



# THE STATUTES OF THE REPUBLIC OF SINGAPORE

## TRUSTEES ACT

### (CHAPTER 337)

#### Act

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# Trustees Act

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An Act relating to trustees.

[15th July 1967]

PART I  
PRELIMINARY

**Short title**

1. This Act may be cited as the Trustees Act.

**Application of Act**

2.—(1) This Act, except where otherwise expressly provided, shall apply to trusts including, so far as this Act applies thereto, executorships and administratorships constituted or created either before, on or after 1st September 1929.

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

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*Notes:*—Unless otherwise stated, the abbreviations used in the references to other Acts and statutory provisions are references to the following Acts and statutory provisions. The references are provided for convenience and are not part of the Act:

Malaya Trustees (Incorporation) 1952	: Federation of Malaya Trustees (Incorporation) Ordinance 1952 (No. 73 of 1952)
Trustees Ordinance 1955 Ed.	: Singapore Trustees Ordinance (Chapter 34, 1955 Revised Edition)
UK Charitable Trustees 1872	: UK Charitable Trustees Incorporation Act 1872
UK Charitable Trusts 1954	: UK Charitable Trusts (Validation) Act 1954
UK Trustee 1925	: UK Trustee Act 1925 (c. 19)
UK Trustee 2000	: UK Trustee Act 2000 (c. 29)

(3) This Act shall not affect the legality or validity of anything done before 1st September 1929, except as otherwise expressly provided.

[UK Trustee 1925, s. 69; Trustees Ordinance 1955 Ed., s. 2]

### **Interpretation**

**3.** In this Act, unless the context otherwise requires —

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

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

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

“court” means the High Court;

“debentures” includes debenture stock, loan stock, bonds, notes and any other document which creates or acknowledges a debt, whether constituting a charge on assets or not;

“general power of investment”, in relation to a trustee, means the general power of investment conferred on him by section 4;

“income” includes rents and profits;

“instrument” includes a written law;

“land” has the same meaning as in section 4 of the Land Titles Act (Cap. 157);

“mentally disordered person” means any person found by due course of law to be of unsound mind and incapable of managing himself or his affairs;



“mortgage”, “mortgagee” and “mortgagor” include “charge”, “chargee” and “chargor” respectively, and further include and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee;

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

“personal representative” means the executor, original or by representation, or administrator for the time being of a deceased person;

“person of unsound mind” means any person, not a minor, who not having been found to be a mentally disordered person is incapable from infirmity of mind of managing his own affairs;

“possessed” applies to receipt of income of and to any vested estate less than a life interest in possession or in expectancy in any land;

“possession” includes receipt of rents and profits or the right to receive the same, if any;

“property” includes movable and immovable property, and any estate, share and interest in any property, movable or immovable, and any debt, and any thing in action, and any other right or interest, whether in possession or not;

“rights” includes estates and interests;

“sale” includes an exchange;

“securities” includes debentures, stocks, funds and shares; and so far as relates to payments into court has the same meaning as in the written laws relating to funds in court;

“securities payable to bearer” includes securities transferable by delivery or by delivery and endorsement;

“shareholders equity”, in relation to a company, means the total assets of the company less the total liabilities of the company as disclosed in the last audited accounts of the company laid before a general meeting of the company in accordance with section 201 of the Companies Act (Cap. 50) (or the equivalent provision of the law of any other country which applies to that

company) or, if a prospectus has subsequently been registered by the company in accordance with the requirements of law, the accounts contained in that prospectus;

“solicitor” means an advocate and solicitor of the Supreme Court;

“standard investment criteria”, in relation to a trust, means the standard investment criteria set out in section 5 (3);

“statutory duty of care”, in relation to a trustee, means the duty of care required to be exercised by him under Part IA;

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

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

“trust” does not include the duties incident to an estate conveyed by way of mortgage, but with this exception “trust” and “trustee” extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and “trustee” where the context admits includes a personal representative, and “new trustee” includes an additional trustee;

\*“trust corporation” means the Public Trustee or a corporation either appointed by the court in any particular case to be a trustee, or registered as a trust company under the Trust Companies Act (Cap. 336);

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\*Definition of “trust corporation” will be amended as follows when item 8 of the Fifth Schedule of Trust Companies Act 2005 is brought into operation:

“trust corporation” means the Public Trustee or a corporation either appointed by the court in any particular case to be a trustee, or *licensed as a trust company under the Trust Companies Act 2005*;

“trust for sale”, in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale;

“trustees for sale” means the persons (including a personal representative) holding land on trust for sale.

*[Trustees Ordinance 1955 Ed., s. 3]*

*[8/78; 24/91; 23/92; 45/2004]*

## PART IA

### STATUTORY DUTY OF CARE

#### **Trustees’ statutory duty of care**

**3A.**—(1) In exercising any power, carrying out any duty or doing any act referred to in the First Schedule, a trustee shall exercise such care and skill as is reasonable in the circumstances, having regard in particular —

- (a) to any special knowledge or experience that he has or holds himself out as having; and
- (b) if he acts as trustee in the course of a business or profession, to any special knowledge or experience that may reasonably be expected of a person acting in the course of that kind of business or profession.

*[45/2004]*

(2) This section shall apply in relation to trusts whether created before, on or after 15th December 2004\* except if, or in so far as, it appears from the trust instrument that the requirements of subsection (1) are not meant to apply.

*[UK Trustee 2000, s. 1]*

*[45/2004]*

## PART II

### INVESTMENTS

#### **General power of investment**

**4.**—(1) Subject to the provisions of this Part, a trustee may make any kind of investment that he could make if he were absolutely entitled to the assets of the trust.

*[45/2004]*

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\*Date of commencement of the Trustees (Amendment) Act 2004 (Act 45 of 2004).

(2) For the purpose of subsection (1), “investment” includes investment in assets that do not yield any income.

[45/2004]

(3) This section shall apply in relation to trusts whether created before, on or after 15th December 2004.

[UK Trustee 2000, s. 3 (1)]

[45/2004]

### **Standard investment criteria**

**5.—**(1) In exercising any power of investment, whether arising under this Part or otherwise, a trustee shall have regard to the standard investment criteria.

[45/2004]

(2) A trustee shall, from time to time, review the investments of the trust and consider whether, having regard to the standard investment criteria, they should be varied.

[45/2004]

(3) The standard investment criteria, in relation to a trust, are —

(a) the suitability to the trust of investments of the same kind as any particular investment proposed to be made or retained and of that particular investment as an investment of that kind; and

(b) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust.

[45/2004]

(4) This section shall apply in relation to trusts whether created before, on or after 15th December 2004.

[UK Trustee 2000, s. 4]

[45/2004]

### **Advice**

**6.—**(1) Except as otherwise provided by subsection (3), a trustee shall, before exercising any power of investment, whether arising under this Part or otherwise, obtain and consider proper advice about the way in which the power should be exercised, having regard to the standard investment criteria.

[45/2004]

(2) Except as otherwise provided by subsection (3), a trustee shall, when reviewing the investments of the trust, obtain and consider proper advice about whether the investments should be varied, having regard to the standard investment criteria.

[45/2004]

(3) A trustee need not obtain the advice required under subsection (1) or (2) if he reasonably concludes that in all the circumstances it is unnecessary or inappropriate to do so.

[45/2004]

(4) In this section, “proper advice” means the advice of a person who is reasonably believed by the trustee to be qualified to give such advice by his ability in and practical experience of financial and other matters relating to the proposed investment.

[45/2004]

(5) This section shall apply in relation to trusts whether created before, on or after 15th December 2004.

[UK Trustee 2000, s. 5]

[45/2004]

### **Power to retain investment which has ceased to be authorised**

7. A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the trust instrument or by this Act.

[UK Trustee 1925, s. 4; Trustees Ordinance 1955 Ed., s. 7]

[23/92]

### **Investment in bearer securities**

8. (*Repealed by Act 45/2004*)

### **Loans and investments by trustees not chargeable as breaches of trust**

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

- (a) that in making the loan the trustee was acting upon proper advice obtained in accordance with section 6; and
- (b) that the amount of the loan does not exceed two-third parts of the value of the property as stated in the report made by the person giving proper advice in accordance with section 6.

[23/92; 45/2004]

(2) This section shall apply to transfers of existing securities as well as to new securities and to investments made before, on or after 26th June 1992\*.

[UK Trustee 1925, s. 8; Trustees Ordinance 1955 Ed., s. 9]

[23/92]

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\*Date of commencement of the Trustees (Amendment) Act 1992 (Act 23 of 1992).

**Liability for loss by reason of improper investment**

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

[23/92]

(2) This section shall apply to investments made before, on or after 26th June 1992.

[UK Trustee 1925, s. 9; Trustees Ordinance 1955 Ed., s. 10]

[23/92]

**Powers supplementary to powers of investment**

**11.**—(1) Trustees lending money on the security of any property on which they can lawfully lend may contract that such money shall not be called in during any period not exceeding 5 years from the time when the loan was made, provided that —

(a) interest be paid within a specified time not exceeding 10 days after every monthly or other day on which it becomes due; and

(b) there be no breach of any covenant by the mortgagor contained in the instrument of mortgage or charge for the maintenance and protection of the property.

[23/92]

(2) On a sale by trustees of land for an estate in fee simple, or held under a grant issued under the State Lands Act (Cap. 314), or for a term having at least 30 years to run, the trustees may, where the proceeds are liable to be invested, contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by mortgage of the land sold, with or without the security of any other property, but such mortgage, if any buildings are comprised therein, shall contain a covenant by the mortgagor to keep such buildings insured against loss or damage by fire to the full value thereof.

[23/92]

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

(a) for the reconstruction of the company;

(b) for the sale of any or any part of the property and undertaking of the company to another company;

- (c) for the acquisition of the securities of the company, or of control thereof, by another company;
- (d) for the amalgamation of the company with another company;
- (e) for the release, modification, or variation of any rights, privileges or liabilities attached to the securities or any of them,

in the like manner as if they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities.

(4) The trustees shall not be responsible for any loss occasioned by any act or thing so done if they have discharged the statutory duty of care, and may retain any securities so accepted as specified in subsection (3) for any period for which they could have properly retained the original securities.

[23/92; 45/2004]

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

[23/92; 45/2004]

(6) The consideration for any assignment referred to in subsection (5) shall be held as capital money of the trust.

[23/92]

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

[23/92]

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

[UK Trustee 1925, s. 10; Trustees Ordinance 1955 Ed., s. 11]

[23/92]

**Power to deposit at bank, to pay calls and to purchase dwelling-house for beneficiary**

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

[23/92]

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

[23/92]

(3) Trustees may —

(a) where they are of the opinion that it is desirable to purchase a dwelling-house for the use of any beneficiary under the trust, purchase a dwelling-house with any trust funds, whether at the time in a state of investment or not; or

(b) retain any dwelling-house that forms part of the trust notwithstanding any trust for conversion contained in the instrument creating the trust,

and permit the beneficiary to reside in the dwelling-house upon such terms and conditions consistent with the trust and the extent of the interest of the beneficiary as the trustee thinks fit.

[23/92]

(4) In subsection (3), “dwelling-house” means a place of residence and includes a building or tenement wholly or principally used, constructed or adapted for human habitation.

[UK Trustee 1925, s. 11; Trustees Ordinance 1955 Ed., s. 12]

[45/2004]

**PART III****GENERAL POWERS OF TRUSTEES  
AND PERSONAL REPRESENTATIVES***General Powers***Power of trustees for sale to sell by auction, etc.**

**13.**—(1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of



title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.

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

*[UK Trustee 1925, s. 12 (1) and (2); Trustees Ordinance 1955 Ed., s. 13]*

### **Power to sell subject to depreciatory conditions**

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

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

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds as mentioned in subsection (2).

(4) This section shall apply to sales made before, on or after 1st September 1929.

*[UK Trustee 1925, s. 13; Trustees Ordinance 1955 Ed., s. 14]*

### **Power of trustees to give receipts**

**15.—**(1) The receipt in writing of a trustee for any money, securities, investments or other personal property or effects payable, transferable or deliverable to him under any trust or power shall —

- (a) be a sufficient discharge to the person paying, transferring or delivering the same; and
- (b) effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.

*[45/2004]*

(2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for the proceeds of sale or other capital money arising under a trust for sale of land.

(3) Notwithstanding anything to the contrary in a disposition on trust for sale of land or in the settlement of the net proceeds, the proceeds of sale or other capital money arising under the disposition shall not be paid to or applied by the direction of fewer than 2 persons as trustees of the disposition, except where the trustee is a trust corporation.

(4) Subsection (3) does not affect the right of a sole personal representative as such to give valid receipts for or direct the application of the proceeds of sale or other capital money mentioned in that subsection; nor, except where capital money arises on a transaction, render it necessary to have more than one trustee.

(5) This section shall apply notwithstanding anything to the contrary in the instrument, if any, creating the trust.

*[UK Trustee 1925, s. 14; Trustees Ordinance 1955 Ed., s. 15]*

### **Power to compound liabilities**

**16.—**(1) A personal representative, or 2 or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust, or by statute, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit —

- (a) accept any property before the time at which it is made transferable or payable;
- (b) sever and apportion any blended trust funds or property;
- (c) pay or allow any debt or claim on any evidence that he or they think sufficient;
- (d) accept any composition or any security for any debt or for any property claimed;
- (e) allow any time for payment of any debt; or
- (f) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate or to the trust.

(2) For any of the purposes mentioned in subsection (1) (a) to (f), such person may enter into, give, execute and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any

loss occasioned by any act or thing so done by him or them if he has or they have discharged the statutory duty of care.

[*UK Trustee 1925, s. 15; Trustees Ordinance 1955 Ed., s. 16*]

[45/2004]

### **Powers of trustees of renewable leaseholds to renew and raise money for the purpose**

**17.—**(1) A trustee of any leaseholds for lives or years which are renewable from time to time either under any covenant or contract, or by custom or usual practice, may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future, or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same hereditaments on the accustomed and reasonable terms, and for that purpose may, from time to time, make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite.

(2) Where by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

(3) If money is required to pay for the renewal, the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose he may raise the money required by mortgage of the hereditaments to be comprised in the renewed lease or of any other hereditaments for the time being subject to the uses or trusts to which those hereditaments are subject.

(4) No person advancing money upon a mortgage purporting to be under subsection (3), shall be bound to see that the money is wanted, or that no more is raised than is wanted for the purpose, or otherwise as to the application thereof.

[*Trustees Ordinance 1955 Ed., s. 17*]

### **Power to raise money by sale, mortgage, etc.**

**18.—**(1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by

sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession.

(2) This section shall apply notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but shall not apply to trustees of property held for charitable purposes.

*[UK Trustee 1925, s. 16; Trustees Ordinance 1955 Ed., s. 18]*

### **Protection to purchasers and mortgagees dealing with trustees**

**19.** No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted, or that no more is raised than is wanted, or otherwise as to the application thereof.

*[UK Trustee 1925, s. 17; Trustees Ordinance 1955 Ed., s. 19]*

### **Devolution of powers or trusts**

**20.—**(1) Where a power or trust is given to or imposed on 2 or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.

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

(3) This section shall take effect subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation.

(4) In this section, “personal representative” shall not include an executor who has renounced or has not proved.

*[UK Trustee 1925, s. 18; Trustees Ordinance 1955 Ed., s. 20]*

### **Power to insure**

**21.—**(1) A trustee may —

- (a) insure any property which is subject to the trust against risks of loss or damage due to any event; and
- (b) pay the premiums out of the trust funds.

*[45/2004]*

(2) In the case of property held on a bare trust, the power to insure is subject to any direction given by the beneficiary or each of the beneficiaries —

- (a) that any property specified in the direction is not to be insured; or
- (b) that any property specified in the direction is not to be insured except on such conditions as may be so specified.

[45/2004]

(3) If a direction under subsection (2) is given, the power to insure, so far as it is subject to the direction, ceases to be a delegable function for the purposes of section 41B.

[45/2004]

(4) For the purposes of this section —

- (a) property is held on a bare trust if it is held on trust for —
  - (i) a beneficiary who is of full age and capacity and absolutely entitled to the property subject to the trust; or
  - (ii) beneficiaries each of whom is of full age and capacity and who (taken together) are absolutely entitled to the property subject to the trust; and
- (b) “trust funds” means any income or capital funds of the trust.

[45/2004]

(5) This section shall apply in relation to trusts whether created before, on or after 15th December 2004.

[UK Trustee 2000, s. 34]

[45/2004]

### **Application of insurance money where policy kept up under any trust, power or obligation**

**22.—**(1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property that is subject to a trust shall, where the policy has been kept up under any trust in that behalf or under any power statutory or otherwise, or in the performance of any covenant or of any obligation statutory or otherwise, or by a tenant for life impeachable for waste, be capital money for the purpose of the trust.

[45/2004]

(2) If any such money is receivable by any person, other than the trustees of the trust, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof

after discharging any costs of recovering and receiving it, to the trustees of the trust, or, if there are no trustees capable of giving a discharge therefor, into court.

(3) Any such money —

(a) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust; and

(b) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the court, in rebuilding, reinstating, replacing or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.

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

(6) This section shall apply to policies effected either before, on or after 1st September 1929, but only to money received on or after that date.

*[UK Trustee 1925, s. 20; Trustees Ordinance 1955 Ed., s. 22]*

### **Deposit of documents for safe custody**

**23.** *(Repealed by Act 45/2004)*

### **Reversionary interests, valuations and audit**

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

(a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;

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

without being responsible in any such case for any loss occasioned by any act or thing so done by them if they have discharged the statutory duty of care.

[45/2004]

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

- (a) to apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as referred to in subsection (1) is derived, payable or charged; or
- (b) to take any proceedings on account of any act, default or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested,

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

(3) Nothing in subsection (2) shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession.

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

[45/2004]

(5)\* Trustees may, in their absolute discretion, from time to time, but not more than once in every year unless the nature of the trust or

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\*Compare section 22 of the Public Trustee Act (Cap. 260).

any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require.

(6) The costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

[UK Trustee 1925, s. 22; Trustees Ordinance 1955 Ed., s. 24]

### **Power to employ agents**

**25.** (*Repealed by Act 45/2004*)

### **Power to concur with others**

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

[UK Trustee 1925, s. 24; Trustees Ordinance 1955 Ed., s. 26]

### **Delegation of trustee's functions by power of attorney**

**27.—**(1) Notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate the execution or exercise of all or any trusts, powers and discretions vested in him as trustee either alone or jointly with any other person or persons.

[45/2004]

(2) A delegation under this section —

(a) shall commence as provided by the instrument creating the power or, if the instrument makes no provision as to the



commencement of the delegation, on the date of the execution of the instrument by the donor; and

- (b) shall continue for a period of 18 months or any shorter period provided by the instrument creating the power.

[45/2004]

(3) The persons who may be donees of a power of attorney under this section include a trust corporation.

[45/2004]

(4) Before or within 7 days after giving a power of attorney under this section, the donor shall give written notice of it (specifying the date on which the power comes into operation and its duration, the donee of the power, the reason why the power is given and, where only some trusts, powers and discretions are delegated, the trusts, powers and discretions delegated) to —

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

- (b) each of the other trustees, if any,

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

[45/2004]

(5) A power of attorney given under this section by a single donor —

- (a) in the form set out in the Third Schedule; or

- (b) in a form to the like effect but expressed to be made under this subsection,

shall operate to delegate to the person identified in the form as the single donee of the power, the execution and the exercise of all the trusts, powers and discretions vested in the donor as trustee (either alone or jointly with any other person or persons) under the single trust so identified.

[45/2004]

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

[45/2004]

(7) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed

stock or securities, for himself to delegate to an attorney the power to transfer, but not including the power of delegation conferred by this section.

[45/2004]

(8) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock or securities the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect the Depository (as defined in section 130A of the Companies Act (Cap. 50)), any person in whose books the stock is inscribed or registered or the issuer of the securities with any notice of the trust.

[45/2004]

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

[UK Trustee 1925, s. 25 (as amended by UK Powers of Attorney Act 1971)]

[45/2004]

### *Indemnities*

#### **Protection against liability in respect of rents and covenants**

**28.—**(1) This section applies to a personal representative or trustee liable as such for —

- (a) any rent, covenant or agreement reserved by or contained in any lease;
- (b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rentcharge; or
- (c) any indemnity given in respect of any rent, covenant or agreement referred to in paragraph (a) or (b).

(2) Where a personal representative or trustee referred to in subsection (1) —

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

on the property demised or granted, although the period for laying out the same may not have arrived,

then and in any such case the personal representative or trustee —

- (i) may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof; and
- (ii) thereafter, may distribute the residuary estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as referred to in paragraph (b)) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the lease or grant.

(3) Notwithstanding any distribution referred to in subsection (2) (ii), the personal representative or trustee shall not be personally liable in respect of any subsequent claim under the lease or grant.

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

(5) In this section —

“grant” applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as mentioned in subsection (1) or varying the liabilities under the grant;

“lease” includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as mentioned in subsection (1) or varying the liabilities under the lease;

“lessee” and “grantee” include persons respectively deriving title under them.

**Protection by means of advertisement**

**29.**—(1) With a view to the conveyance to or distribution among the persons entitled to any movable or immovable property, the trustees or personal representatives may give notice by advertisement in the *Gazette*, and such other like notices, including notices elsewhere than in Singapore, as would, in any special case, have been directed by a court of competent jurisdiction in an action for administration, of their intention to make such conveyance or distribution and requiring any person interested to send to the trustees or personal representatives within the time, not being less than 2 months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

(2) At the expiration of the time fixed by the notice the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates, to or among the persons entitled thereto, having regard only to the claims whether formal or not, of which the trustees or personal representatives then had notice and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution.

(3) Nothing in this section shall —

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

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

[UK Trustee 1925, s. 27; Trustees Ordinance 1955 Ed., s. 29]

**Protection in regard to notice**

**30.** A trustee or personal representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely

by reason of his acting or having acted for the purposes of another trust or estate.

*[UK Trustee 1925, s. 28; Trustees Ordinance 1955 Ed., s. 30]*

### **Exoneration of trustees in respect of certain powers of attorney**

**31.—**(1) A 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 act or payment the person who gave the power of attorney was subject to any disability or bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying.

(2) Nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made.

(3) The person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

*[Trustees Ordinance 1955 Ed., s. 31]*

### **Implied indemnity of trustees**

**32.** A trustee shall —

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

*[UK Trustee 1925, s. 30; Trustees Ordinance 1955 Ed., s. 32]*

### *Maintenance, Advancement and Protective Trusts*

### **Power to apply income for maintenance and to accumulate surplus income during a minority**

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

- (a) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is —
  - (i) any other fund applicable to the same purpose; or
  - (ii) any person bound by law to provide for his maintenance or education; and
- (b) if such person on attaining the age of 21 years has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) to him, until he either attains a vested interest therein or dies, or until failure of his interest.

(1A) In deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes mentioned in subsection (1), the trustees shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as mentioned in subsection (1) or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(2) During the infancy of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income by investing it, and any profits from so investing it, from time to time in authorised investments, and shall hold those accumulations as follows:

- (a) if any such person —
  - (i) attains the age of 21 years, or marries under that age, and his interest in such income during his infancy or until his marriage is a vested interest; or
  - (ii) on attaining the age of 21 years or on marriage under that age becomes entitled to the property from which such income arose in fee simple, absolute or determinable, or under a grant issued under the State Lands Act (Cap. 314) or absolutely,

the trustees shall hold the accumulations in trust for that person absolutely, and so that the receipt of that person after marriage, and though still an infant, shall be a good discharge; and

- (b) in any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which the accumulations arose, and as one fund with such capital for all purposes,

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

[45/2004]

(3) This section shall apply in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it shall apply to a future or contingent legacy by the parent of, or a person standing in loco parentis to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in such latter case the rate of interest shall (if the income available is sufficient and subject to any provision of the Rules of Court to the contrary) be \$5 per centum per annum.

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

(5) This section shall not apply where the instrument, if any, under which the interest arises came into operation before 1st September 1929.

[UK Trustee 1925, s. 31; Trustees Ordinance 1955 Ed., s. 33]

### **Power of advancement**

**34.—**(1) Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his

death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion.

(2) Any payment or application may be made under subsection (1) notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs.

(3) The money paid or applied under subsection (1) for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property; and if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share.

(4) No payment or application shall be made under subsection (1) so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.

(5) This section shall not apply to trusts constituted or created before 1st September 1929.

[UK Trustee 1925, s. 32; Trustees Ordinance 1955 Ed., s. 34]

### **Protective trusts**

**35.**—(1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (referred to in this section as the principal beneficiary) for the period of his life or for any less period, then, during the period (referred to in this section as the trust period) such income shall, without prejudice to any prior interest, be held on the following trusts:

- (a) upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby, if such income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the



trust period, whichever first happens, this trust of such income shall fail or determine;

- (b) if the trust referred to in paragraph (a) fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons:

- (i) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any; or
- (ii) if there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be,

as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

(2) This section shall not apply to trusts coming into operation before 1st September 1929 and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.

(3) Nothing in this section shall operate to validate any trust which would, if contained in the instrument creating the trust, be liable to be set aside.

*[UK Trustee 1925, s. 33; Trustees Ordinance 1955 Ed., s. 35]*

## PART IV

### APPOINTMENT AND DISCHARGE OF TRUSTEES

#### **Limitation of the number of trustees**

**36.—**(1) In the case of settlements and dispositions on trust of property, whether movable or immovable, made or coming into operation on or after 1st September 1929 —

- (a) the number of trustees thereof shall not in any case exceed 4, and where more than 4 persons are named as such trustees,

the 4 first named (who are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy; and

(b) the number of the trustees shall not be increased beyond 4.

(2) The restrictions hereby imposed on the number of trustees shall not apply in the case of property vested in trustees for charitable, religious or public purposes.

[UK Trustee 1925, s. 34; Trustees Ordinance 1955 Ed., s. 36]

### **Power of appointing new or additional trustees**

**37.**—(1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise —

- (a) is dead;
- (b) remains out of Singapore for more than 12 months;
- (c) desires to be discharged from all or any of the trusts or powers reposed in or conferred on him;
- (d) refuses or is unfit to act therein;
- (e) is incapable of acting therein; or
- (f) is an infant,

then, subject to the restrictions imposed by this Act on the number of trustees —

- (i) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
- (ii) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee,

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

(2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to

be discharged from the trust, and this section shall apply accordingly, but subject to the restrictions imposed by this Act on the number of trustees.

(3) Where a corporation being a trustee is or has been dissolved, either before, on or after 1st September 1929, then, for the purposes of this section and of any written law replaced thereby, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.

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

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

(6) Where a sole trustee, other than a trust corporation, is or has been originally appointed to act in a trust, or where, in the case of any trust, there are not more than 3 trustees (none of them being a trust corporation) either original or substituted and whether appointed by the court or otherwise, then and in any such case —

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

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

may, by writing, appoint another person or other persons to be an additional trustee or additional trustees.

(7) It shall not be obligatory to appoint any additional trustee under subsection (6) unless the instrument, if any, creating the trust, or any written law provides to the contrary, nor shall the number of trustees be increased beyond 4 by virtue of any such appointment.

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

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

(10) Where a mentally disordered person or a person of unsound mind, being a trustee, is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by the continuing trustees or trustee, under this section, unless leave has been given by the court to make the appointment.

*[UK Trustee 1925, s. 36; Trustees Ordinance 1955 Ed., s. 37]*

### **Supplemental provisions as to appointment of trustees**

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

- (a) the number of trustees may, subject to the restrictions imposed by this Act on the number of trustees, be increased;
- (b) a separate set of trustees, not exceeding 4, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed, then, except as hereinafter provided, one separate trustee may be appointed;

- (c) it shall not be obligatory, except as hereinafter provided, to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than 2 trustees were originally appointed, but, except where only one trustee was originally appointed, and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee shall not be discharged from his trust unless there will be either a trust corporation or at least 2 individuals to act as trustees to perform the trust; and
- (d) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.

(2) Nothing in this Act shall authorise the appointment of a sole trustee, not being a trust corporation, where the trustee, when appointed, would not be able to give valid receipts for all capital money arising under the trust.

*[UK Trustee 1925, s. 37; Trustees Ordinance 1955 Ed., s. 38]*

### **Evidence as to a vacancy in a trust**

**39.**—(1) A statement contained in any instrument coming into operation on or after 1st September 1929 by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of Singapore for more than 12 months or refuses or is unfit to act, or is incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a purchaser of a legal estate, be conclusive evidence of the matter stated.

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

*[UK Trustee 1925, s. 38; Trustees Ordinance 1955 Ed., s. 39]*

### **Retirement of trustee without a new appointment**

**40.**—(1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least 2 individuals to act as trustees to perform the trust, then —

- (a) if such trustee by deed declares that he is desirous of being discharged from the trust; and

- (b) if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property,

the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

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

*[UK Trustee 1925, s. 39; Trustees Ordinance 1955 Ed., s. 40]*

### **Vesting of trust property in new or continuing trustees**

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

- (a) if the deed contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate, interest or right to which the declaration relates; and
- (b) if the deed is made on or after 1st September 1929 and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates, interests and rights with respect to which a declaration could have been made.

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

- (a) if the deed contains such a declaration as referred to in subsection (1) by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates; and

- (b) if the deed is made on or after 1st September 1929 and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as referred to in paragraph (a) extending to all the estates, interests and rights with respect to which a declaration could have been made.

(3) An express vesting declaration, whether made before, on or after 1st September 1929, shall, notwithstanding that the estate, interest or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2), as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons.

(4) This section shall not extend —

- (a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;
- (b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless by virtue of any written law or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture; or
- (c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in the manner directed by or under any written law.

(5) In subsection (4), “lease” includes an underlease and an agreement for a lease or underlease.

(6) This section shall apply to deeds of appointment or discharge executed on or after 1st August 1886.

*[UK Trustee 1925, s. 40; Trustees Ordinance 1955 Ed., s. 41]*

PART IVA  
AGENTS, NOMINEES AND CUSTODIANS

**Application of this Part**

**41A.**—(1) Subject to subsection (2), this Part shall apply in relation to trusts whether created before, on or after 15th December 2004.

[45/2004]

(2) Except as otherwise provided in section 41I (4), this Part shall apply in relation to a trust having a sole trustee as it applies in relation to other trusts, and references to trustees in this Part (except in sections 41C (1) and (3) and 41J (4)) shall be read accordingly.

[45/2004]

*Agents*

**Power to appoint agents**

**41B.**—(1) Subject to the provisions of this Part, the trustees of a trust may authorise any person to exercise any or all of their delegable functions as their agent.

[45/2004]

(2) In the case of a trust other than a charitable trust, the trustees' delegable functions consist of any function other than —

- (a) any function relating to whether or in what way any assets of the trust should be distributed;
- (b) any power to decide whether any fees or other payment due to be made out of the trust funds should be made out of income or capital;
- (c) any power to appoint a person to be a trustee of the trust; or
- (d) any power conferred by any other written law or the trust instrument which permits the trustees to delegate any of their functions or to appoint a person to act as a nominee or custodian.

[45/2004]

(3) In the case of a charitable trust, the trustees' delegable functions are —

- (a) any function relating to carrying out a decision that the trustees have taken;
- (b) any function relating to the investment of assets subject to the trust (including, in the case of land held as an investment,



managing the land and creating or disposing of an interest in the land); and

- (c) any function relating to the raising of funds for the trust otherwise than by means of profits of a trade which is an integral part of carrying out the trust's charitable purpose.

[45/2004]

(4) For the purposes of subsection (3) (c), a trade is an integral part of carrying out a trust's charitable purpose if, whether carried on in Singapore or elsewhere, the profits are applied solely to the purposes of the trust and either —

- (a) the trade is exercised in the course of the actual carrying out of a primary purpose of the trust; or
- (b) the work in connection with the trade is mainly carried out by beneficiaries of the trust.

[UK Trustee 2000, s. 11]

[45/2004]

### **Persons who may act as agents**

**41C.**—(1) Subject to subsection (2), the persons whom the trustees may under section 41B authorise to exercise functions as their agent include one or more of their number.

[45/2004]

(2) The trustees may not authorise 2 or more persons to exercise the same function unless they are to exercise the function jointly.

[45/2004]

(3) The trustees may not, under section 41B, authorise a beneficiary to exercise any function as their agent (even if the beneficiary is also a trustee).

[45/2004]

(4) The trustees may, under section 41B, authorise a person to exercise functions as their agent even though he is also appointed to act as their nominee or custodian (whether under section 41G, 41H or 41I or any other power).

[UK Trustee 2000, s. 12]

[45/2004]

### **Linked functions, etc.**

**41D.**—(1) Subject to subsection (2), a person who is authorised under section 41B to exercise any function shall, notwithstanding the terms of the agency, be subject to any specific duties or restrictions attached to the function.

## Example

A person who is authorised under section 41B to exercise the general power of investment shall be subject to the duties under section 5 in relation to that power.

[45/2004]

(2) A person who is authorised under section 41B to exercise a power which is subject to a requirement to obtain advice shall not be subject to the requirement if he is the kind of person from whom it would have been proper for the trustees, in compliance with the requirement, to obtain advice.

[UK Trustee 2000, s. 13]

[45/2004]

**Terms of agency**

**41E.**—(1) Subject to subsection (2) and sections 41F (2), 41R, 41S and 41T, the trustees may authorise a person to exercise functions as their agent on such terms as to remuneration and other matters as they may determine.

[45/2004]

(2) The trustees may not authorise a person to exercise functions as their agent on any of the terms set out in subsection (3) unless it is reasonably necessary for them to do so.

[45/2004]

(3) The terms for the purposes of subsection (2) are —

- (a) a term permitting the agent to appoint a substitute;
- (b) a term restricting the liability of the agent or his substitute to the trustees or any beneficiary; and
- (c) a term permitting the agent to act in circumstances capable of giving rise to a conflict of interest.

[UK Trustee 2000, s. 14]

[45/2004]

**Asset management — special restrictions**

**41F.**—(1) The trustees may not authorise a person to exercise any of their asset management functions as their agent except by an agreement which is in writing or evidenced in writing.

[45/2004]

(2) The trustees may not authorise a person to exercise any of their asset management functions as their agent unless —

- (a) the trustees have provided that person with a statement that gives guidance as to how the functions should be exercised (referred to in this Act as a policy statement); and

(b) the agreement under which the agent is to act includes a term to the effect that he will secure compliance with —

(i) the policy statement; or

(ii) if the policy statement is revised or replaced under section 41M, the revised or replacement policy statement.

[45/2004]

(3) The trustees shall formulate any guidance given in the policy statement with a view to ensuring that the functions will be exercised in the best interests of the trust.

[45/2004]

(4) The policy statement shall be in writing or evidenced in writing.

[45/2004]

(5) For the purposes of this section, the asset management functions of trustees are their functions relating to —

(a) the investment of assets subject to the trust;

(b) the acquisition of property which is to be subject to the trust; and

(c) the management of property which is subject to the trust and the disposal of, or the creation or disposal of an interest in, such property.

[UK Trustee 2000, s. 15]

[45/2004]

### *Nominees and custodians*

#### **Power to appoint nominees**

**41G.**—(1) Subject to the provisions of this Part, the trustees of a trust may —

(a) appoint a person to act as their nominee in relation to such of the assets of the trust as they may determine (other than settled land); and

(b) take such steps as are necessary to secure that those assets are vested in a person so appointed.

[45/2004]

(2) An appointment under this section shall be in writing or evidenced in writing.

[UK Trustee 2000, s. 16]

[45/2004]

**Power to appoint custodians**

**41H.**—(1) Subject to the provisions of this Part, the trustees of a trust may appoint a person to act as a custodian in relation to such of the assets of the trust as the trustees may determine.

[45/2004]

(2) For the purposes of this Act, a person is a custodian in relation to assets if he undertakes the safe custody of the assets or of any document or record concerning the assets.

[45/2004]

(3) An appointment under this section shall be in writing or evidenced in writing.

[UK Trustee 2000, s. 17]

[45/2004]

**Investment in bearer securities**

**41I.**—(1) If trustees retain or invest in securities payable to bearer, they shall appoint a person to act as a custodian of the securities.

[45/2004]

(2) Subsection (1) shall not apply if the trust instrument or any written law contains any provision which (however expressed) permits the trustees to retain or invest in securities payable to bearer without appointing a person to act as a custodian.

[45/2004]

(3) An appointment under this section shall be in writing or evidenced in writing.

[45/2004]

(4) This section shall not impose a duty on a sole trustee if that trustee is a trust corporation.

[UK Trustee 2000, s. 18]

[45/2004]

**Persons who may be appointed as nominees or custodians**

**41J.**—(1) A person may not be appointed under section 41G, 41H or 41I as a nominee or custodian or continue to act as such nominee or custodian unless —

(a) the person carries on a business which consists of or includes acting as a nominee or custodian; or

(b) the person is a body corporate which is controlled by the trustees.

[45/2004]

(2) For the purposes of subsection (1) (b), a body corporate is controlled by the trustees if the trustees have power to secure —

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of the trustees.

[45/2004]

(3) The trustees of a charitable trust which is registered under the Charities Act (Cap. 37) shall act in accordance with any guidance given by the Commissioner of Charities concerning the selection of a person for appointment as a nominee or custodian under section 41G, 41H or 41I.

[45/2004]

(4) Subject to subsections (1) and (3), the persons whom the trustees may, under section 41G, 41H or 41I, appoint as a nominee or custodian include —

- (a) one of their number, if that one is a trust corporation; or
- (b) 2 or more of their number, if they are to act as joint nominees or joint custodians.

[45/2004]

(5) The trustees may, under section 41G, appoint a person to act as their nominee even though he is also —

- (a) appointed to act as their custodian (whether under section 41H or 41I or any other power); or
- (b) authorised to exercise functions as their agent (whether under section 41B or any other power).

[45/2004]

(6) The trustees may, under section 41H or 41I, appoint a person to act as their custodian even though he is also —

- (a) appointed to act as their nominee (whether under section 41G or any other power); or
- (b) authorised to exercise functions as their agent (whether under section 41B or any other power).

[UK Trustee 2000, s. 19]

[45/2004]

### **Terms of appointment of nominees and custodians**

**41K.**—(1) Subject to subsection (2) and sections 41R, 41S and 41T, the trustees may, under section 41G, 41H or 41I, appoint a person to

act as a nominee or custodian on such terms as to remuneration and other matters as they may determine.

[45/2004]

(2) The trustees may not, under section 41G, 41H or 41I, appoint a person to act as a nominee or custodian on any of the terms set out in subsection (3) unless it is reasonably necessary for them to do so.

[45/2004]

(3) The terms for the purposes of subsection (2) are —

- (a) a term permitting the nominee or custodian to appoint a substitute;
- (b) a term restricting the liability of the nominee or custodian or his substitute to the trustees or to any beneficiary; and
- (c) a term permitting the nominee or custodian to act in circumstances capable of giving rise to a conflict of interest.

[UK Trustee 2000, s. 20]

[45/2004]

*Review of and liability for agents,  
nominees and custodians, etc.*

**Application of sections 41M and 41N**

**41L.**—(1) Sections 41M and 41N shall apply in a case where trustees have, under section 41B, 41G, 41H or 41I —

- (a) authorised a person to exercise functions as their agent; or
- (b) appointed a person to act as a nominee or custodian.

[45/2004]

(2) Subject to subsection (3), sections 41M and 41N shall also apply in a case where trustees have, under any power conferred on them by the trust instrument or by any written law —

- (a) authorised a person to exercise functions as their agent; or
- (b) appointed a person to act as a nominee or custodian.

[45/2004]

(3) If the application of section 41M or 41N in a case is inconsistent with the terms of the trust instrument or any written law, that section shall not apply to that case.

[UK Trustee 2000, s. 21]

[45/2004]

**Review of agents, nominees and custodians, etc.**

**41M.**—(1) While the agent, nominee or custodian continues to act for the trust, it shall be the duty of the trustees —

- (a) to keep under review the arrangements under which the agent, nominee or custodian acts and the manner in which such arrangements are being put into effect;
- (b) if circumstances make it appropriate to do so, to consider whether there is a need to exercise any power of intervention that they have; and
- (c) if they consider that there is a need to do so, to exercise the power of intervention.

[45/2004]

(2) If the agent has been authorised to exercise asset management functions, the duty under subsection (1) shall include, in particular —

- (a) a duty to consider whether there is any need to revise or replace the policy statement made for the purposes of section 41F;
- (b) if the trustees consider that there is a need to revise or replace the policy statement, a duty to do so; and
- (c) a duty to assess whether the policy statement (as it has effect for the time being) is being complied with.

[45/2004]

(3) Section 41F (3) and (4) shall apply to the revision or replacement of a policy statement under this section as they apply to the making of a policy statement under that section.

[45/2004]

(4) In this section, “power of intervention” includes —

- (a) a power to give directions to the agent, nominee or custodian; and
- (b) a power to revoke the authorisation or appointment of the agent, nominee or custodian.

[UK Trustee 2000, s. 22]

[45/2004]

### **Liability for agents, nominees and custodians, etc.**

**41N.**—(1) A trustee shall not be liable for any act or default of the agent, nominee or custodian unless he fails to comply with the statutory duty of care applicable to him under paragraph 3 of the First Schedule when —

- (a) entering into the arrangements under which the person acts as agent, nominee or custodian; or
- (b) carrying out his duties under section 41M.

[45/2004]

(2) If a trustee has agreed to a term under which the agent, nominee or custodian is permitted to appoint a substitute, the trustee shall not be liable for any act or default of the substitute unless he has failed to comply with the statutory duty of care applicable to him under paragraph 3 of the First Schedule —

- (a) when agreeing to that term; or
- (b) when carrying out his duties under section 41M in so far as they relate to the use of the substitute.

[UK Trustee 2000, s. 23]

[45/2004]

### *Supplementary*

#### **Effect of trustees exceeding their powers**

**41O.** A failure by the trustees to act within the limits of the powers conferred by this Part —

- (a) in authorising a person to exercise a function of theirs as an agent; or
- (b) in appointing a person to act as a nominee or custodian,

shall not invalidate the authorisation or appointment.

[UK Trustee 2000, s. 24]

[45/2004]

## **PART IVB**

### **REMUNERATION**

#### **Application of this Part**

**41P.**—(1) Subject to subsection (2), sections 41Q to 41T shall apply in relation to —

- (a) services provided to or on behalf of trusts, whenever created; or
- (b) expenses incurred on or after 15th December 2004 on behalf of trusts, whenever created.

[45/2004]

(2) Nothing in section 41Q or 41R is to be treated as affecting the operation of —

- (a) section 57 (4) of the Probate and Administration Act (Cap. 251) (Administration of assets); or



(b) section 10 of the Wills Act (Cap. 352) (Gifts to attesting witness or to wife or husband of attesting witness to be void), in relation to any death occurring before 15th December 2004.

*[UK Trustee 2000, s. 33]*

*[45/2004]*

### **Trustee's entitlement to payment under trust instrument**

**41Q.**—(1) Except to the extent (if any) to which the trust instrument makes an inconsistent provision, subsections (2), (3) and (4) shall apply to a trustee if —

- (a) there is a provision in the trust instrument entitling him to receive payment out of trust funds in respect of services provided by him to or on behalf of the trust; and
- (b) the trustee is a trust corporation or is acting in a professional capacity.

*[45/2004]*

(2) The trustee shall be treated as being entitled under the trust instrument to receive payment in respect of services even if they are services which are capable of being provided by a lay trustee.

*[45/2004]*

(3) Subsection (2) shall apply to a trustee of a charitable trust who is not a trust corporation only —

- (a) if he is not a sole trustee; and
- (b) to the extent that a majority of the other trustees have agreed that it should apply to him.

*[45/2004]*

(4) Any payment to which the trustee is entitled in respect of services shall be treated as remuneration for services (and not as a gift) for the purposes of —

- (a) section 57 (4) of the Probate and Administration Act (Cap. 251) (Administration of assets); and
- (b) section 10 of the Wills Act (Cap. 352) (Gifts to attesting witness or to wife or husband of attesting witness to be void).

*[45/2004]*

(5) For the purposes of this Part, a trustee acts in a professional capacity if he acts in the course of a profession or business which consists of or includes the provision of services in connection with —

- (a) the management or administration of trusts generally or a particular kind of trust; or

(b) any particular aspect of the management or administration of trusts generally or a particular kind of trust, and the services he provides to or on behalf of the trust fall within that description.

[45/2004]

(6) For the purposes of this Part, a person acts as a lay trustee if he —

(a) is not a trust corporation; and

(b) does not act in a professional capacity.

[UK Trustee 2000, s. 28]

[45/2004]

### **Remuneration of certain trustees**

**41R.**—(1) Subject to subsection (4), a trustee who is a trust corporation shall be entitled to receive reasonable remuneration out of the trust funds for any services that the trust corporation provides to or on behalf of the trust.

[45/2004]

(2) Subject to subsection (4), a trustee who —

(a) acts in a professional capacity; and

(b) is not a trust corporation or a sole trustee,

shall be entitled to receive reasonable remuneration out of the trust funds for any services that he provides to or on behalf of the trust if each other trustee has agreed in writing that he may be remunerated for the services.

[45/2004]

(3) A trustee shall be entitled to remuneration under this section even if the services in question are capable of being provided by a lay trustee.

[45/2004]

(4) A trustee shall not be entitled to remuneration under this section if any provision about his entitlement to remuneration has been made —

(a) by the trust instrument; or

(b) by any written law.

[45/2004]

(5) This section shall apply to a trustee who has been authorised under a power conferred by Part IVA or the trust instrument —

(a) to exercise functions as an agent of the trustees; or

(b) to act as a nominee or custodian,  
as it applies to any other trustee.

[45/2004]

(6) In this section, “reasonable remuneration” means, in relation to the provision of services by a trustee, such remuneration as is reasonable in the circumstances for the provision of those services to or on behalf of that trust by that trustee.

[UK Trustee 2000, s. 29]

[45/2004]

### **Trustees’ expenses**

**41S.**—(1) A trustee —

(a) shall be entitled to be reimbursed from the trust funds; or

(b) may pay out of the trust funds,

reasonable expenses properly incurred by him when acting on behalf of the trust.

[45/2004]

(2) This section shall apply to a trustee who has been authorised under a power conferred by Part IVA or any other written law, or by the trust instrument —

(a) to exercise functions as an agent of the trustees; or

(b) to act as a nominee or custodian,

as it applies to any other trustee.

[UK Trustee 2000, s. 31]

[45/2004]

### **Remuneration and expenses of agents, nominees and custodians**

**41T.**—(1) This section shall apply if, under a power conferred by Part IVA or any other written law, or by the trust instrument, a person other than a trustee has been —

(a) authorised to exercise functions as an agent of the trustees;  
or

(b) appointed to act as a nominee or custodian.

[45/2004]

(2) The trustees may remunerate the agent, nominee or custodian out of the trust funds for services if —

(a) he is engaged on terms entitling him to be remunerated for those services; and

- (b) the amount does not exceed such remuneration as is reasonable in the circumstances for the provision of those services by him to or on behalf of that trust.

[45/2004]

(3) The trustees may reimburse the agent, nominee or custodian out of the trust funds for any reasonable expenses properly incurred by him in exercising functions as an agent, nominee or custodian.

[UK Trustee 2000, s. 32]

[45/2004]

## PART V

### POWERS OF COURT

#### **Power of court to appoint new trustees**

**42.**—(1) The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable to do so without the assistance of the court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, although there is no existing trustee.

(2) Without prejudice to the generality of subsection (1), the court may make an order appointing a new trustee in substitution for a trustee who is —

- (a) sentenced to a term of imprisonment;
- (b) a mentally disordered person or a person of unsound mind;
- (c) a bankrupt; or
- (d) a corporation which is in liquidation or has been dissolved.

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

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

[UK Trustee 1925, s. 41; Trustees Ordinance 1955 Ed., s. 42]

**Power to authorise remuneration**

**43.** The court may allow any trustee, other than the Public Trustee, such remuneration for his services as trustee as the court may think fit.

*[UK Trustee 1925, s. 42; Trustees Ordinance 1955 Ed., s. 43]*

**Powers of new trustee appointed by the court**

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

*[UK Trustee 1925, s. 43; Trustees Ordinance 1955 Ed., s. 44]*

*Vesting Orders***Vesting orders of land**

**45.—(1)** In any of the following cases:

- (a) where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;
- (b) where a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person —
  - (i) is under disability;
  - (ii) is out of the jurisdiction of the court; or
  - (iii) cannot be found, or, being a corporation, has been dissolved;
- (c) where it is uncertain who was the survivor of 2 or more trustees jointly entitled to or possessed of any interest in land;
- (d) where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead;
- (e) where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;

- (f) where there is no personal representative of a deceased mortgagee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased mortgagee who was entitled to or possessed of any interest in land, or where it is uncertain whether any mortgagee entitled to or possessed of any interest in land is living or dead, or where any mortgagee entitled to or possessed of any interest in land is out of the jurisdiction of the court or cannot be found or being a corporation has been dissolved;
- (g) where a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for 28 days after the date of the requirement; or
- (h) where land or any interest therein is vested in a trustee whether by way of mortgage or otherwise and it appears to the court to be expedient,

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

(2) Where the order is consequential on the appointment of a trustee the land or interest therein shall be vested for such estate as the court may direct in the persons who on the appointment are the trustees.

(3) Where the order relates to a trustee entitled or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved, the land, interest or right shall be vested in such other person who remains entitled, either alone or with any other person, as the court may appoint.

*[UK Trustee 1925, s. 44; Trustees Ordinance 1955 Ed., s. 45]*

**Orders as to contingent rights of unborn persons**

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

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

*[UK Trustee 1925, s. 45; Trustees Ordinance 1955 Ed., s. 46]*

**Vesting order in place of conveyance by infant mortgagee**

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

*[UK Trustee 1925, s. 46; Trustees Ordinance 1955 Ed., s. 47]*

**Vesting order consequential on order for sale or mortgage of land**

**48.—(1)** Where any court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any interest in the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Act.

(2) The court may, if it thinks expedient, make an order vesting the land or any part thereof, for such estate or interest as the court thinks fit in the purchaser or mortgagee or in any other person.

*[UK Trustee 1925, s. 47; Trustees Ordinance 1955 Ed., s. 48]*

**Vesting order consequential on judgment for specific performance, etc.**

**49.** Where a judgment is given for the specific performance of a contract concerning any interest in land, or for sale or exchange

of any interest in land, or generally where any judgment is given for the conveyance of any interest in land either in cases arising out of the doctrine of election or otherwise, the court may declare —

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

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

*[UK Trustee 1925, s. 48; Trustees Ordinance 1955 Ed., s. 49]*

### **Effect of vesting order**

**50.** A vesting order made under this Act shall —

- (a) in the case of a vesting order consequential on the appointment of a trustee, have the same effect —
  - (i) as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate or interest as the court directs; or
  - (ii) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate or interest as the court directs; and
- (b) in every other case have the same effect as if the trustee, mortgagee or other person or description or class of persons to whose rights or supposed rights the relevant provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

*[UK Trustee 1925, s. 49; Trustees Ordinance 1955 Ed., s. 50]*



**Power to appoint person to convey**

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

*[UK Trustee 1925, s. 50; Trustees Ordinance 1955 Ed., s. 51]*

**Vesting orders as to stock and thing in action**

**52.—(1)** In any of the following cases:

- (a) where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;
- (b) where a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person, to stock or to a thing in action —
  - (i) is under disability;
  - (ii) is out of the jurisdiction of the court;
  - (iii) cannot be found, or, being a corporation, has been dissolved;
  - (iv) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto for 28 days next after a request in writing has been made to him by the person so entitled; or
  - (v) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action for 28 days next after an order of the court for that purpose has been served on him;
- (c) where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead;
- (d) where stock is standing in the name of a deceased person whose personal representative is under disability; or
- (e) where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the court to be expedient,

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

(2) Where the order is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees.

(3) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the court may appoint.

(4) In all cases where a vesting order can be made under this section, the court may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(5) The person appointed under subsection (4) to make or join in making a transfer of stock shall be some proper officer of the company whose stock is to be transferred.

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

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

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

(9) The provisions of this Act as to vesting orders shall apply to shares in ships registered under any written law relating to merchant shipping as if they were stock.

*[UK Trustee 1925, s. 51; Trustees Ordinance 1955 Ed., s. 52]*

### **Vesting orders of charity or society property**

**53.** The powers conferred by this Act as to vesting orders may be exercised for vesting any interest in land, stock or thing in action in

any trustee of a charity or society over which the court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the court under its general or statutory jurisdiction.

*[UK Trustee 1925, s. 52; Trustees Ordinance 1955 Ed., s. 53]*

### **Vesting orders in relation to infant's beneficial interest**

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

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

*[UK Trustee 1925, s. 53; Trustees Ordinance 1955 Ed., s. 54]*

### **Orders made upon certain allegations to be conclusive evidence**

**55.—**(1) Where a vesting order is made as to any land under this Act founded on an allegation of any of the following matters:

- (a) the personal incapacity of a trustee or mortgagee;
- (b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the court, or cannot be found, or being a corporation has been dissolved;
- (c) that it is uncertain which of 2 or more trustees, or which of 2 or more persons interested in a mortgage, was the survivor;
- (d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage is living or dead; or
- (e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested,

the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order.

(2) Nothing in this section shall prevent the court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

[UK Trustee 1925, s. 55; Trustees Ordinance 1955 Ed., s. 55]

### *Jurisdiction to make other Order*

#### **Power of court to authorise dealings with trust property**

**56.**—(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may —

- (a) by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit; and
- (b) direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

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

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

[UK Trustee 1925, s. 57; Trustees Ordinance 1955 Ed., s. 56]

#### **Persons entitled to apply for orders**

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

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

*[UK Trustee 1925, s. 58; Trustees Ordinance 1955 Ed., s. 57]*

### **Power to give judgment in absence of trustee**

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

*[UK Trustee 1925, s. 59; Trustees Ordinance 1955 Ed., s. 58]*

### **Power to charge costs on trust estate**

**59.** The court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court may seem just.

*[UK Trustee 1925, s. 60; Trustees Ordinance 1955 Ed., s. 59]*

### **Power to relieve trustee from personal liability**

**60.** If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before, on or after 1st September 1929, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed the breach, then the court may relieve him either wholly or partly from personal liability for the same.

*[UK Trustee 1925, s. 61; Trustees Ordinance 1955 Ed., s. 60]*

**Power to make beneficiary indemnify for breach of trust**

**61.**—(1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman restrained from anticipation, make such order as to the court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him.

(2) This section shall apply to breaches of trust committed as well before as on or after 1st September 1929.

*[UK Trustee 1925, s. 62; Trustees Ordinance 1955 Ed., s. 61]*

*Payment into Court***Payment into court by trustees**

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

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

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

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

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

*[UK Trustee 1925, s. 63; Trustees Ordinance 1955 Ed., s. 62]*

**PART VI****CHARITABLE TRUSTS****Public Trustee may administer property of charitable trust without trustee**

**63.—**(1) Whenever it appears to the Public Trustee that a charitable trust has no trustee, he may send by registered post a letter to the person in apparent control of any property subject to the trust requesting the names and addresses of the trustees, if any, of the trust.

(2) If the Public Trustee does not within one month of sending the letter receive any answer thereto, he may publish in the *Gazette* and send to the person referred to in subsection (1), by registered post, a notice that at the expiration of one month from the date of that notice, unless cause is shown to the contrary, the trust shall be deemed to have no trustee.

(3) At the expiration of the time mentioned in the notice, unless cause to the contrary is previously shown by any trustee of such trust, or if the Public Trustee receives an answer to the effect that such trust has no trustee, the Public Trustee —

- (a) may declare that he undertakes to administer the property subject to such trust provisionally; and
- (b) shall publish notice thereof in the *Gazette* and on the publication in the *Gazette* of the notice all property, movable and immovable of whatever description, subject to such trust shall vest in the Public Trustee as provisional trustee thereof.

(4) The Public Trustee as such provisional trustee may apply to the court by motion for the appointment of new trustees to administer such trust and on the appointment of the new trustees all such property shall vest in them.

(5) All costs and expenses incurred by the Public Trustee in exercising the powers conferred by this section shall be paid out of the assets of the trusts concerned.

**Validation of certain imperfect charitable trusts**

**64.—**(1) No trust shall be held to be invalid by reason that some non-charitable and invalid purpose as well as some charitable purpose is or could be deemed to be included in any of the purposes to or for

which an application of the trust funds or any part thereof is by such trust directed or allowed.

(2) Any such trust shall be construed and given effect to in the same manner in all respects as if no application of the trust funds or any part thereof to or for any such non-charitable and invalid purpose had been or could be deemed to have been so directed or allowed.

(3) This section shall not apply to any trust declared before or to the will of any testator dying before 14th July 1967.

[UK Charitable Trusts 1954, s. 1]

### *Incorporation of Trustees*

#### **Grant of certificate of registration of trustees as body corporate**

**65.**—(1) Trustees, not less than 3 in number, may be appointed by any body or association of persons established for any religious, educational, literary, scientific, social or charitable purpose, and such trustees may apply, in the manner provided in section 67, to the Minister for a certificate of registration of the trustees of such body or association of persons as a body corporate.

(2) If the Minister, having regard to the extent, nature and objects and other circumstances of such body or association of persons, considers such incorporation expedient, he may grant such certificate accordingly, subject to such conditions or directions generally as he thinks fit to insert in such certificate, and particularly relating to the qualifications and number of the trustees, their tenure and avoidance of office, the mode of appointing new trustees, the custody and use of the common seal, the amount of the land which such trustees may hold, and the purposes for which the land may be applied.

(3) The trustees shall upon the grant of the certificate under subsection (2) —

- (a) become a body corporate by the name described in the certificate;
- (b) have perpetual succession and a common seal;
- (c) have power to sue and be sued in such corporate name; and
- (d) subject to the conditions and directions contained in the certificate, have power to acquire, purchase, take, hold and enjoy movable and immovable property and by instruments under the common seal to sell, convey, assign, surrender



and yield up, mortgage, charge, demise, reassign, transfer or otherwise dispose of movable and immovable property now or hereafter belonging to, or held for the benefit of, such body or association of persons, in such and the like manner, and subject to such restrictions and provisions, as the trustees might do, without such incorporation, for the purposes of such body or association of persons.

*[UK Charitable Trustees 1872, s. 1; Malaya Trustees (Incorporation) 1952, s. 2]*

### **Estate to vest in body corporate**

**66.**—(1) The certificate of incorporation shall vest in such body corporate all property, movable or immovable of whatever description, belonging to or held by any person in trust for the body or association of persons, and thereupon any person in whose name any stocks, funds or securities shall be standing in trust for the body or association of persons, shall transfer the same into the name of the body corporate.

(2) All covenants and conditions relating to any such immovable property enforceable by or against the trustees thereof before their incorporation shall be enforceable to the same extent and by the same means by or against them after their incorporation.

*[UK Charitable Trustees 1872, s. 2; Malaya Trustees (Incorporation) 1952, s. 3]*

### **Particulars respecting application**

**67.**—(1) Every application to the Minister for a certificate under this Part shall be in writing, signed by the person or persons making the same, and shall contain the several particulars specified in the Second Schedule, or such of them as shall be applicable to the case.

*[23/92]*

(2) The Minister may require a statutory declaration or other evidence in verification of the statements and particulars in the application, and such other particulars, information and evidence (if any) as he may think necessary or proper.

*[UK Charitable Trustees 1872, s. 3; Malaya Trustees (Incorporation) 1952, s. 4]*

### **Nomination of trustees and filling up vacancies**

**68.**—(1) Before a certificate of incorporation shall be granted, the trustees shall have been effectually appointed to the satisfaction of the Minister.

(2) Where a certificate of incorporation shall have been granted vacancies in the number of the trustees shall, from time to time, be filled up so far as shall be required by the constitution or settlement of the

body or association of persons, or by any conditions or directions as referred to in section 65 (2), by such legal means as would have been available for the appointment of new trustees of the body or association of persons if no certificate of incorporation had been granted, or otherwise as shall be required by such conditions or directions as referred to in section 65 (2).

(3) The appointment of every new trustee shall be certified by, or by the direction of, the trustees to the Public Trustee upon the completion of such appointment.

(4) Within one month after the expiration of each period of 5 years after the grant of a certificate of incorporation, or whenever required by the Public Trustee, a return shall be made to the Public Trustee by the then trustees of the names of the trustees at the expiration of each such period, with their residences and descriptions.

*[UK Charitable Trustees 1872, s. 4; Malaya Trustees (Incorporation) 1952, s. 5]*

### **Liability of trustees and others, notwithstanding incorporation**

**69.**—(1) After a certificate of incorporation has been granted under the provisions of this Part, all trustees of the body or association of persons, notwithstanding their incorporation, shall be —

- (a) chargeable for such property as shall come into their hands; and
- (b) answerable and accountable for their own acts, receipts, neglects and defaults, and for the due administration of the body or association of persons and its property, in the same manner and to the same extent as if no such incorporation had been effected.

(2) Nothing in this section shall diminish or impair any control or authority exercisable by the Attorney-General or other public officer under any written law for the time being in force over the trustees who shall be so incorporated but they shall remain subject jointly and separately to such control and authority as if they were not incorporated.

*[UK Charitable Trustees 1872, s. 5; Malaya Trustees (Incorporation) 1952, s. 6]*

### **Certificate to be evidence of compliance with requirements**

**70.**—(1) A certificate of incorporation so granted shall be conclusive evidence that all the preliminary requirements contained in this Part and required in respect of such incorporation have been complied with.

(2) The date of incorporation mentioned in such certificate shall be deemed to be the date at which incorporation has taken place.

*[UK Charitable Trustees 1872, s. 6; Malaya Trustees (Incorporation) 1952, s. 7]*

### **Record of applications and documents to be kept, and supply of copies**

**71.**—(1) The Public Trustee shall keep a record of all applications for and certificates of incorporation granted and all documents, accounts and returns required by the provisions of this Part to be filed with the Public Trustee.

(2) Any person may obtain a copy or extract of any such document certified by the Public Trustee on payment of the prescribed fee.

*[UK Charitable Trustees 1872, s. 7; Malaya Trustees (Incorporation) 1952, s. 8]*

### **Enforcement of conditions and directions**

**72.** All conditions and directions inserted in any certificate of incorporation shall be —

- (a) binding upon and performed or observed by the trustees as trusts of the body or association of persons; and
- (b) enforceable by the Attorney-General or other public officer or persons interested under any written law for the time being in force.

*[UK Charitable Trustees 1872, s. 8; Malaya Trustees (Incorporation) 1952, s. 9]*

### **Applications and certificates to be stamped**

**73.** (*Repealed by Act 38/2002*)

### **Gifts to vest in body corporate**

**74.** After the incorporation of the trustees of any body or association of persons under this Part, every donation, gift and disposition of land, or any interest therein, theretofore lawfully made (but not having actually taken effect) or hereafter lawfully made by deed, will or otherwise to or in favour of such body or association of persons, or the trustees thereof, or otherwise for the purposes thereof, shall take effect as if the same had been made to, or in favour of, the incorporated body or otherwise for the like purposes.

*[UK Charitable Trustees 1872, s. 10; Malaya Trustees (Incorporation) 1952, s. 11]*

**Common seal**

**75.**—(1) The common seal of the body corporate shall have such device as may be approved by the Minister.

(2) Any instrument to which the common seal of the body corporate has been affixed, in apparent compliance with the conditions or directions for the use of the common seal referred to in section 65, shall be binding on such body corporate, notwithstanding any defect or circumstance affecting the execution of such instrument.

*[Malaya Trustees (Incorporation) 1952, s. 12]*

**Contracts not under seal to be binding in certain cases**

**76.** Every contract made or entered into by the trustees of a body or association of persons which would be valid and binding according to the constitution, settlement or rules and regulations of that body or association of persons if no incorporation under this Part had taken place, shall be valid and binding although the same shall not have been made or entered into under the common seal of the trustees.

*[UK Charitable Trustees 1872, s. 11; Malaya Trustees (Incorporation) 1952, s. 13]*

**Payments on transfers in reliance on corporate seal protected**

**77.** Any person who makes or permits to be made any transfer or payment bona fide, in reliance on any instrument to which the common seal of any body corporate created under this Part is affixed, shall be indemnified and protected in respect of such transfer or payment, notwithstanding any defect or circumstance affecting the execution of the instrument.

*[UK Charitable Trustees 1872, s. 12; Malaya Trustees (Incorporation) 1952, s. 14]*

**Trustees to keep accounts and to render annual returns of accounts**

**78.**—(1) The trustees of any body or association of persons incorporated under this Part shall, in books to be kept by them for that purpose, regularly enter or cause to be entered full and true accounts of all moneys received and paid respectively on account of such body or association of persons.

(2) The trustees referred to in subsection (1) shall, on or before 25th March in every year, or upon such other day as may be appointed by the Public Trustee, prepare and make out the following accounts in relation to the body or association of persons referred to in subsection (1):

- (a) an account of the gross income arising from any endowment or which ought to have arisen therefrom during the year ending on 31st December immediately preceding, or upon such other day as may have been appointed for this purpose by the Public Trustee;
- (b) an account of all balances in hand at the commencement of the year and of all moneys received during the same year on account of such body or association of persons;
- (c) an account for the same period of all payments; and
- (d) an account of all moneys owing to or from such body or association of persons, so far as conveniently may be.

(3) The accounts prescribed under subsection (2) shall be certified under the hand of all the trustees referred to in subsection (1) who are in Singapore and shall be audited by the auditor of such body or association of persons (if any).

(4) The trustees referred to in subsection (1) shall, within 14 days after the day appointed for making out the accounts referred to in subsection (2), file a copy thereof with the Public Trustee and every such copy shall be open to inspection of all persons at all reasonable hours upon payment of the prescribed fee.

(5) Any person may require a copy of every such account, or of any part thereof, on paying the prescribed fee.

(6) The trustees referred to in subsection (1) shall, at the same time as the accounts prescribed under subsection (2) are filed with the Public Trustee in accordance with subsection (4) for the first time after the grant of a certificate of incorporation under this Part, file with the Public Trustee an account of any endowments then belonging to such body or association of persons, showing in the case of immovable property not in hand the manner in which the same is let or occupied and in the case of movable property the existing investment or employment thereof and in what names such investments are made.

(7) Thereafter, the trustees or trustee shall, on every occasion upon which the accounts are filed as mentioned in subsection (6) with the Public Trustee after the acquisition of any endowment not included in such accounts, or after the alienation, charge or transfer of any movable or immovable property of such body or association of persons,

file with the Public Trustee a similar account of such last-mentioned endowment and an account of such alienation, charge or transfer, as the case may be.

[*Malaya Trustees (Incorporation) 1952, s. 15*]

### **Petition to decide question whether person is a member of a body corporate**

**79.**—(1) When any question arises as to whether any person is a member of such body corporate, any person interested in the question may apply by petition to the court for its opinion on the question.

(2) Notice of the hearing shall be given to such persons and in such manner as the court thinks fit.

(3) Any opinion given by the court on an application under this section shall be binding —

- (a) on the person in respect of whom the question arose;
- (b) upon all members of the body corporate referred to in subsection (1);
- (c) upon that person interested in the question; and
- (d) upon any persons to whom notice of the hearing has been given in accordance with any direction of the court.

[*Malaya Trustees (Incorporation) 1952, s. 16*]

### **Dissolution of body corporate**

**80.**—(1) Where the administration of a charitable trust has been taken over by the Government or a statutory corporation or for any other sufficient cause it is expedient to dissolve a body corporate created under this Part, the Minister may, by order, direct the Public Trustee to strike the name of the body corporate off the register.

(2) The Public Trustee shall publish the order in the *Gazette* and on publication in the *Gazette* of the order, the body corporate shall be dissolved.

### **Penalty for false statement**

**81.** If any person in any return, account or other documents required by any of the provisions of this Part to be filed with the Public Trustee, wilfully makes a statement which is false in any material particular, knowing it to be false, he shall be guilty of an offence and shall be liable

on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 2 years or to both.

**Penalty for not filing returns, etc.**

**82.** If any trustee fails to comply or to take all reasonable steps to secure compliance with any of the provisions of this Part which requires the lodging or filing with the Public Trustee of any return, account or other documents or the giving of notice to him of any matter, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 and, in the case of a continuing offence, to a further fine not exceeding \$50 for every day during which the offence continues after conviction.

PART VII\*

UNIT TRUST SCHEMES

**Power of Minister to make order declaring a unit trust scheme to be an authorised unit trust scheme**

**83.** (*Repealed by Act 45/2004*)

**Investigation into the administration of unit trust scheme by inspectors appointed by Minister**

**84.** (*Repealed by Act 45/2004*)

PART VIII

GENERAL PROVISIONS

**Indemnity**

**85.—(1)** This Act and every order purporting to be made under this Act shall be a complete indemnity to all persons for any acts done pursuant thereto.

(2) It shall not be necessary for any person to inquire concerning the propriety of the order, or whether the court by which the order was made had jurisdiction to make it.

[UK Trustee 1925, s. 66; Trustees Ordinance 1955 Ed., s. 64]

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\*Part VII is repealed by Trustees (Amendment) Act 2004 (Act 45 of 2004) and any order made under that Part declaring any unit trust scheme to be an authorised unit trust scheme for the purposes thereof shall cease to have effect.

**Avoidance of dispositions and trusts created to defraud creditors**

**86.** For the avoidance of doubt, every settlement or disposition of property made or caused to be made on trust, before, on or after 15th December 2004, with intent to defraud creditors, shall be voidable at the instance of any person thereby prejudiced, in accordance with section 73B of the Conveyancing and Law of Property Act (Cap. 61).

[45/2004]

**Effect of Bankruptcy Act on transactions at undervalue and unfair preferences**

**87.—**(1) For the avoidance of doubt, every settlement or disposition of property made or caused to be made on trust, before, on or after 15th December 2004, that is —

(a) a transaction at an undervalue as defined in section 98 (read with sections 100 and 101) of the Bankruptcy Act (Cap. 20);  
or

(b) an unfair preference as defined in section 99 (read with sections 100 and 101) of the Bankruptcy Act,

shall be subject to the respective sections, as the case may be.

[45/2004]

(2) Where the person making the settlement or disposition is a body corporate, the provisions of sections 98 to 101 of the Bankruptcy Act shall be read subject to such modifications as are prescribed under the Companies Act (Cap. 50) for the application of those provisions for the purposes of sections 227T and 329 of the Companies Act.

[45/2004]

**Accumulation of income for duration of trusts**

**88.** The income arising from a trust may be accumulated for such period as is allowed under section 31 of the Civil Law Act (Cap. 43).

[45/2004]

**Perpetuity period applicable to trusts**

**89.** For the purposes of the rule against perpetuities, the provisions of sections 32, 33 and 34 of the Civil Law Act shall apply to trusts created on or after 15th December 2004.

[45/2004]



**Validity of certain trusts**

**90.**—(1) Subject to subsection (3), where a person creates a trust or transfers movable property to be held on an existing trust during his lifetime, he shall be deemed to have the capacity to so create the trust or transfer the property if he has capacity to do so under any of the following laws:

- (a) the law applicable in Singapore;
- (b) the law of his domicile or nationality; or
- (c) the proper law of the transfer.

[45/2004]

(2) No rule relating to inheritance or succession shall affect the validity of a trust or the transfer of any property to be held on trust if the person creating the trust or transferring the property had the capacity to do so under subsection (1).

[45/2004]

(3) Subsection (1) —

- (a) does not apply if, at the time of the creation of the trust or the transfer of the property to be held on trust, the person creating the trust or transferring the property is a citizen of Singapore or is domiciled in Singapore; and
- (b) applies in relation to a trust only if the trust is expressed to be governed by Singapore law and the trustees are resident in Singapore.

[45/2004]

(4) In subsection (1), the reference to “law” does not include any choice of law rules forming part of that law.

[45/2004]

(5) No trust or settlement of any property on trust shall be invalid by reason only of the person creating the trust or making the settlement reserving to himself any or all powers of investment or asset management functions under the trust or settlement.

[45/2004]

**Savings, transitional and further consequential provisions**

**91.**—(1) Where a trust deed created before 15th December 2004 confers on a trustee the power to invest trust funds in accordance with the repealed First Schedule to the Trustees Act (Cap. 337) in force immediately before that date, however the conferment of such power may be expressed in the trust deed, the power of investment so conferred shall, as from that date, be deemed to be the general power

of investment under section 4 of the Trustees Act in force as from that date.

[45/2004]

(2) A trustee shall not be liable for breach of the statutory duty of care by reason only of his continuing to hold an investment which has ceased to be an investment made by him pursuant to the repealed First Schedule to the Trustees Act (Cap. 337) in force immediately before 15th December 2004 if they are investments which a trustee may make under section 4 of the Trustees Act in force as from that date.

[45/2004]

## FIRST SCHEDULE

Sections 3A (1) and 41N

### APPLICATION OF STATUTORY DUTY OF CARE UNDER PART IA

#### **Investment**

1. The duty of care under Part IA applies to a trustee —
  - (a) when exercising the general power of investment or any other power of investment, however conferred; or
  - (b) when carrying out any duty imposed on him by this Act in relation to the investment of trust funds.

#### **Acquisition of land**

2. The duty of care under Part IA applies to a trustee —
  - (a) when exercising any power to acquire land, however conferred; or
  - (b) when exercising any power in relation to land acquired under a power mentioned in sub-paragraph (a).

#### **Agents, nominees and custodians**

- 3.—(1) The duty of care under Part IA applies to a trustee —
  - (a) when entering into arrangements under which a person is authorised under section 41B to exercise functions as an agent;
  - (b) when entering into arrangements under which a person is appointed under section 41G to act as a nominee;
  - (c) when entering into arrangements under which a person is appointed under section 41H or 41I to act as a custodian;
  - (d) when entering into arrangements under which, under any other power, however conferred, a person is authorised to exercise functions as an agent or is appointed to act as a nominee or custodian; or
  - (e) when carrying out his duties under section 41M (Review of agents, nominees and custodians, etc.).

FIRST SCHEDULE — *continued*

(2) For the purposes of sub-paragraph (1), entering into arrangements under which a person is authorised to exercise functions as an agent or is appointed to act as a nominee or custodian includes, in particular —

- (a) selecting the person who is to act;
- (b) determining any terms on which he is to act; and
- (c) if the person is being authorised to exercise asset management functions, the preparation of a policy statement under section 41F.

**Compounding of liabilities**

4. The duty of care under Part IA applies to a trustee —
- (a) when exercising the power under section 16 to do any of the things referred to in that section; or
  - (b) when exercising any corresponding power, however conferred.

**Insurance**

5. The duty of care under Part IA applies to a trustee —
- (a) when exercising the power under section 21 to insure property; or
  - (b) when exercising any corresponding power, however conferred.

**Reversionary interests, valuations and audit**

6. The duty of care under Part IA applies to a trustee —
- (a) when exercising the power under section 24 (1) or (4) to do any of the things referred to therein; or
  - (b) when exercising any corresponding power, however conferred.

[UK Trustee 2000, Sch. 1]

[45/2004]

**SECOND SCHEDULE**

Section 67 (1)

**PARTICULARS TO BE INSERTED IN APPLICATION  
FOR INCORPORATION OF TRUSTEES**

1. The objects of the body or association of persons, and the rules and regulations of the same, together with the date of, and parties to every deed, will or other instrument (if any) creating, constituting or regulating the same.
2. A statement and short description of the land, or interest in land, which at the date of application is possessed by, or belonging to, or held on behalf of such body or association of persons.
3. The names, residences and descriptions of the trustees of such body or association of persons.
4. The proposed title of the body corporate, of which title the words “trustees” and “registered” shall form part.
5. The proposed device of the common seal.
6. The regulations for the custody and use of the common seal.

**THIRD SCHEDULE**

Section 27 (5)

**FORM OF POWER OF ATTORNEY  
UNDER SECTION 27 (5)**

THIS GENERAL TRUSTEE POWER OF ATTORNEY is made on [date] by [name of one donor] of [address of donor] as trustee of [name or details of one trust].

I appoint [name of one donee] of [address of donee] to be my attorney [if desired, the date on which the delegation commences or the period for which it continues (or both)] in accordance with section 27 (5) of the Trustees Act (Cap. 337).

[To be executed as a deed].

[45/2004]

## LEGISLATIVE HISTORY

### TRUSTEES ACT (CHAPTER 337)

#### **1. Act 17 of 1967 — Trustees Act 1967**

Date of First Reading	:	26.10.66 (Bill No. 48/66 published on 8.11.66)
Date of Second and Third Readings	:	29.6.67
Date of commencement	:	15.7.67

#### **2. Act 42 of 1967 — Companies Act 1967**

(Consequential amendments made by)

Date of First Reading	:	5.12.66 (Bill No. 58/66 published on 12.12.66)
Date of Second Reading	:	21.12.66
Referred to Select Committee	:	7.12.67
Date of Third Reading	:	21.12.67
Date of commencement	:	29.12.67

#### **3. Act 39 of 1970 — Trustees (Amendment) Act 1970**

Date of First Reading	:	22.7.70 (Bill No. 31/70 published on 27.7.70)
Date of Second and Third Readings	:	2.9.70
Date of commencement	:	30.10.70

#### **4. Act 10 of 1975 — Trustees (Amendment) Act 1975**

Date of First Reading	:	17.3.75 (Bill No. 19/75 published on 18.3.75)
Date of Second and Third Readings	:	27.3.75
Date of commencement	:	25.4.75

#### **5. Act 8 of 1978 — Trustees (Amendment) Act 1978**

Date of First Reading	:	31.1.78 (Bill No. 3/78 published on 3.2.78)
Date of Second and Third Readings	:	17.2.78
Date of commencement	:	10.3.78

## LEGISLATIVE HISTORY

TRUSTEES ACT  
(CHAPTER 337)**6. Act 21 of 1982 — Trustees (Amendment) Act 1982**

Date of First Reading	:	27.7.82 (Bill No. 11/82 published on 4.8.82)
Date of Second and Third Readings	:	31.8.82
Date of commencement	:	1.10.82

**7. Act 9 of 1987 — Development Loan Act 1987**

(Consequential amendments made by)

Date of First Reading	:	13.3.87 (Bill No. 7/87 published on 16.3.87)
Date of Second and Third Readings	:	26.3.87
Date of commencement	:	10.4.87

**8. Act 39 of 1989 — Trustees (Amendment) Act 1989**

Date of First Reading	:	6.10.89 (Bill No. 40/89 published on 7.10.89)
Date of Second and Third Readings	:	30.11.89
Date of commencement	:	5.1.90

**9. Act 24 of 1991 — Land Surveyors Act 1991**

(Consequential amendments made by)

Date of First Reading	:	27.2.91 (Bill No. 11/91 published on 28.2.91)
Date of Second Reading	:	22.3.91
Referred to Select Committee	:	Parl. 3 of 1991 presented to Parliament on 17.6.91
Date of Third Reading	:	28.6.91
Date of commencement	:	30.8.91

**10. Act 23 of 1992 — Trustees (Amendment) Act 1992**

Date of First Reading	:	27.2.92 (Bill No. 18/92 published on 28.2.92)
Date of Second and Third Readings	:	29.5.92
Date of commencement	:	26.6.92

LEGISLATIVE HISTORY

TRUSTEES ACT  
(CHAPTER 337)

**11. Act 7 of 1997 — Statutes (Miscellaneous Amendments) Act 1997**

Date of First Reading	:	11.7.97 (Bill No. 6/97 published on 12.7.97)
Date of Second and Third Readings	:	25.8.97
Date of commencement	:	1.10.97 (except section 3) 1.9.98 (section 3)

**12. Act 22 of 2000 — Auctioneers' Licences (Amendment) Act 2000**

(Consequential amendments made by)

Date of First Reading	:	22.5.2000 (Bill No. 17/2000 published on 23.5.2000)
Date of Second and Third Readings	:	3.7.2000
Date of commencement	:	1.8.2000

**13. Act 17 of 2001 — Singapore Land Authority Act 2001**

(Consequential amendments made by)

Date of First Reading	:	5.3.2001 (Bill No. 17/2001 published on 7.3.2001)
Date of Second and Third Readings	:	19.4.2001
Date of commencement	:	1.6.2001

## LEGISLATIVE HISTORY

TRUSTEES ACT  
(CHAPTER 337)**14. Act 42 of 2001 — Securities and Futures Act 2001**

(Consequential amendments made by)

Date of First Reading	:	25.9.2001 (Bill No. 33/2001 published on 26.9.2001)
Date of Second and Third Readings	:	5.10.2001
Date of commencement	:	1.1.2002 (Parts I, VIII, IX, X and XV (except sections 314 and 342 (1) and (3)), First Schedule, Second Schedule and items (4) ( <i>o</i> ) and ( <i>q</i> ) and (7) ( <i>c</i> ) of the Fourth Schedule) 1.7.2002 (Parts XIII and XIV, and items (1) ( <i>a</i> ), (3) ( <i>a</i> ), (4) ( <i>a</i> ) (i), (iii) to (ix), ( <i>b</i> ), ( <i>c</i> ), ( <i>f</i> ), ( <i>g</i> ), ( <i>h</i> ), ( <i>i</i> ), ( <i>l</i> ), ( <i>m</i> ), ( <i>t</i> ), and ( <i>u</i> ), (7) ( <i>b</i> ), (12) and (13) of the Fourth Schedule) 1.10.2002 (Parts II to VII, XI and XII, sections 314 and 342 (1) and (3), Third Schedule and items (1) ( <i>b</i> ), (2), (3) ( <i>b</i> ), (4) ( <i>a</i> ) (ii), ( <i>d</i> ), ( <i>e</i> ), ( <i>j</i> ), ( <i>k</i> ), ( <i>n</i> ), ( <i>p</i> ), ( <i>r</i> ), ( <i>s</i> ) and ( <i>v</i> ), (5), (6) and (7) ( <i>a</i> ) and ( <i>d</i> ) and (8) to (11) of the Fourth Schedule)

**15. Act 38 of 2002 — Stamp Duties (Amendment) Act 2002**

(Consequential amendments made by)

Date of First Reading	:	31.10.2002 (Bill No. 40/2002 published on 1.11.2002)
Date of Second and Third Readings	:	25.11.2002
Date of commencement	:	1.1.2003

**16. Act 45 of 2004 — Trustees (Amendment) Act 2004**

Date of First Reading	:	21.9.2004 (Bill No. 43/2004 published on 22.9.2004)
Date of Second and Third Readings	:	19.10.2004
Date of commencement	:	15.12.2004



## COMPARATIVE TABLE

### TRUSTEES ACT (CHAPTER 337, 2005 EDITION)

The following provisions in the 1999 Revised Edition of the Trustees Act have been renumbered by the Law Revision Commissioners in this 2005 Revised Edition.

This Comparative Table is provided for the convenience of users. It is not part of the Trustees Act.

2005 Ed.	1999 Ed.
—	<b>9—(2) and (3)</b> ( <i>Deleted by Act 45/2004</i> )
<b>9—(2)</b>	(4)
—	<b>11—(3)</b> ( <i>Deleted by Act 45/2004</i> )
<b>11—(3)</b>	(4)
(4)	(4A)
<b>28—(1), (2) and (3)</b>	<b>28—(1)</b>
(4)	(2)
(5)	(3)
<b>32</b>	<b>32—(1)</b>
—	(2) ( <i>Deleted by Act 45/2004</i> )
<b>91</b>	<b>26</b> (Savings, transitional and further consequential provisions) of the Trustees (Amendment) Act 2004 (Act 45/2004)

## COMPARATIVE TABLE

### TRUSTEES ACT (CHAPTER 337, 1999 EDITION)

The following provisions in the 1985 Revised Edition of the Trustees Act were renumbered by the Law Revision Commissioners in the 1999 Revised Edition.

This Comparative Table is provided for the convenience of users. It is not part of the Trustees Act.

<b>1999 Ed.</b>	<b>1985 Ed.</b>
<b>13</b>	<b>16</b>
<b>14</b>	<b>17</b>
<b>15—(3) and (4)</b>	<b>18—(3)</b>
(5)	(4)
<b>16—(1) and (2)</b>	<b>19</b>
<b>17—(1) and (2)</b>	<b>20—(1)</b>
(3) and (4)	(2)
<b>18</b>	<b>21</b>
<b>19</b>	<b>22</b>
<b>20</b>	<b>23</b>
<b>21</b>	<b>24</b>
<b>22</b>	<b>25</b>
<b>23</b>	<b>26</b>
<b>24—(2) and (3)</b>	<b>27—(2)</b>
(4)	(3)
(5) and (6)	(4)
<b>25—(3), (4) and (5)</b>	<b>28—(3)</b>
<b>26</b>	<b>29</b>
<b>27—(1A)</b>	Proviso to <b>30—(1)</b>
<b>28</b>	<b>31</b>
<b>29—(2) and (3)</b>	<b>32—(2)</b>
(4)	(3)
<b>30</b>	<b>33</b>

<b>1999 Ed.</b>	<b>1985 Ed.</b>
<b>31</b> —(1), (2) and (3)	<b>34</b>
<b>32</b>	<b>35</b>
<b>33</b> —(1) and (1A)	<b>36</b>
<b>34</b> —(1), (2), (3) and (4)	<b>37</b> —(1)
(5)	(2)
<b>35</b>	<b>38</b>
<b>36</b>	<b>39</b>
<b>37</b> —(6) and (7)	<b>40</b> —(6)
(8)	(7)
(9)	(8)
(10)	(9)
<b>38</b>	<b>41</b>
<b>39</b>	<b>42</b>
<b>40</b>	<b>43</b>
<b>41</b> —(4) and (5)	<b>44</b> —(4)
(6)	(5)
<b>42</b> —(1) and (2)	<b>45</b> —(1)
(3)	(2)
(4)	(3)
<b>43</b>	<b>46</b>
<b>44</b>	<b>47</b>
<b>45</b> —(1), (2) and (3)	<b>48</b>
<b>46</b>	<b>49</b>
<b>47</b>	<b>50</b>
<b>48</b> —(1) and (2)	<b>51</b>
<b>49</b>	<b>52</b>
<b>50</b>	<b>53</b>
<b>51</b>	<b>54</b>

<b>1999 Ed.</b>	<b>1985 Ed.</b>
<b>52</b> —(1), (2) and (3)	<b>55</b> —(1)
(4) and (5)	(2)
(6)	(3)
(7)	(4)
(8)	(5)
(9)	(6)
<b>53</b>	<b>56</b>
<b>54</b>	<b>57</b>
<b>55</b> —(1) and (2)	<b>58</b>
<b>56</b>	<b>59</b>
<b>57</b>	<b>60</b>
<b>58</b>	<b>61</b>
<b>59</b>	<b>62</b>
<b>60</b>	<b>63</b>
<b>61</b>	<b>64</b>
<b>62</b>	<b>65</b>
<b>63</b>	<b>66</b>
<b>64</b>	<b>67</b>
<b>65</b>	<b>68</b>
<b>66</b> —(1) and (2)	<b>69</b>
<b>67</b>	<b>70</b>
<b>68</b> —(1), (2) and (3)	<b>71</b> —(1)
(4)	(2)
<b>69</b> —(1) and (2)	<b>72</b> —(1)
<b>70</b> —(1) and (2)	<b>73</b>
<b>71</b> —(1) and (2)	<b>74</b>
<b>72</b>	<b>75</b>
<b>73</b>	<b>76</b>
<b>74</b>	<b>77</b>

<b>1999 Ed.</b>	<b>1985 Ed.</b>
<b>75</b>	<b>78</b>
<b>76</b>	<b>79</b>
<b>77</b>	<b>80</b>
<b>78—(3), (4) and (5)</b>	<b>81—(3)</b>
<b>(6) and (7)</b>	<b>(4)</b>
<b>79—(2) and (3)</b>	<b>82—(2)</b>
<b>80—(1) and (2)</b>	<b>83</b>
<b>81</b>	<b>84</b>
<b>82</b>	<b>85</b>
<b>83—(1) and (2)</b>	<b>86—(1)</b>
<b>(3) and (4)</b>	<b>(2)</b>
<b>84</b>	<b>87</b>
<b>—</b>	<b>88</b> ( <i>Deleted by Act 7/97</i> )
<b>85—(1) and (2)</b>	<b>89</b>