceed the sum of \$75,000, the Public Trustee shall as soon as practicable thereafter file in the office of the Supreme Court in which the election to administer was filed a memorandum under seal stating the fact; and shall thereupon proceed in the ordinary manner to obtain a grant of administration in Samoa, and for that purpose may uplift from the Court any will or exemplification filed with the election.

(7) The Minister may by notice in the Savali vary the figure \$75,000 in subsections (1) and (6) where fiscal and economic circumstances require.

**66. Election in respect of unadministered balance of an estate – (1) If:**

- (a) a grant of administration (“the original grant”) has been made in Samoa for the estate of any deceased person (“the original estate”); and
- (b) the persons to whom the original grant or any substituted grant of administration was made have

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died, whether before or after the commencement of this Act, leaving part of the original estate unadministered; and

- (c) the gross value of the property situated in Samoa so left unadministered, as estimated by the Public Trustee at the time of the election hereinafter mentioned, does not exceed the sum of \$3,000; and
- (d) no person has since the death of the last administrator taken out letters of administration *de bonis non* in Samoa in respect of the original estate, –

the Public Trustee may, instead of applying for an order to administer *de bonis non* in Samoa, file in the office of the Supreme Court out of which the original grant was issued an election in writing under seal setting forth the fact of the original grant, the death of the executors or other administrators, and the particulars and estimated value of the property situated in Samoa so left unadministered, and electing to administer the part of the original estate so left unadministered.

(2) On the election being filed, the Public Trustee is taken to be administrator of the original estate left unadministered in like manner and to the same extent in all respects as if an order to administer *de bonis non* had been duly granted to him or her.

(3) If after the filing of any such election the gross value of the property situated in Samoa to be administered by the Public Trustee is found to exceed the sum of \$3,000 the Public Trustee shall, as soon as practicable thereafter, file in the said office of the Supreme Court a memorandum under seal stating the fact, and shall thereupon proceed in the ordinary manner to obtain in Samoa an order to administer *de bonis non* (either with or without the will annexed, as the case may be) in respect of the estate, and for that purpose may uplift from the Court any will or exemplification filed with the election.

**67. Operation of election to administer as regards property overseas** – In determining the value of the property of any person that is situated in Samoa for the purposes of section 65 or 66, that property shall not include or be taken to include to administer, whether or not the property may afterwards be transferred to Samoa (whether to the Public Trustee or to any other person) in due course of administration, whether for the

purposes of distribution to the persons beneficially entitled thereto or otherwise howsoever, but in all other respects every election referred to in the sections 65 and 66 shall extend and apply to and include property situated out of Samoa in the same manner and to the same extent in all respects as a grant of administration obtained by the Public Trustee would in the circumstances of each particular case extend or apply to or include that property.

**68. Revocation of elections filed in error – (1)** When the Public Trustee:

- (a) has, pursuant to any of the provisions of this Part, filed an election to administer the estate of a deceased person; and
- (b) subsequently discovers that the election is invalid or ineffective by reason of the discovery of a will or a later will, or of the revocation or invalidity of a will, or for any other reason,—

the Public Trustee may file, in the office of the Supreme Court in which the election to administer was filed, a memorandum under seal setting out the facts and certifying that the election already filed is invalid or ineffective.

(2) Upon any such memorandum being filed, the election to administer previously filed shall cease to be of any effect whatsoever, and thereafter an application for administration may be made or a fresh election may be filed in all respects as if the election to administer previously filed had not been filed.

**69. Court fees payable on elections, etc. – (1)** The fees payable to the Registrar of the Supreme Court for the filing of any election under this Part are prescribed by regulations under this Act or any other enactment .

(2) A certified copy of the election under the seal of the Supreme Court or by a Registrar of the Supreme Court is equivalent to an exemplification of that election for all purposes, and the only fee payable is the prescribed fee for certification.

**70. Certificate by Public Trustee as to legal status in any matter – (1)** If the Public Trustee as executor or other administrator or is by law authorised to administer the estate of any deceased person, or if he or she is acting as trustee, guardian,

manager, agent, attorney, liquidator, committee or receiver, or in any other capacity, a certificate under seal by the Public Trustee:

- (a) for a deceased person, stating the name, residence and occupation of the deceased person at the time of his or her death, and the date of his or her death, and certifying that the Public Trustee has obtained a grant of probate or an order to administer or is otherwise authorised to administer the estate, and stating the date when the probate or order to administer was granted or the manner in which and the time at which the Public Trustee became authorised to administer; and
- (b) in any case where the Public Trustee is acting as trustee, guardian, manager, agent, attorney, liquidator, committee or receiver, or in any other capacity, certifying that the Public Trustee is authorised to act as such trustee, guardian, manager, agent, attorney, liquidator, committee or receiver, or in such other capacity, and stating the manner in which and the time at which he became so authorised to act,-

is, despite any law or statutory provision to the contrary, to be accepted by all Courts, officers and persons, whether acting under any Act or not, as sufficient evidence in the case of a deceased person of the death of that person, and of the appointment of the Public Trustee as executor or other administrator, and of his or her right to administer, and in any of the other cases mentioned of the Public Trustee's right to act, without any other proof whatsoever.

(2) The certificate is sufficient for the purpose of registering the Public Trustee as proprietor of any estate or interest in any freehold land, or of any shares, stock or property in any bank, company, body or association; and no Registrar of Land or bank or company or body or association to whom or which any such certificate is produced shall be concerned to inquire concerning the trusts on which the Public Trustee holds any such land or shares or stock or property or as to his or her authority to transfer or deal with the same.

(3) In the case of an estate or interest in freehold, the certificate is equivalent for registration purposes to, and it is not necessary to register, the probate, order to administer, election to

administer, trust instrument, order, power of attorney, or other document or authority under which the Public Trustee is acting.

(4) A statement of the purport of any trust instrument, order, power of attorney or other document or authority in any assurance, certificate or instrument under seal is sufficient evidence thereof, and no person shall be concerned to inquire beyond that statement.

## **PART 6 UNCLAIMED PROPERTY**

**71. Appointment of Public Trustee as manager of unclaimed property** – (1) Except as provided in subsection (2), the Public Trustee may be appointed or become manager in accordance with this Part of any real or personal property in Samoa in the following cases:

- (a) when, after due inquiry, it is not known who the owner of the property is, or where he or she is, or whether he or she is alive or dead;
- (b) when the owner of the property is absent from Samoa or dead and, after due inquiry, it is not known whether he or she has an agent or administrator in Samoa with authority to take possession of and administer the property, or where any such agent or administrator is, or whether he or she is alive or dead.

(2) The Public Trustee shall not be so appointed or become manager of:

- (a) any customary land within the meaning of Article 101(2) of the Constitution; or
- (b) any public land within the meaning of Article 101(4) for which no contract for the alienation thereof has been made.

**72. Mode of appointment** – (1) The Court may appoint the Public Trustee as manager of any property under this Part on application made *ex parte* by the Public Trustee and on being satisfied that the appointment is advisable in the interests of the owner of the property or in the interests of any other person or to secure the development or better utilisation of land. Notice of any

such appointment shall be published in the Samoa *Gazette* or the *Savali* or any other newspaper.

(2) If:

- (a) the gross value (as estimated by the Public Trustee) of the property of which the Public Trustee proposes to become manager does not exceed \$4,000; and
- (b) the Public Trustee is satisfied that it is advisable, in the interests of the owner of the property or in the interest of any other person or to secure the development or better utilisation of land, that the Public Trustee should become the manager of the property, –

the Public Trustee may, by notice in the Samoa *Gazette* or the *Savali* or any other newspaper, elect to be the manager of the property under this Part, and the Public Trustee shall thereupon become the manager of the property without any order of the Court.

(3) In any application made under subsection (1) where the Court considers that due inquiry has not been made for the owner of the property specified therein, or for this agent or administrator, or as to whether the property is subject to any trust, it may, before making an order, require further inquiry to be made or advertisements published or notice given, and adjourn the application to enable this to be done.

(4) No property shall vest in the Public Trustee by reason only of the fact that he or she is appointed or becomes manager thereof under this Part after the commencement of this Act; but, on application by the Public Trustee, the Court may at any time make an order vesting in the Public Trustee or in any other person any property of which the Public Trustee is for the time being manager under this Part, whether the Public Trustee was appointed or became manager of the property before or after the commencement of this Act.

**73. Powers of Public Trustee – (1)** Unless the Court shall in any particular case otherwise order, the Public Trustee, as manager under this Part of any property, may:

- (a) take or recover possession of the property, and recover all money, damages and mesne profits payable to the owner or his or her administrator in



respect of the property, whether the payment became due before or after the Public Trustee became manager of the property; or

- (b) apply the property, money, damages or mesne profits, or any part thereof or income therefrom, for the maintenance or education (including past maintenance or education) or the advancement or benefit, in such manner as the Public Trustee in his or her absolute discretion thinks fit, of the wife or husband or children of the owner of the property or any other person who is or was dependent upon the owner; or
- (c) complete, carry out, perform or endorse in such manner as he or she may think fit any contract affecting the property or entered into by the owner, and exercise any powers conferred by any such contract; or
- (d) pay, out of money received, advanced or borrowed by him or her in exercise of any powers conferred by this Part, any mortgages, charges, or other obligations on or attaching to the property, and any debts or other liabilities of the owner of the property; or
- (e) perform or discharge any obligation or duty imposed by any Act or otherwise upon the owner of the property; or
- (f) do any act or thing requisite to obtaining or perfecting the title to the property; or
- (g) in the case of land, cut and gather crops growing or situate thereon and erect fences on or around the same or contribute to the erection of any dividing or boundary fences; or
- (h) exercise any power of sale or other powers or rights conferred upon the owner by any mortgage, lease, Act, or instrument; or
- (i) pay or retain all such commission charges and expenses as may be fixed or authorised by regulations made by the Head of State, acting on the advice of Cabinet; or
- (j) in the name of the owner, or at his or her discretion in his or her own corporate name, bring any action

or other proceeding relating to the property, and defend, confess, compromise or submit to judgement in any action, claim, demand or proceeding touching the property; or

- (k) exercise as if he or she were the trustee of the property all powers which as trustee he or she could exercise without the consent of the Court under (the Trusts Act 2015) or any other Act or law; or
- (l) exercise in respect of the property all other powers which may be conferred on him or her by the Court, whether or not they are powers which, if he or she were trustee of the property, could be so conferred on him or her under any Act or law relating to trustees.

(2) Any money which the Public Trustee may wish to raise pursuant to the powers conferred by or under this section may be advanced from the Common Fund of the Public Trust Office or borrowed from any other source.

(3) All deeds and other documents executed by the Public Trustee in his or her corporate name as manager of any property pursuant to the powers conferred on him or her by or under this Part shall have effect and may be registered in all respects as if they were executed by the owner of the property; and when an instrument is executed by the Public Trustee, purporting to be made in exercise of the powers conferred by or under this Part, no Court or officer or person shall be concerned to see or inquire whether those powers had or had not become exercisable, or be responsible for the exercise or the improper exercise of those powers.

#### **74. Power of Public Trustee to pay for improvements –**

The Public Trustee may make such payment or allowance for the value of improvements made on, to or in respect of any property of which he or she is manager under this Part, or for money expended on or in respect of the property, as to him or her may seem just or reasonable, even if the value of the improvements or the money so expended may have ceased to be recoverable at law either before or after the Public Trustee became manager of the property or may never have been so recoverable.

**75. Sale or transfer of land to occupier or person entitled thereto – (1)** If the Public Trustee, as manager of any land under this Part, sells the land to the occupier thereof:

- (a) in the fixing the price of the land, the Public Trustee may make an allowance with section 74 in respect of any improvements made by the occupier or by any person by or through or under whom he or she claims possession of the land:

**PROVIDED THAT** nothing in this paragraph affects the generality of that section;

- (b) the Public Trustee shall not be under any liability for failing to recover any money or damages payable in respect of the occupation of the land:

**PROVIDED THAT** nothing in this paragraph affects the liability of the occupier to the owner of the land or restrict the generality of section 76.

(2) If the Public Trustee is manager under this Act of any land, and it is proved to his or her satisfaction that the registered proprietor of the land has sold the land and received payment of all amounts to which he or she is entitled on the sale, the Public Trustee, may, on payment of the prescribed fee together with any charges or expenses incurred or payable by him or her transfer the land to the person who is in equity entitled thereto without requiring any payment on behalf of the registered proprietor;

**PROVIDED THAT** nothing in this subsection affects any rights which any other person may have in respect of the land.

**76. Public Trustee to have discretion as to exercise of powers–(1)** The Public Trustee is not obliged to take any steps or proceeding to cause himself or herself to be appointed or to become manager of any property under this Part.

(2) If the Public Trustee is manager of any property under this Act, the Public Trustee has, subject to any direction of the Court, a complete discretion as to whether or not he or she exercises any of the powers conferred on him or her by or under this Part, and is not liable for a thing done or omitted to be done by the Public Trustee in good faith in exercise of that discretion or of any such power.

**77. Public Trustee may apply to Court for direction – (1)** The Public Trustee, as manager of any property under this Part,

may apply ex parte to the Court for directions concerning the property, or in respect of the management or administration of the property, or respecting the exercise of any power or discretion vested in him or her as such manager.

(2) The Court may order any such application to be served upon such persons as it thinks expedient.

**78. Money to form part of common fund** – All money for the time being held by the Public Trustee under this Part shall form part of the common fund of the Public Trustee Office.

**79. Remuneration and expenses of Public Trustee** – (1) All expenditures incurred by the Public Trustee as manager of any property under this Part, and all fees, costs, commission, charges, interest and expenses incurred by or payable to the Public Trustee as manager of any property under this Part, shall be a charge upon the property, which charge shall come next in priority to any mortgage or charge to which the property is subject when the Public Trustee becomes manager of the same.

(2) The amount for the time being so charged on the property shall bear interest at a rate fixed by the Public Trustee.

(3) If the Public Trustee is unable to recover the amount so charged on property from any person or property, the amount of the deficiency shall be charged on and be met out of the Treasury Fund and shall be statutory expenditure.

**80. Property of which Public Trustee takes possession to be held for owner** – When the Public Trustee, manager under this Part, takes possession of any property or receives or recovers any money, damages or mesne profits for any property, the property, money, damages or mesne profits shall, after payment thereof of all money authorised to be applied, expended or charged by the Public Trustee, be held by him or her for the owner of the property.

**81. Termination of managership** – (1) The Public Trustee shall cease to be manager of any property under this Part upon the happening of any of the following events:

- (a) if the Court so orders on application made by the owner of the property, or by his or her administrator or duly authorised agent, or by any

person having any interest in the property or in any part thereof, and served on the Public Trustee;

- (b) if the Public Trustee publishes notice in the *Samoa Gazette* or the *Savali* or any other newspaper that he has ceased to be the manager of the property under this Part;
- (c) if the Public Trustee transfers or delivers the property to the owner or his or her administrator or duly authorised agent.

(2) The termination of the Public Trustee's managership of any property under this Part shall not affect any charge acquired by the Public Trustee under this Part, or the validity of any act or thing done by the Public Trustee while he or she was manager of the property.

(3) No order shall be made by the Court under this section without the consent of the Public Trustee until the Public Trustee has been paid all amounts to which he or she is entitled under this Part in respect of all expenditures, fees, costs, commission, charges, interest and expenses, incurred by or payable to the Public Trustee as manager of the property, together with all costs incurred by the Public Trustee of and incidental to the application for the order.

(4) Upon the Public Trustee ceasing to be manager of any property which remains in his or her name or in his or her possession, the Public Trustee may transfer or deliver the property to the person entitled thereto.

**83. Transfer of unclaimed property to State** – (1) If, after 20 years from the date of the publication in the *Gazette* or the *Savali* or any other newspaper of the order or election or other act by which the Public Trustee was appointed or became manager of any land, no person has established his or her claim to the land, and the Public Trustee has not become aware of the existence and whereabouts of any person who has a claim to the land:

- (a) where the land has not been sold by the Public Trustee in exercise of the powers conferred on him by this Part, it shall vest in the State;
- (b) all money held by the Public Trustee and derived from the land shall be paid to the Public Account and credited to the Treasury Fund, and shall

thereafter be subject to Part 10 of the Public Finance Management Act 2001.

(2) If after 7 years from the date of the publication in the *Gazette* or the *Savali* or any other newspaper of the order or election or other act by which the Public Trustee was appointed or became manager of any property, and the Public Trustee has not become aware of the existence and whereabouts of any person who has or may have a claim to the property:

(a) where the property has not been sold by the Public Trustee in exercise of the powers conferred on him by this Part, it shall vest in the State;

(b) all money held by the Public Trustee and derived from the property shall be paid to the Public Account and credited to the Treasury Fund, and shall thereafter be subject to Public Finance Management Act 2001.

(3) Nothing in this Part affects the State in respect of its property or rights.

**84. Provision in cases of lost title** – If the Public Trustee is manager of any property under this Part and a certificate or other document evidencing title to the property has (on registration) issued in respect thereof, the Registrar or person for the time being responsible for keeping the register may, if he or she is satisfied that the certificate or document cannot after due inquiry be found, cancel the previous registration, and re-register the property, and issue a new certificate or document evidencing title to the property.

**85. Order or notice not affected by mistake of fact** – An order made or any notice published under this Part, or a thing done under this Part or of any such order or notice, shall not be or become invalid or inoperative merely because it has been made or done under a mistake of fact, or because the owner of the property was dead at the time when the order was made or the notice was published or has died since the making or publication thereof, or because of any disposition or has died since the making or publication thereof, or because of any disposition of the property made by the owner thereof while the Public Trustee was manager of the property under this Part, as the case may be.

**86. Savings** – (1) Upon the commencement of this Act the Public Trustee shall become manager under this Part of all property which was vested in him or her or in respect of which he or she could exercise any powers under Part V of the Public Trust Office Act 1957 (NZ) immediately before the commencement of this Act.

(2) Nothing in this Part affects any Act by which a period of limitation is prescribed.

## **PART 7 MISCELLANEOUS**

**87. Special powers that may be exercised by the Public Trustee** – If the Public Trustee is executor, administrator, trustee, guardian or otherwise authorised to act in the administration of an estate, then, unless a contrary intention is expressed in this Act or in any relevant instrument, the Public Trustee may at his or her discretion, but without restricting any other powers, exercise the following powers:

- (a) where he or she has power to raise money by mortgage, raise the money or borrowing without giving security;
- (b) pay or discharge all debts, liabilities, obligations, costs and expenses;
- (c) carry out or vary contracts entered into before his or her appointment;
- (d) set off against the claim of any person in respect of any estate (whether as beneficiary, creditor or otherwise), and of any person claiming by, through or under that person all money owing by the first-mentioned person, whether to the same estate or to any other estate under administration by the Public Trustee, and whether the claim of the person in respect of an estate or his or her liability to pay money to an estate arose before or after the Public Trustee became entitled to administer the estate or before or after the death of the deceased;
- (e) grant powers of attorney to any person, in or out of Samoa, to do any act or thing which the Public Trustee, if personally present, could do;

- (f) bring or defend any action, suit or other proceedings, and suffer judgment to go by default or consent to any judgment, decree or order in the action, suit or proceeding upon such terms and conditions as the Public Trustee thinks fit;
- (g) take proceedings to cause any person to be adjudicated a bankrupt, or any company to be placed in liquidation, and vote and act either personally or by proxy at meetings of creditors or shareholders, and (in the case of a company) whether it is in liquidation or not;
- (h) take criminal proceedings touching or concerning property, and for the purposes of the proceedings the property is, unless the contrary is proved, taken to be the property of the Public Trustee and in the possession of the Public Trustee;
- (i) at the estate, employ such persons as he or she thinks fit (whether or not they are officers or employees of the Public Trust Office) for the purpose of advising and assisting him or her in the administration or management of any estate or any part thereof and remunerate any such person in such manner as he or she thinks fit.

**88. Public Trustee may act on written statement, etc.— (1)**

Unless expressly prohibited by any Act or by the terms of any particular trust, the Public Trustee may, in the administration of any trust or estate, or the performance of any power or duty under this or any other Act, act on credible information (though less than legal evidence) as to matters of fact.

(2) The Public Trustee may allow any claim which is made upon or before him or her upon the affidavit, declaration or statement of the claimant alone, or, where the Public Trustee thinks fit to call for other evidence, upon such evidence as he or she requires.

(3) 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 the declaration or evidence is produced.



(4) The Public Trustee, if acting in good faith, is not liable for accepting as correct and acting upon the faith of any written statement or statutory declaration by any person, in or out of Samoa, whom he or she believes to be trustworthy, as to any birth, death marriage or other matter of pedigree or relationship, or other matter of fact upon which the title to any estate or any part thereof may depend.

**89. Powers of inspection of property**—(1) The Public Trustee may require an officer of the Public Trust Office, or employ any other person:

- (a) to inspect any land or other property forming part of an estate being administered by the Public Trustee or for which the Public Trustee is mortgagee; and
- (b) to provide a report to him or her as to the state or condition thereof, or the observance and performance by any occupier, lessee, mortgagor or other person of the terms and conditions on which the land or property is held, or generally on any matters relating to any land or other property forming part of any estate being administered by the Public Trustee.

(2) For the purpose of making any such report any such officer or person shall at all reasonable times have free ingress, egress and regress, and right of inspection in, to and over any land or other property in the occupation or possession of any person.

(3) A person who obstructs any such officer or person in the performance of his or her duty, or refuses or wilfully neglects to answer any reasonable question put to him or her in writing by such officer or person in connection with his or her duty, or makes to him or her any wilful mis-statement, commits an offence and is liable to a fine not exceeding one-half of a penalty unit.

**90. Public Trustee as mortgagee in possession may charge for collection of rents** – (1) The Public Trustee, when exercising the powers of a mortgagee in possession, may make such charge for the collection of rents and interest and other duties incidental to being a mortgagee in possession as may be prescribed by regulations.

(2) The charges, with interest thereon at the rate agreed on in the mortgage, constitute a debt due by the mortgagor to the Public Trustee, and until repayment thereof are to be added to the sum expressed to be secured by the mortgage.

(3) The amount of any fee or charge required under this Act to be prescribed by regulations:

- (a) shall be proposed by the Public Trustee with the concurrence of the Investment Board; and
- (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management 2001.

**91. Public Trustee acting in fiduciary capacity may receive remuneration** – Despite the provisions of any other Act or any rule of law prohibiting or limiting or regulating the right of any person acting in a fiduciary capacity to charge, demand or receive payment of remuneration for so acting, or determining the manner in which any such payment or remuneration is to be ascertained or assessed, the Public Trustee when acting in fiduciary capacity may charge, demand and receive such remuneration therefor by way of commission or otherwise as may and receive such remuneration therefor by way of commission or otherwise as may from time to time be fixed or authorised by this or any other Act or by any regulations made under this or any other Act.

**92. Public Trustee may sue himself or herself in different capacity** – Despite any rule of law or practice to the contrary, the Public Trustee, acting in one capacity, may commence proceedings against himself or herself acting in another capacity. **PROVIDED THAT** in every such case the Public Trustee shall obtain the directions of the Court as to manner in which the opposing interests are to be represented.

**93. Sale of goods by auction** – When the Public Trustee is realising the goods, chattels and effects that are not in the opinion of the Public Trustee of greater value than \$400, and are situated at a distance of more than 10 miles from the usual place of business of a licensed auctioneer, then, despite anything to the contrary in the Business Licences Act 1998, those goods, chattels and effects may be offered for sale by auction by some person to

be appointed by the Public Trustee, and that person for the purpose of the sale shall not be required to take out a business or auctioneer's licence.

**94. Proof and payment of debts – (1)** If the estate of a testate or intestate is administered by the Public Trustee, he or she may, at such time as he or she thinks fit, cause advertisements to be published in such newspapers as the Public Trustee deems expedient, calling upon creditors to prove their debts or claims before him or her on or before a date to be fixed in the notice.

**(2)** The Public Trustee may allow any debt or claim which is made before him or her upon the statutory declaration of the claimant alone, or where he or she shall think fit to call for other evidence, upon such evidence as he or she requires.

**(3)** The Public Trustee may, in accordance with law, as soon after the expiration of the time allowed for proof of debts or claims as he or she conveniently can:

- (a) pay the debts and claims proved, if the whole thereof can be paid; and, if not;
- (b) declare and pay a dividend thereon.

**(4)** If the Public Trustee collects any further assets after paying any such dividend, he or she may, in accordance with law, pay any part of the proved debts and claims remaining unpaid, and any debts and claims subsequently proved before him or her, or a dividend thereon, as the case may be, but creditors who subsequently prove shall first be paid a dividend equal to the dividend paid to creditors who rank equally with them and who previously proved their debts and claims.

**(5)** After payment or deduction of all debts, fees, commission and expenses incidental to the collection, management and administration of the estate, the Public Trustee shall hold the residue of the estate for the person or persons lawfully entitled to the same.

**95. Payment of claims when assets insufficient –** If the assets of any testate estate under administration by the Public Trustee are insufficient to pay the liabilities in full, the Public Trustee may give priority, in the distribution of those assets, to the costs and expenses of administration, funeral expenses medical and hospital expenses, and claims having priority under the law relating to insolvency, in that order, with any surplus

then remaining to be held for the person or persons lawfully entitled to the same.

**96. Public Trustee may bar claim of creditor if not prosecuted**

–(1) If a person claims to recover from the Public Trustee any money, chattels or things under \$400 in value, as estimated by the Public Trustee, and the Public Trustee rejects the claim, the Public Trustee may serve upon the person by whom or on whose behalf the claim is made a notice calling upon him or her to take legal proceedings within a period of 3 months to establish or enforce the claim and also to prosecute the proceedings with all due diligence.

(2) If the proceedings are not commenced by the person within the period in subsection (1), the claim shall thereupon be barred, and the money, chattels or things shall become irrecoverable, and the Public Trustee may proceed to administer and distribute the estate disregarding the claim.

(3) The powers in this section are in addition to the powers conferred under the Trusts Act 2014.

**97. Duty of Public Trustee as to shares of infants** –If the Public Trustee is the administrator or other trustee of testate or intestate estate, or the trustee under any trust or settlement, the Public Trustee shall (subject to the terms of any Act, will, instrument of trust or settlement) hold the shares of infants in the estate, trust or settlement as trustee for the infants until their infancy ceases; and the shares shall be dealt with or administered in the meantime by the Public Trustee.

**98. Interest on pecuniary legacies** – When:

- (a) under the will of any person whose estate is being administered by the Public Trustee—
  - (i) provision is made for payment of a pecuniary legacy; and
  - (ii) there is no money or not sufficient money for the time being in the estate with which to pay or out of which to appropriate the legacy; or
- (b) by reason of the infancy or disability of the legatee or for any other reason, payment or appropriation of the legacy is postponed, –

the legacy or so much thereof as is not paid or appropriated shall, from the time the same is due and payable until payment or appropriation thereof, bear interest at a rate fixed by the Public Trustee, but not exceeding the rate current in the Public Trust Office on advances by way of overdraft, any rule of law to the contrary notwithstanding.

**99. Conditions on which tenant for life may be allowed into possession** –(1) Subject to any order of the Court, if a person is legal or equitable tenant for life of any land composed in an estate being administered by the Public Trustee, that person is not entitled to the use, occupation and enjoyment of, or the receipt of the income, rents, issues, and profits for the land, until he or she has given such undertaking, and (where necessary) such security, as the Public Trustee may require to comply with such terms and conditions as to keeping the trust property in repair and punctual payment of rates taxes, insurance premiums, assessments, rents, impositions, and other outgoings or otherwise, as the Public Trustee may think fit.

**PROVIDED THAT** nothing in this subsection enables the Public Trustee to impose any terms and conditions other than those which the Court could impose if application were made to it in that behalf.

(2) If:

- (a) the person who is in occupation of land fails to observe any of the duties or obligations attaching to him or her as such tenant for life or as imposed by the Public Trustee or the Court; or
- (b) the Public Trustee for any other reason deem it necessary or expedient to enter into possession of the land, –

the Public Trustee may, by notice in writing personally delivered to the person or forwarded by the registered letter to him or her at his or her last known address, direct the person to give up possession of the land on or before a date to be specified in the notice not being less than one month from the date thereof.

(3) Subject to any order of the Court, on the person failing to give up possession of the land on or before the expiry of the date specified in the notice, the person is taken to be a trespasser as from that date, and the Public Trustee may take the necessary legal proceedings to have the person ejected.

(4) It is no defence to any such proceedings that the person sought to be ejected is a legal or equitable life tenant of the land.

**100. Public Trustee to have lien on policy money for premiums** – If the Public Trustee pays any premiums for any policy of insurance, he or she shall have a lien on the policy money for the amount of the premiums so paid, together with interest thereon at the rate current from time to time in the Public Trust Office on advances by way or overdraft.

**101. Power of Public Trustee to make small payments without order** – When, under this Act or any other Act, the Public Trustee is directed to make any payment, upon an order of a Court or Judge being obtained, to any person entitled thereto, he or she may make a payment without such an order if the amount thereof does not exceed \$500; and any payment so made shall be as valid as if authorised by an order of the Court or a Judge thereof.

**102. Payment of money without grant of administration** –(1) On the death of any person to whom any sum of money (not exceeding \$500) is payable by the Public Trustee, the Public Trustee may pay the sum or any part or parts thereof to any person or persons whom the Public Trustee may consider entitled thereto without requiring administration to be taken out in the estate of the deceased person.

(2) Any payment made in good faith in this section is valid against all persons whomsoever, and the Public Trustee is absolutely discharged from all liability for any money paid by him or her under this section.

(3) A person to whom any such money is paid pursuant to this section is liable to apply the money in due course of administration, and the Public Trustee may if he or she thinks fit, without being liable to see to the application of any such money, require any such person to give sufficient security, by bond or otherwise, that the money so paid will be so applied.

(4) Notice of every payment made under this section shall be given to the Commissioner of Inland Revenue.

(5) Nothing in this section debars or prevents any person to whom the money or any part thereof ought to have been paid from pursuing and exercising any remedy for the recovery

thereof against the person or persons to whom the money has been paid.

**103. Public Trustee may determine domicile of person in certain cases** –(1) If the Public Trustee is administering the estate of any person and the value as estimated by the Public Trustee of the net residue of the estate, after meeting all liabilities in respect thereof, is under \$5,000 the Public Trustee may determine the domicile, of that person on such evidence as to him or her seems fit.

(2) The determination by the Public Trustee is sufficient evidence of the domicile of the person, and the Public Trustee may administer, distribute or otherwise deal with the assets of any such estate accordingly, and shall not be liable to any beneficiary next-of-kin, creditor or other person in respect of any error in the determination.

**104. Existence of property belonging to estate being administered by Public Trustee to be disclosed** – If:

- (a) any corporation, association, partnership or person is in possession of any property of a deceased person; or
- (b) there is to the credit of any deceased person in the books or account or other records of any corporation, association, partnership or person any property or money; or
- (c) under any association or partnership any deceased person is entitled to a share in the assets thereof, or his or her personal representatives are entitled to any payment as his or her share in those assets; or
- (d) any deceased person is the registered proprietor of any shares in any corporation or association; or
- (e) any person, then if the property, money, shares or debts are to become vested in or belong to the Public Trustee, –

the corporation, association, partnership or person, on becoming aware of the death and of the Public Trustee's interest in the property, shall forthwith give notice to the Public Trustee of the extent, nature, and situation of the property, money, shares or debts.

**105. Inquiries as to property** –(1) In this section, “documents” includes books, papers, deed, documents and any writings whatsoever.

(2) The Public Trustee is entitled to require all persons to deliver, convey, transfer or assign to the Public Trustee all property to which the Public Trustee is entitled.

(3) For the purpose of ascertaining whether any person is possessed of or has control over any property which should be so delivered, conveyed, transferred or assigned the Public Trustee may institute such inquiries as he or she thinks proper, and may, by summons under seal, require any person to appear before him or her or before any officer of the Public Trust Office named by him or her, and answer all questions that he or she or the office may put to the person with reference to any property, and to produce any document. The Public Trustee shall pay or tender to the person so summoned the same amount as the person would have been entitled to had he been summoned as a witness to a District Court.

(4) If any person fails to so deliver, convey, transfer or assign all property as aforesaid, or if the procedure provided in subsection (3) fails to elicit the particulars required, the Public Trustee may take out a summons requiring the person, or any person who may be supposed to be in possession of information relevant to the matter under investigation, to appear before either the Supreme Court or a District Court, as the Public Trustee shall determine, for the purpose of being examined on oath touching the matters, and to produce any documents.

(5) If the Court is of opinion that any such person is possessed of or has control over any property that should be so delivered, conveyed, transferred or assigned as aforesaid, the Court may make an order requiring the person to deliver, convey, transfer or assign all the property within such time as the Court may fix. Any such order may be made in the absence of the person summoned, if the summons has been duly served upon him or her, or if the Court is satisfied that reasonable efforts have been made to serve the same without success.

(6) The Court may order the person to pay all expenses of and incidental to the summons and any examination consequent thereon; and if the Court does not so order, then the expenses shall be paid out of the funds of the estate concerned in priority



to all other claims, or, if the Court, so orders, out of any particular portion of those funds.

(7) A person is guilty of contempt of Court who:

- (a) without valid excuse, fails to attend before the Court pursuant to any such summons; or
- (b) upon attending, refuses to be sworn or neglects or refuses to answer any relevant question put to him or her by or on behalf of the Public Trustee; or
- (c) having been summoned to produce any documents, fails to produce the same without valid excuse, or if so required by the Court, to hand the documents over to the Public Trustee; or
- (d) disobeys any order made by the Court upon the hearing of any such summons, –

and the Court may—

- (i) make an order for the arrest of the person and his or her imprisonment either for such period as the Court thinks fit or until he or she has purged his or her contempt to the satisfaction of the Court; or
- (ii) order such person to pay the expenses of the proceedings.

**106. Declaration of non-revocation not necessary where Public Trustee executes as attorney – (1)** If the Public Trustee executes any document as attorney, it shall not be obligatory for him or her, nor shall any person require him or her, to provide evidence by way of statutory declaration that no notice or information of the revocation of the power of attorney by death or otherwise has been received by him or her.

(2) The execution by the Public Trustee of any document as attorney shall be accepted by all persons as conclusive proof of the non-revocation of the power of attorney at the time when the document was executed.

**107. Protection of Public Trustee acting under power of attorney –** The Public Trustee, acting or paying money in good faith under or in pursuance of any power of attorney, shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the

power, if this fact was not known to the Public Trustee at the time of his or her so acting or paying.

**108. Deposit of wills – (1)** Any testator may deposit his or her will in the Public Trust Office, whether or not the Public Trustee is appointed executor thereof.

(2) If under a will so deposited the Public Trustee is not appointed executor thereof, then, after the death of the testator, the Public Trustee shall deliver the same to such person as the testator may have nominated in writing, or in the absence of any such nomination or, if the person nominated is dead or cannot be found, to such person as the Public Trustee thinks is entitled thereto.

(3) If under a will so deposited the Public Trustee is appointed the executor thereof, then, after the testator's death, notice of the acceptance or rejection of the Public Trustee's appointment shall be given in such manner as the Public Trustee thinks proper; and if the Public Trustee shall reject the same he or she shall deliver the will to such person as the testator may have nominated, or, in the absence of any such nomination or if the person nominated is dead or cannot be found, to such person as the Public Trustee thinks is entitled thereto.

(4) When notice is given to the Public Trustee by the Registrar of any application by any applicant other than the Public Trustee, for administration of the estate of any deceased person, and there is deposited in the Public Trust Office the will of any whose name is identical with or resembles that of the deceased person, then and in any such case the Public Trustee may search free of cost in the office of the Supreme Court for the purpose of determining whether the deceased person is identical with the testator whose will is so deposited in the Public Trust Office.

**109. Debentures, etc., may be accepted by the Public Trustee for safe custody – (1)** The Public Trustee may accept for safe custody debentures or other interest bearing securities for money, and any documents of title to property and any other deeds or documents or chattels.

(2) The Public Trustee's liability for all such debentures, securities, documents, deeds and chattels shall, where a charge is

made, be that of a bailee for reward, and, where no charge is made, be that of a gratuitous bailee.

**110. Custody of documents – (1)** In order to facilitate the transaction of business in the Public Trust Office, the Public Finance Management Act 2001 (relating to the issue by the Minister of Finance of instructions providing for the safe custody of public securities) does not apply to documents of title (not being debentures or bonds constituting investments of the Common Fund) held by the Public Trustee.

**(2)** All such documents of title shall be kept in safe custody in such manner as the Public Trustee directs, and may be produced or parted with by his or her authority as and when he or she thinks proper in the conduct of the business of the Public Trust Office.

**111. Term of tenancies created by Public Trustee –** Despite any statutory provision or law to the contrary, a tenancy created by the Public Trustee, whether as administrator or other trustee, or as committee, manager, agent, attorney, or in any other capacity, is, in the absence of any written agreement to the contrary, taken to be a weekly tenancy determinable at the will of the landlord or of the tenant by one week's notice in writing.

**112. Acceptance of rent not invalidate notice to quit –** When the Public Trustee, acting in any capacity to which section 111 applies, has served any notice to quit on any tenant or lessee, or has given any other notice of the termination of a tenancy or lease, the acceptance by the Public Trustee or any officer or agent of the Public Trustee of any rent after the service or giving the notice is taken not to be a waiver of the notice or the creation of a new tenancy or lease.

**113. Protection of purchases and others –** It is not incumbent upon:

- (a) any purchaser, vendor, mortgagee, lessee or other person to or with whom any sale, exchange, purchase, mortgage or lease is to be made to inquire as to the authority or power in any respect of the Public Trustee to make the sale, exchange, purchase, mortgage or lease; and

- (b) upon any such person to inquire—
- (i) whether the proposed dealing is consistent with the trusts on which the land or other hereditament to be dealt with are held, or whether any required authority of the Public Trustee or of any other person has been given, or
  - (ii) otherwise as to the propriety or regularity of the transaction, or as to the application of any money received by the Public Trustee upon any such sale, exchange, mortgage or lease.

**114. Protection of tenant or lessee** – The title of any tenant or lessee of the Public Trustee or of any person claiming under any such tenant or lessees shall not, if the tenant or lessee or person acted in good faith, be prejudiced or affected by reason of the non-compliance on the part of the Public Trustee with any direction of the trust instrument or of any Act requiring the calling of tenders, submissions to auction, or other matters preliminary to the execution of the lease or the granting of the tenancy.

**115. No notice of trust to arise merely from dealing with Public Trustee** – In dealings with property the fact that the Public Trustee is the person or one of the persons dealt with shall not of itself constitute notice of a trust.

**116. Registration of shares** –(1) The entry of the Public Trustee by that name in the register of shareholders of a company shall not constitute notice of a trust.

(2) A company is not entitled to object to enter the name of the Public Trustee in its register of shareholders by reason only that the Public Trustee is a trustee or is a corporation.

(3) In this subsection and in subsections (4) and (5), “shares” includes shares, stock, bonds, debentures and other securities for money, where shares in any body, whether corporate or not, or in any association are comprised in any trust or estate administered by the Public Trustee, or where any such shares are vested in the Public Trustee under the terms of any trust instrument, or are purchased by him or her in the exercise of any trust, direction or authority imposed or conferred upon him or her, then,

notwithstanding any law or provisions affecting the registration of persons holding shares as trustee or in any other representative capacity, the Public Trustee is entitled to be registered as the proprietor of the shares as trustee or in any other representative capacity, as he or she may require.

(4) Under no circumstances shall the Public Trustee's liability for any shares exceed the value of any other assets which, at the time when any demand is made for the satisfaction of any such liability, are held by the Public Trustee upon the same trusts as are applicable to the shares; but if the other assets are insufficient to meet the liability, the body or association and any person lawfully acting on its behalf shall, in respect of any unpaid balance of the liability, have the same rights and remedies against any person or persons so beneficially entitled as if the person or persons were the registered proprietor or registered proprietors of the shares.

(5) The Public Trustee, upon registration, is, for all purposes, excepting, as to liability as aforesaid, deemed to be the registered proprietor of any such shares, and neither the body nor association aforesaid, nor any person dealing with the Public Trustee, shall be concerned to see or inquire whether any sales, dealings or transactions by or with the Public Trustee are or are not within his or her powers.

(6) Despite the provisions of any Act, charter, deed or settlement or other instrument, the number of shares in the capital of any bank that may be held by the Public Trustee in his or her corporate capacity shall not be subject to any limit.

**117. Public Trustee may evidence and register dealings in land when acting in different capacities** –(1) In this section, "trustee" includes the Public Trustee in his or her own corporate capacity, whether as trustee of money comprised in the Common Fund and the various investments of the Common Fund or otherwise howsoever.

(2) Despite any rule of law or other statutory provision to the contrary, the Public Trustee, in any case where he or she is registered as the proprietor of any estate or share or interest in land by virtue of his or her appointment or status as administrator or other trustee under any part of this Act or under any other Act or under any will or deed or order or instrument, or in any case where he or she is otherwise so registered as proprietor, may:

- (a) transfer, assign, convey, mortgage or lease the estate, share or interest or any part thereof; or
- (b) grant easements in respect of the same to himself or herself in any other capacity; and
- (c) enter in to covenants and agreements in respect of any such transaction with himself or herself in the one capacity so as to bind himself or herself in the other capacity as fully and effectually in all respects as if he or she were a separate person in each capacity, and every such covenant and agreement shall be binding upon or (as the case may be) operative in favour of any assignee of that Public Trustee taking from him or her in any such capacity.

(3) Upon any such transfer, assignment, conveyance, mortgage, lease or grant of easement being presented for registration, the Registrar of Land shall, if the same is otherwise in order for registration, register the same in accordance with the provisions of the said order, notwithstanding that the transfer assignment, conveyance, mortgage, lease or grant may contain notice of or otherwise evidence a trust in respect of the said estate, share or interest affected thereby, and notwithstanding that it may contain notice of or otherwise evidence the fact that in taking the transfer, assignment, conveyance, mortgage, lease or grant the Public Trustee does so in the capacity of a trustee.

(4) Upon any such transfer, assignment, conveyance, mortgage, lease or grant being registered, no person thereafter having dealings in respect of the estate, share or interest or in respect of the transfer, assignment, conveyance, mortgage, lease or grant shall be affected by any notice of trust contained in or evidence by the transfer, assignment, conveyance, mortgage, lease or grant shall be affected by any notice of trust contained in or evidence by the transfer, assignment, conveyance, mortgage, lease or grant, nor shall any person be concerned to see or inquire whether the Public Trustee possessed lawful authority to enter into the transaction.

**118. Procuration fee in respect of loan from Public Trustee forbidden** – (1) A person shall not charge any borrower of money from the Public Trustee any procuration fee in respect thereof.

(2) The borrower may recover in a Court any such procuration fee paid by him or her.

**119. Certain restrictive covenants in mortgages declared void** – A covenant, stipulation or condition in a mortgage whereby the mortgagor covenants that the money secured by the mortgage shall become due and payable or that any power of sale or entry into possession shall become exercisable, is void, when:

- (a) the Public Trustee becoming entitled in any capacity to administer the estate of the mortgagor or
- (b) the estate coming into the hands of the Public Trustee; or
- (c) any other covenant, stipulation or condition adversely affecting or tending to affect the mortgagor adversely, the Public Trustee so becoming entitled to administer the estate of the mortgagor.

**120. Protection of Public Trustee acting under order of Court** – When the Public Trustee acts under or in pursuance of any judgment or order of any Court or Judge, the Public Trustee is taken, so far as regards his or her own responsibility, to have discharged his or her duty in connection with the subject-matter of the judgment or order, despite that the judgment or order is subsequently invalidated overruled, set aside or otherwise rendered of no effect:

**PROVIDED THAT** this section does not indemnify the Public Trustee for any act done under the judgment or order if he or she has been guilty of any fraud or wilful concealment or misrepresentation in obtaining the judgment or order or in acquiescing in the Court or Judge giving or making the judgment or order.

**121. Reciprocity of administration with Public Trustees of Commonwealth countries** – (1) If, before or after the commencement of this Act, the Public Trustee of Samoa is administering the estate of a person who at the time of his or her death was domiciled in any Commonwealth country and whose estate in that country is being administered by the Public Trustee or Curator or other like official of that country, the Public Trustee

of Samoa may pay over to that Public Trustee or Curator or official the balance of the proceeds of the estate in Samoa of the said person, after payment of creditors and of the charges provided for under this Act, without being under any obligation to see to the application of that balance, and without incurring any liability in regard to the payment of that balance, and shall certify to the correctness of any account supplied to that Public Trustee or Curator or official accordingly.

(2) If the estate of any deceased person who at the time of his or her death was domiciled in Samoa is being administered by the Public Trustee of Samoa, and the Public Trustee or Curator or other like official of any Commonwealth country has in that country obtained administration of the estate in that country, the Public Trustee of Samoa may receive from the Public Trustee or Curator or official the balance of the proceeds of the estate in that country. That balance shall, when so received, form part of the estate of the deceased person, and shall be dealt with according to the law of Samoa.

**122. Public Trustee not required to give bond** – No bond or security is required from the Public Trustee upon or in respect of his or her appointment in any capacity by or under this Act or any other Act, whether as administrator or other trustee, or as guardian, committee, manger, liquidator, receiver, agent, attorney or otherwise.

**123. Public Trustee and officers not personally liable except for fraud or crime** – Neither the Public Trustee nor any officer, employee, agent or representative of the Public Trust Office acting or in good faith purporting to act under any of the authorities contained in or conferred by this Act or any other Act is personally liable for any act or thing done or omitted, unless the liability arises from actual fraud or crime.

**124. Same remedies against Public Trustee as against private person** – Where any person, by any act or thing done or omitted by the Public Trustee or any officer, employee, agent representative or person acting or in good faith purporting to act under this Act or any other Act, sustains any injury or suffers any loss which would have entitled the person to a remedy in respect thereof if the same had been done or omitted by a



private person, the person is entitled to the same remedy against the Public Trustee in his or her corporate capacity as he or she would be entitled to against a private person, and is entitled to be indemnified out of the Public Trustee's Account, and if the same is insufficient, then out of such money as may be appropriated for the purpose by Parliament.

**125. Service of notices by Public Trustee – (1)**When under this Act notice is required to be given by the Public Trustee, or by any officer, employee or person acting under or in good faith purporting to act under this Act, it is sufficient if the notice is sent by registered letter addressed to the person to whom the notice is to be given at his or her then known or then last place of abode or business.

(2)If a notice is sent by post under subsection (1), it is taken to have been given at the time when the letter would have been delivered in the ordinary course of post.

**126. Relationship between this Act and other Acts and instruments – (1)** Any Act for the time being in force relating to administration of estates or trusts and trustees is to be read and construed so as not to affect any of the express provisions of this Act, and is to be read and construed as subordinate to the provisions of this Act.

(2) Nothing in this Act deprives the Public Trustee of, or limits or restricts, any powers or authorities vested in or exercisable by him or her by or under any other Act, instrument, or law; and all powers and authorities conferred by this Act on the Public Trustee are taken to be in addition to and not in limitation or restriction of other powers or authorities vested in or exercisable by him or her by or under any other Act or instrument or law.

(3) Except in so far as it is expressly otherwise provided by this Act, all rights, powers and remedies conferred by any other Act or law upon any Court or Judge, or upon the Public Trustee or any other person, remain unrestricted, and the provisions of this Act are to be read and construed as conferring upon such Court, Judge, Public Trustee or persons the rights, powers and remedies provided in this Act in addition to and not in derogation of any rights, powers and remedies conferred by that other Act or law and by this Act are capable of being exercised independently

the one of the other, or in aid the one of the other; but, nevertheless, the express provisions of this Act is not restricted by any other Act or law.

**127. Regulations – (1)** The Head of State, acting on the advice of Cabinet, may make regulations in regard to any matter or for any purpose for which regulations are prescribed or contemplated by this Act, and may make all such other regulations as may in his or her opinion be necessary or expedient for giving full effect to the provisions of this Act, and for the due administration thereof.

**(2)** Without limiting subsection (1), regulations may be made under this section for all or any of the following purposes:

- (a) regulating the conduct of the business of the Public Trust Office;
- (b) determining the duties of the officers and employees of the Public Trust Office;
- (c) prescribing the manner in which deeds and instruments may be executed on behalf of the Public Trustee by other officers and employees of the Public Trust Office;
- (d) regulating the receipt and payment of money;
- (e) regulating the receipt and payment of money;
- (f) regulating the safe custody of securities;
- (g) regulating the custody of the money in the Public Trustee's Account, and the payment of money to or withdrawal of money from that Account, and the mode of keeping that Account, and any other account that may be deemed necessary in the business of the Public Trust Office;
- (h) prescribing the time during which documents, records, vouchers and papers shall be retained in the custody of the Public Trustee, and the mode in which they may thereafter be destroyed or otherwise disposed of;
- (i) fixing scales of commissions that may be charged and other charges that may be made by the Public Trustee;
- (j) specifying any matters or services for which charges may be made by the Public Trustee or in respect to which remuneration shall be payable to the

Public Trustee, and fixing by scale or otherwise the amounts of such charges or remuneration or authorising the Public Trustee so to do; and authorising the Public Trustee (either generally or in any particular case or cases) to make charges in respect of any matters or services (whether specified or not) and to fix by scale or otherwise the amount of such charges;

- (k) authorising the Public Trustee to fix the remuneration of advisory trustees in cases where the Public Trustee is the responsible trustee;
- (l) fixing by scale or otherwise the professional fees and charges payable in respect of professional services rendered to the Public Trustee, or empowering the Public Trustee so to do;
- (m) authorising the Public Trustee to reduce or forego any commission or otherwise charges fixed or authorised by this Act or by any regulations made hereunder in order to meet the special circumstances of any estate;
- (n) prescribing the forms of mortgages, leases, certificates and other official instruments and documents to be used in the conduct of the business of the Public Trust Office;
- (o) regulating the general conduct of business and proceedings of the Public Trust Office Investment Board.

**128. Rules of Court** – Rules of Court may be made in the manner prescribed by the Judicature Ordinance 1961 for the purpose of regulating any proceedings under this Act in the Supreme Court or the Court of Appeal.

**129. Repeal** – The enactments specified in the Schedule to this Act are revoked and repealed so far as they are part of the law of Samoa.

**SCHEDULE**  
**(Section 129)**

Samoa Public Trust Office Order 1921 (NZ)  
 Samoa Public Trust Office amendment Order 1921 (NZ)  
 Samoa Public Trust Office amendment Order 1924 (NZ)  
 Samoa Public Trust Office Amendment Order 1929 (NZ)  
 Public Trust Office Act 1957 (NZ No.36)

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**REVISION NOTES 2008– 2019**

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division from 2008 – 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices and relevant statutes.
  - (i) References to the Bank of Western Samoa appear in section 13, 15 and 26 have been amended to ANZ Bank of Samoa;
  - (ii) Reference was made in section 83 to sections of the Unclaimed Money Act 1964 that has been repealed and replaced by Part X of the Public Finance Management Act 2001.
  - (iii) Reference was made in section 93 to the Business Licences Ordinance 1960 has been repealed by the Business Licences Act 1998.
- (c) Insertion of the commencement date
- (d) References to the male gender made gender neutral
- (e) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
  - (iv) “Every” and “any” changed to “a/an”
  - (v) Present tense drafting style:
    - “shall be” changed to “is/are” or “is/are to be”
    - “shall have” changed to “has”
    - “it shall be lawful” and “is hereby empowered to” changed to “may”
    - “it shall be the duty” and “it shall be obligatory on” changed to “shall”
    - “aforesaid/forth” removed
    - “hereby” and “from time to time” removed
  - (vi) Removal/replacement of obsolete and archaic terms with plain language

- “notwithstanding” changed to “despite” and “notwithstanding that” changed to “even if”
- “pursuant to” changed to “under”
- “furnish” changed to “provide”
- “requisite” changed to “required”
- “in the case of” changed to “for”
- “in any case where” and “where” changed to “if”
- “in accordance with” changed to “under”
- (vii) Numbers in words changed to figures
- (viii) Removal of superfluous terms
  - “the generality of”
  - “of this Act/section/subsection”
  - “the provisions of”
  - “the term”
- (ix) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate.
- (x) “the foregoing provisions of this section”, “the preceding subsection” and similar wording changed to the actual section/subsections
- (xi) Section 27, 39 divided into subsections (1) and (2); section 66(1) divided into paragraphs (a) to (d); section 99(2) divided into paragraphs (a) and (b); Section 104 divided into paragraphs (a) to (e); section 117(2) divided into paragraphs (a) to (c);
- (xii) Division numbers inserted for subheadings of Parts
- (xiii) Empowering provision of Schedule inserted
- (xiv) Arrangement of provision made consistent with the text
- (xv) Sections 38(2), 54(1), 57(1), 58(1) and (2), 62, 63(2), 65(1), 68(1), 72(2), 89(1), 98, 105(7), 113 and 119 divided into paragraphs
- (xvi) Substituted “Trustee Act 1975” with “Trusts Act 2014”.
- (xvii) Part numbering changed to decimal

The following amendments have been made to specific sections of the Act to incorporate amendments not noted in the publication of the *Consolidated and Revised Statutes of Samoa 2007*–

*By the Public Trust Office Amendment Act 2007, No. 28 (commenced 21 November 2007)*

- Section 2** - inserted the definition of “senior management level officer” in the correct alphabetical order by section 3.
- Section 4** - repealed and substituted with its current form by section 4.
- Section 4A and** - insertion of section 4A on “General responsibilities of the





Lemalu Hermann P. Retzlaff  
Attorney General of Samoa

*This Act is administered by  
the Public Trust Office.*

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