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## BILLS SUPPLEMENT

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**Notification No. B 34** — The Public Trustee (Amendment) Bill is hereby published for general information. It was introduced in Parliament on the 7th day of October 2014.

# Public Trustee (Amendment) Bill

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**Bill No. 34/2014.**

*Read the first time on 7 October 2014.*

A BILL

*i n t i t u l e d*

An Act to amend the Public Trustee Act (Chapter 260 of the 1985 Revised Edition) and to make consequential amendments to certain other written laws.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

## Short title and commencement

1. This Act may be cited as the Public Trustee (Amendment) Act 2014 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

## Amendment of section 2

2. Section 2 of the Public Trustee Act (referred to in this Act as the principal Act) is amended —

(a) by deleting the words “Public Trustee” in the definition of “Board”;

(b) by deleting the definition of “common fund” and substituting the following definition:

“ “Common Fund” means the common fund referred to in section 10;”; and

(c) by inserting, immediately after the definition of “private trustee”, the following definition:

“ “Reserve Fund” means the fund established under section 15A;”.

## Amendment of section 3

3. Section 3 of the principal Act is amended by deleting subsection (2) and substituting the following subsections:

“(2) The Minister may appoint such fit and proper persons to be Deputy Public Trustees, Assistant Public Trustees and other officers of the Public Trustee as the Minister considers necessary for the purposes of this Act.

(2A) The Deputy Public Trustees, Assistant Public Trustees and other officers of the Public Trustee are to hold office on such terms as the Minister may determine.

(2B) Any reference in this Act or in any other written law to officer or officers of the Public Trustee includes a reference to a Deputy Public Trustee and an Assistant Public Trustee.”.

#### **Amendment of section 4**

**4.** Section 4 of the principal Act is amended by deleting subsection (5) and substituting the following subsections:

“(5) Subject to any conditions or restrictions imposed by the Minister in writing, the Public Trustee may authorise in writing any Deputy Public Trustee or Assistant Public Trustee to exercise all or any of the powers, and perform all or any of the duties, of the Public Trustee conferred by or under any written law, except this power of authorisation. 5

(6) Every Deputy Public Trustee or Assistant Public Trustee who is authorised under subsection (5) to exercise any power or perform any duty of the Public Trustee must, when exercising that power or performing that duty, comply with the directions of the Public Trustee. 10

(7) Any reference in this Act or in any other written law to the Public Trustee includes a reference to a Deputy Public Trustee and an Assistant Public Trustee authorised under subsection (5), unless the context otherwise requires. 15

(8) Subject to the sanction of and any direction given by the Board, the Public Trustee may authorise any person as his agent to carry out any of his functions under section 10 and the rules made for the purpose of that section.”. 20

#### **Amendment of section 5**

**5.** Section 5 of the principal Act is amended —

(a) by deleting the words “next friend” in subsection (1) and substituting the words “litigation representative”; and 25

(b) by deleting subsections (2) and (3) and substituting the following subsections:

“(2) In any suit or proceeding in which a minor is a party or in which it becomes necessary to add a minor as a party to the suit or proceeding, the court may, of its own motion or on the application of the Public Trustee or any other person, appoint the Public Trustee to act as 30

litigation representative of the minor in the suit or proceeding.

(3) A court is to consider the views of the Public Trustee before deciding whether to appoint the Public Trustee as litigation representative of a minor —

(a) on the application of a person other than the Public Trustee under subsection (1);

(b) of its own motion under subsection (2); or

(c) on the application of a person other than the Public Trustee under subsection (2).”.

### **Amendment of section 6**

6. Section 6 of the principal Act is amended —

(a) by deleting the words “by the court” in subsection (1);

(b) by deleting “\$5,000” in subsection (1) and substituting the words “the prescribed amount”;

(c) by deleting subsection (2) (including the marginal note to the subsection) and substituting the following subsection:

“(2) On the Public Trustee undertaking, by declaration in writing signed and sealed by him, to administer the estate, the trust property shall, by virtue of this Act, vest in the Public Trustee.”;

(d) by deleting subsection (6) (including the marginal note to the subsection) and substituting the following subsections:

“(6) Where proceedings have been instituted in any court for the administration of an estate, the court may order that the estate be administered by the Public Trustee, subject to such directions as the court may give, where —

(a) by reason of the small value of the estate, it appears to the court that the estate can be more economically administered by the Public Trustee than by any other person; or

(b) for any other reason, it appears to the court that it is expedient that the estate should be administered by the Public Trustee instead of any other person.

(6A) The court must not make any order under subsection (6) without having considered the views of the Public Trustee on the matter.

(6B) Where the court makes an order under subsection (6), this section applies as if the Public Trustee has given an undertaking under subsection (2) to administer the estate.”; and

(e) by deleting the words “any trust money which is not included in the investment account of the common fund” in subsection (7) and substituting the words “any trust money (forming part of an estate administered by the Public Trustee under this section) which is not included in the Common Fund”.

### **Amendment of section 7**

7. Section 7 of the principal Act is amended by deleting subsections (1) and (2) (including the marginal note to the subsection) and substituting the following subsections:

“(1) Subject to subsection (2B), a testator, a settlor or a court may appoint the Public Trustee by that name, or by any sufficient description, as if the Public Trustee were a private trustee —

(a) to be trustee of any will, settlement or other instrument creating a trust; or

(b) to perform any trust or duty belonging to a class which the Public Trustee is authorised by rules made under this Act to accept.

(2) This section applies regardless of when the will, settlement or other instrument creating the trust or duty was made or came into operation.

(2A) The Public Trustee may be appointed under subsection (1) —

(a) as an original trustee; or

(b) as a new trustee in place of or in addition to one or more trustees.

(2B) No appointment under subsection (1) has effect unless the Public Trustee has given his written consent to the appointment.

(2C) Where a court wishes to appoint the Public Trustee under subsection (1), the court must direct that an application for the written consent of the Public Trustee required under subsection (2B) be made by such person seeking the appointment of a trustee by the court as the court considers fit.

(2D) Where no written consent has been given by the Public Trustee before his appointment, the Public Trustee may, at any time after he knows of the fact of his appointment, act as if the Public Trustee had given his written consent.

(2E) Where the Public Trustee has been appointed a trustee of any trust, a co-trustee may retire from the trust under and in accordance with the provisions of the Trustees Act (Cap. 337) but without such consent as is required by that Act, even if the Public Trustee becomes the sole trustee upon the retirement.”.

## **Amendment of section 8**

**8.** Section 8 of the principal Act is amended by deleting subsections (3) (including the marginal note to the subsection), (4) and (5) and substituting the following subsections:

“(3) An executor who has obtained probate or an administrator who has obtained letters of administration may, even if he has already acted in the administration of the deceased’s estate in part, apply to the court to sanction the transfer of the estate to the Public Trustee for administration either solely or jointly with the continuing executors or administrators, if any.

(4) Any executor or administrator who wishes to apply to the court for a transfer of the estate to the Public Trustee under subsection (3) must, before making such an application, obtain the written consent of the Public Trustee.

(5) Before hearing an application made under subsection (3), the court may direct that notice of the hearing be given in such manner as it considers fit to any person beneficially interested in the deceased's estate.

(6) The court hearing an application made under subsection (3) may sanction the transfer of the deceased's estate to the Public Trustee for administration, either solely or jointly with the continuing executors or administrators, if any.

(7) Upon the court making an order under subsection (6) sanctioning a transfer of a deceased's estate, the Public Trustee shall have all the powers of the executor or administrator from whom the estate is transferred under the order.

(8) The court may, on the application of any person beneficially interested in a deceased's estate, with the written consent of the Public Trustee obtained by the person and upon proof of sufficient cause, appoint the Public Trustee in place of all or any one or more of the existing executors or administrators.

(9) Upon the court making an order under subsection (8), the Public Trustee shall have all the powers of the executor or administrator the Public Trustee replaces under the order.

(10) The executor or administrator referred to in subsection (3), or an executor or administrator replaced under an order under subsection (8), shall not in any way be liable in respect of any act or default in reference to the estate in question occurring after the date of an order under subsection (6) or (8) (as the case may be), other than the act or default of himself or of persons other than himself for whose conduct he is in law responsible.”.

## **Repeal of section 9**

9. Section 9 of the principal Act is repealed.

## **Amendment of section 10**

10. Section 10 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsections:

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“(1) All capital moneys available for investment which come into the hands of the Public Trustee are to be placed in a fund known as the Common Fund.

(1A) Any credit balance at the date immediately before the date of commencement of the Public Trustee (Amendment) Act 2014 in the common fund referred to in section 10(1) of the Public Trustee Act in force immediately before that date shall be transferred to the Common Fund, and shall constitute its credit balance on that date.

(1B) All moneys in the Common Fund may from time to time be invested by the Public Trustee in any investments permitted by law for the investment of trust funds.

(1C) No investment may be made on account of the Common Fund by the Public Trustee, and no investment made on account of the Common Fund may be disposed of by the Public Trustee, without the sanction of the Board.

(1D) The Board may grant the sanction referred to in subsection (1C) with reference to any class or description of investments and upon such conditions as the Board may specify.

(1E) Subject to section 15A(4), all income received from the investments of capital moneys in the Common Fund is to be credited to the Common Fund.”;

(b) by deleting the words “the investment account of the common fund” in subsection (2) and substituting the words “the Common Fund”;

(c) by deleting subsection (3) and substituting the following subsections:

“(3) All investments taken over under subsection (2) are to be taken over at their market value at the date of the taking over less any interest accrued at that date.

(3A) No investment may be taken over under subsection (2) unless —

- (a) the investment is one which is permitted by law for the investment of trust funds;
- (b) the taking over of the investment is sanctioned by the Board; and
- (c) the Board is of the opinion that the investment is and is likely to continue to be readily realisable.

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(3B) For the purposes of this section, interest is to accrue from day to day, and is apportionable in respect of time.”;

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- (d) by deleting the words “common fund or included in its investment account” in subsection (4) and substituting the words “Common Fund or taken over and included in the Common Fund”;

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- (e) by deleting the words “common fund” in subsection (5)(a) and substituting the words “Common Fund”; and

- (f) by deleting the marginal note and inserting the following section heading:

**“Common Fund”.**

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## **Amendment of section 11**

**11.** Section 11 of the principal Act is amended —

- (a) by deleting the words “common fund” wherever they appear in subsection (1) and substituting in each case the words “Common Fund”; and

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- (b) by deleting the marginal note and inserting the following section heading:

**“What are not to be included in Common Fund”.**

## **Repeal and re-enactment of section 12 and new section 12A**

**12.** Section 12 of the principal Act is repealed and the following sections substituted therefor:

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**“Frequency of calculation and income payable to estates**

12.—(1) The Board must determine a schedule of regular periods in each year (each called a basis period) for the purpose of calculating and paying to the relevant estates the income earned during each basis period from the investment of the Common Fund.

(2) The Public Trustee must, no later than the 45th day after the last day of each basis period determined under subsection (1), by notification in the *Gazette*, specify the income payable to the respective estates for each basis period, expressed as a rate of return on the investment of the Common Fund during that basis period.

**Manner of calculating and paying income to estates**

12A.—(1) The income payable to an estate the moneys of which form part of the Common Fund and which are subject to investment during any part of a basis period, is the total of the prescribed amount for every day in the same basis period in which moneys in the estate are subject to investment.

(2) In subsection (1), “prescribed amount”, in relation to any day in a basis period, means —

$$Y \times \frac{V_E}{V_{CF}} \times \frac{V_{CF}}{V_{Agg}},$$

where  $Y$  is the distributable sum for the basis period;

$V_E$  is the amount of money from the estate which is subject to investment on that day;

$V_{CF}$  is the amount of money in the Common Fund which is subject to investment on that day; and

$V_{Agg}$  is the aggregate value of  $V_{CF}$  for all days in the basis period in which moneys in the Common Fund are subject to investment.

(3) In subsections (1) and (2), moneys are subject to investment if they have been invested, and the investment has not been sold or liquidated.

(4) The income payable to an estate which is ascertained in accordance with subsection (1), after rounding down to the nearest cent, must be distributed to the estate no later than the 45th day after the last day of the basis period to which the income relates.

(5) Any part of the income which is not distributed as a result of the rounding down under subsection (4) must be carried forward for distribution in the next basis period.

(6) In this section —

“distributable sum”, in relation to a basis period, means the income earned in the basis period from all investments made on account of the Common Fund, including —

(a) any transfers from the Reserve Fund which are made or to be made in accordance with rules made for the purposes of section 15A(3), for the purpose of supplementing that distributable sum; and

(b) any undistributed income carried from the immediately preceding basis period in accordance with subsection (5),

less any lawful charges, and any moneys or income which is or is to be transferred and credited to the Reserve Fund under section 15A(4) during the same basis period or before the expiry of the 45th day after the last day of that basis period;

“lawful charges” includes —

(a) any fees chargeable by the Public Trustee upon the receipt of income earned during the basis period in question from investments of the Common Fund; and

(b) any expenses incurred in the basis period in question by the Public Trustee in respect of the

investments of the Common Fund by the Public Trustee.”.

### **Amendment of section 13**

**13.** Section 13 of the principal Act is amended —

- (a) by deleting the words “Public Trustee” in subsection (1);
- (b) by deleting subsections (2) and (3) and substituting the following subsections:

“(2) The members of the Board are —

- (a) a Permanent Secretary to the Ministry of Law, as chairman;
- (b) the Public Trustee; and
- (c) 3 other persons to be appointed from time to time by the Minister, of whom at least one must be a public officer (called appointed members).

(2A) The appointed members of the Board hold office for such period and on such terms and conditions as the Minister may determine.

(2B) Any appointed member of the Board may resign by giving notice in writing to the Minister.

(2C) The Minister may at any time revoke the appointment of any appointed member of the Board.

(2D) If an appointed member of the Board dies, resigns, has his appointment revoked by the Minister under subsection (2C) or otherwise vacates his office before the expiry of the term of his appointment, the Minister may appoint any other person to fill the vacancy for so long as the member in whose place that person is appointed would have held office.

(3) The chairman and 2 other members of the Board form a quorum.”; and

- (c) by deleting the marginal note and inserting the following section heading:

**“Constitution of Investment Board”.**

**Repeal of section 14**

- 14.** Section 14 of the principal Act is repealed.

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**New section 15A**

- 15.** The principal Act is amended by inserting, immediately after section 15, the following section:

**“Reserve Fund**

- 15A.—**(1) There is to be a fund called the Reserve Fund.

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(2) Any credit balance at the date immediately before the date of commencement of the Public Trustee (Amendment) Act 2014 in the reserve fund referred to in section 14(4) of the Public Trustee Act in force immediately before that date shall be transferred to the Reserve Fund, and shall constitute its credit balance on that date.

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(3) The Reserve Fund is to be under the control of the Board and may be dealt with by the Board in such manner as may be prescribed.

(4) The following moneys may, with the sanction of the Board, be transferred and credited to the Reserve Fund:

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- (a) such capital gains from the disposal of such investment or class or description of investments made on account of the Common Fund as the Board may determine to be reasonable —

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- (i) to meet any possible future shortfall in the Common Fund arising from losses on any investment made on account of the Common Fund; and

- (ii) to supplement the distributable sum for a basis period referred to in section 12A in the event that —

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(A) losses are incurred during the basis period on any investment made on account of the Common Fund; or

(B) there is no income earned during the basis period from investments made on account of the Common Fund;

(b) such amount of the income on such investment of moneys in the Common Fund as the Board may determine, for the purpose of meeting any known or expected shortfall in the Common Fund arising from the disposal of that investment.”.

### **Amendment of section 16**

**16.** Section 16 of the principal Act is amended —

(a) by deleting the words “common fund” in subsections (1) and (2) and substituting in each case the words “Common Fund”; and

(b) by deleting the marginal note and inserting the following section heading:

**“Government guarantee in regard to moneys included in Common Fund”.**

### **Amendment of section 23**

**17.** Section 23(1) of the principal Act is amended —

(a) by inserting, immediately after the word “interest” in paragraph (g), the words “and income from investments”;

(b) by deleting the words “reserve fund” in paragraph (i) and substituting the words “Reserve Fund”; and

(c) by deleting the full-stop at the end of paragraph (j) and substituting a semi-colon, and by inserting immediately thereafter the following paragraph:

“(k) the manner of authorisation of an agent by the Public Trustee under section 4(8) and the powers and duties of the agent.”.

## **Savings and transitional provisions**

**18.—**(1) Every act of the Public Trustee Investment Board referred to in the principal Act in force immediately before the date of commencement of this Act done before that date is valid and has effect as if it is done by the Investment Board under the principal Act. 5

(2) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient 10

## **Consequential amendments to other written laws**

**19.—**(1) The Fifth Schedule to the Deposit Insurance and Policy Owners' Protection Schemes Act (Cap. 77B, 2012 Ed.) is amended by deleting the words "section 10(1)" in paragraph 2(b) and substituting the words "section 10(1B)". 15

(2) Section 2 of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap. 189, 2000 Ed.) is amended by inserting, immediately after the word "includes" in the definition of "Public Trustee", the words "a Deputy Public Trustee and".

(3) Section 2 of the Probate and Administration Act (Cap. 251, 2000 Ed.) is amended by inserting, immediately after the word "includes" in the definition of "Public Trustee", the words "a Deputy Public Trustee and". 20

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## **EXPLANATORY STATEMENT**

This Bill seeks to amend the Public Trustee Act (Cap. 260) for the following main purposes:

- (a) to require the written consent or the views of the Public Trustee to be obtained in certain circumstances before the appointment of the Public Trustee to assume certain duties under the Act;
- (b) to replace the current system for the payment of income to estates the moneys of which form part of the present common fund with a new system; and



- (c) to change the name and composition of the Public Trustee Investment Board.

The Bill also makes consequential amendments to certain other written laws.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 to amend the definition of “Board” and to insert new definitions of “Common Fund” and “Reserve Fund”, as a consequence of changes made to section 10 and the insertion of a new section 15A.

Clause 3 amends section 3 to provide for the appointment of Deputy Public Trustees by the Minister.

Clause 4 amends section 4 —

- (a) to allow the Public Trustee to authorise a Deputy Public Trustee or an Assistant Public Trustee to exercise the powers and to perform the duties of the Public Trustee, subject to any conditions or restrictions as the Minister or the Public Trustee may impose;
- (b) to treat a reference to the Public Trustee in any written law as including a Deputy Public Trustee and an Assistant Public Trustee acting under the Public Trustee’s authorisation under subsection (5); and
- (c) to allow the Public Trustee to authorise an agent to carry out the Public Trustee’s functions under section 10.

Clause 5 amends section 5 —

- (a) to replace the references to “next friend” with “litigation representative”; and
- (b) to require the court to consider the views of the Public Trustee before the court appoints the Public Trustee as litigation representative of a minor in a suit or proceeding.

Clause 6 amends section 6 —

- (a) to replace the reference to “\$5,000” in subsection (1) with “the prescribed amount” so as to allow the Minister to vary the maximum value of an estate which may be administered by the Public Trustee under the section;
- (b) to allow the Public Trustee to deal with stock comprised in an estate administered by the Public Trustee under the section without the leave of the court; and
- (c) to require the court to consider the views of the Public Trustee before appointing the Public Trustee under subsection (6) to administer an estate.

Clause 7 amends section 7 —

- (a) to clarify who can appoint the Public Trustee to be a trustee of a will, settlement or other instrument of trust, or to perform any trust or duty he is authorised by rules to accept;
- (b) to require the written consent of the Public Trustee to be obtained before an appointment of the Public Trustee as such a trustee takes effect;
- (c) to clarify that though the Public Trustee has not given his written consent before he is appointed, he may act as if he had given his written consent; and
- (d) to clarify that a co-trustee of the Public Trustee may retire from a trust in accordance with the provisions of the Trustees Act (Cap. 337) (but without the consents required by that Act) even though the Public Trustee would become the sole trustee upon the retirement.

Clause 8 amends section 8 to require the written consent of the Public Trustee to be obtained before an estate may be transferred to the Public Trustee upon the application of an executor or an administrator or a beneficiary of the estate.

Clause 9 repeals section 9 which is subsumed in section 8.

Clause 10 amends section 10 —

- (a) to replace references to the “common fund” with “Common Fund”;
- (b) to make provision for a Common Fund which comprises capital moneys available for investment by the Public Trustee and income from the investment of such capital moneys;
- (c) to make provision for how moneys in the Common Fund are to be invested; and
- (d) to make provision for how income from investments made on account of the Common Fund is to be dealt with.

Clause 11 makes textual changes to section 11 by replacing references to the “common fund” with “Common Fund”.

Clause 12 repeals and re-enacts section 12 to provide for —

- (a) the frequency of the calculation and payment of income from investments made on account of the Common Fund; and
- (b) the manner of notifying the income payable to estates the moneys of which form part of the Common Fund and which are invested by the Public Trustee.

The clause also inserts a new section 12A to provide for the calculation of the income payable to an estate the moneys of which form part of the Common Fund

and are invested by the Public Trustee, and the time of payment of the income to an estate.

Clause 13 amends section 13 to make provision for the new Investment Board, its composition and how a vacancy in the membership of the Board may be filled.

Clause 14 repeals section 14 since the powers and duties of the Investment Board are subsumed in other provisions.

Clause 15 inserts a new section 15A which provides for a Reserve Fund and how the Reserve Fund may be dealt with. The Reserve Fund is placed under the control of the Investment Board which may deal with the Reserve Fund in accordance with rules made by the Minister. The Investment Board may also sanction —

- (a) the transfer of capital gains from the disposal of investments made on account of the Common Fund to the Reserve Fund to meet any possible future shortfalls in the Common Fund from investment losses, and to supplement the distributable sum for a basis period referred to in the new section 12A if losses are incurred during the basis period on any investment made on account of the Common Fund or if there is no income earned from investments during the basis period; and
- (b) the transfer of income from any investment made on account of the Common Fund to the Reserve Fund to meet any known or expected shortfall in the Common Fund arising from the disposal of that investment.

Clause 16 amends section 16 to replace references to “common fund” with “Common Fund”.

Clause 17 amends section 23(1) —

- (a) to replace the reference to “reserve fund” with “Reserve Fund”;
- (b) to allow the Minister to make rules concerning the payment of income from investments made on account of the Common Fund; and
- (c) to allow the Minister to make rules concerning the authorisation of an agent by the Public Trustee under the new section 4(8).

Clause 18 contains a savings provision, and enables the Minister, for a period of 2 years, to prescribe provisions of a savings or transitional nature consequent on the enactment of any provision of the Bill.

Clause 19 makes consequential amendments to the Deposit Insurance and Policy Owners’ Protection Schemes Act (Cap. 77B), the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap. 189) and the Probate and Administration Act (Cap. 251).

## EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

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