

SINGAPORE

TRUSTEES ACT

(as amended, 2001)

(CHAPTER 337)

ARRANGEMENT OF PROVISIONS

PART I - PRELIMINARY

1. Short title
2. Application of Act
3. Interpretation

PART II - INVESTMENTS

4. Powers of investment of trustees
5. Duty of trustees in choosing investments
6. Statutory powers of investment
7. Power to retain investment which has ceased to be authorised
8. Investment in bearer securities
9. Loans and investments by trustees not chargeable as breaches of trust
10. Liability for loss by reason of improper investment
11. Powers supplementary to powers of investment
12. Power to deposit at bank, to pay calls and to purchase dwelling-house for beneficiary

PART III - GENERAL POWERS OF TRUSTEES AND PERSONAL

PAYMENT INTO COURT

62. Payment into court by trustees

PART VI - CHARITABLE TRUSTS

63. Public Trustee may administer property of charitable trust without trustee
64. Validation of certain imperfect charitable trusts

INCORPORATION OF TRUSTEES

65. Grant of certificate of registration of trustees as corporate body
66. Estate to vest in corporate body
67. Particulars respecting application
68. Nomination of trustees and filling up vacancies
69. Liability of trustees and others, notwithstanding incorporation
70. Certificate to be evidence of compliance with requirements
71. Record of applications and documents to be kept, and supply of copies
72. Enforcement of conditions and directions
73. Applications and certificates to be stamped
74. Gifts to vest in corporate body
75. Common seal
76. Contracts not under seal to be binding in certain cases
77. Payments on transfers in reliance on corporate seal protected
78. Trustees to keep accounts and to render annual returns of accounts
79. Petition to decide question whether person is a member of a corporate body
80. Dissolution of corporate body
81. Penalty for false statement
82. Penalty for not filing returns, etc.

PART VII - UNIT TRUST SCHEMES

83. Power of Minister to make order declaring a unit trust scheme to be an authorised unit trust scheme
84. Investigation into the administration of unit trust scheme by inspectors appointed by Minister

PART VIII - GENERAL PROVISIONS

85. Indemnity

FIRST SCHEDULE

Manner of Investment

SECOND SCHEDULE

Particulars to be inserted in application for incorporation of trustees

THIRD SCHEDULE

Matters for which trusts deeds pursuant to unit trust schemes must provide

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.

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

Interpretation

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

«approved company» means a company —

- (a) incorporated in Singapore and which has a place of business in Singapore; and
- (b) having as its sole or primary object the promotion of home ownership by advancing for the purchase of lands and buildings sums of money, repayable by instalments of principal and interest over a fixed period of years, not exceeding at any time the valuation of such lands and buildings made by an approved valuer;

«approved valuer» means an appraiser or a surveyor who is registered under the Land Surveyors Act (Cap. 156) and has in force a practising certificate issued under that Act, and includes any other person approved by the Minister;

«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;

«authorised unit trust scheme» means any unit trust scheme which has fulfilled to the satisfaction of the Minister the conditions contained in section 83 and which has been declared by an order of the Minister for the time being in force to be an authorised unit trust scheme for the purposes of this Act;

«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;

«income» includes rents and profits;

«instrument» includes a written law;

«land» means —

- (a) the surface of any defined parcel of the earth, all substances thereunder and so much of the column of airspace above the surface whether or not held apart from the surface as is reasonably necessary for the proprietor's use and enjoyment, and includes any estate or interest therein and all vegetation growing thereon and structures affixed thereto; or
- (b) any parcel of airspace or any subterranean space held apart from the surface of the earth and described with certainty by reference to a plan approved by the Chief Surveyor and filed with the Singapore Land Authority, and includes any estate or interest therein and all vegetation growing thereon and structures affixed thereto;

«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;

«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);

«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;

«unit» , in relation to a unit trust scheme, means a right or interest (whether described as a unit, sub-unit or otherwise) which may be acquired under the scheme;

«unit trust scheme» means any arrangement made for the purpose, or having the effect, of providing for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of any property.

PART II - INVESTMENTS

Powers of investment of trustees

4.(1) Subject to the provisions of this Act, a trustee may invest any funds in his hands, whether at the time in a state of investment or not, in any manner specified in Part I, II or III of the First Schedule and may also from time to time vary such investments.

(2) Part IV of the First Schedule shall have effect for the interpretation and for restricting the operation of Parts I to III of that Schedule.

(3) Every power conferred by this section shall be exercised according to the discretion of the trustee, but subject to any consent or direction, with respect to the investment of the trust funds, required by the instrument, if any, creating the trust or by any written law.

(4) The Minister may, from time to time by order published in the *Gazette*, amend the First Schedule.

Duty of trustees in choosing investments

5.(1) In the exercise of any of his powers of investment, a trustee shall have regard —

- (a) to the need for diversification of the investments of the trust, in so far as is appropriate to the circumstances of the trust, and to the degree of risk attaching to the holding of any particular investment or of investments of any particular description; and

- (b) to the suitability to the trust of investment of the description of investment proposed and of the investment proposed as an investment of that description.

(2) Before exercising any power conferred by section 4 to invest in a manner specified in Part II or III of the First Schedule, a trustee shall obtain and consider proper advice on the question whether the investment is satisfactory in accordance with Part V of that Schedule.

(3) A trustee retaining any investment shall determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice as mentioned in subsection (2), and shall obtain and consider such advice accordingly.

(4) A trustee shall not be treated as having complied with subsection (2) or (3) unless the advice was given in writing or has been subsequently so confirmed.

(5) Subsections (2) and (3) shall not apply —

- (a) to one of two or more trustees where he is the person giving the advice required by this section to his co-trustee or co-trustees;
- (b) to the Public Trustee; or
- (c) to trust companies as defined in the Trust Companies Act (Cap. 336).

Statutory powers of investment

6.(1) In the case of trustees constituted under any written law, other than the Companies Act (Cap. 50), the power to invest in any manner mentioned in Parts II and III of the First Schedule shall apply only in so far as the Minister may direct.

(2) Where any body of persons, not being trustees, have under any written law power (however expressed) to make the like investments as trustees are for the time being authorised by law to make, the power to invest in any manner mentioned in Parts II and III of the First Schedule shall not apply to the body except in so far and to such extent as the Minister may direct.

(3) Any direction under this section may be given generally or in a particular case, and unconditionally or subject to conditions.

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.

Investment in bearer securities

8.(1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorised investments.

(2) Securities payable to bearer retained or taken as an investment by a trustee shall, until sold, be deposited by him for safe custody and collection of income with a banker or banking company.

(3) A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of this section, be deemed to be such an express prohibition as specified in subsection (1).

(4) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property.

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 5 (2); 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 5 (2).

(2) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed either wholly or partly with the production or investigation of the lessor's title.

(3) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase, or in lending money upon the security, of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the court the title accepted be such as a person acting with prudence and caution would have accepted.

(4) 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.

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.

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

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.

(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.

(3) The trustees shall not —

- (a) be bound to obtain any report as to the value of the land or other property to be comprised in such mortgage, or any advice as to the making of the loan; and
- (b) be liable for any loss which may be incurred by reason only of the security being insufficient at the date of the mortgage.

(4) 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.

(4A) The trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as specified in subsection (4) for any period for which they could have properly retained the original securities.

(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 in good faith.

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

(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.

(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.

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.

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

(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.

(4) For the purposes of subsection (3), «dwelling-house» means a dwelling-house situated in Singapore and includes a lot on a strata title plan under the Land Titles (Strata) Act (Cap. 158).

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.

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.

Power of trustees to give receipts

15.(1) The receipt in writing of a trustee for any money, securities, 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.

(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.

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 in good faith.

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.

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.

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.

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.

Power to insure

21.(1) A trustee may —

- (a) insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot, up to the full value of the building or property; and
- (b) pay the premiums for the insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2) This section shall not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

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, subject to a trust, whether by fire or otherwise, 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.

(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.

Deposit of documents for safe custody

23. Trustees may deposit any documents held by them, relating to the trust or to the trust property, with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

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 in good faith.

(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 aforesaid 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 good faith shall be binding upon all persons interested under the trust.

(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 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.

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

(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.

Power to employ agents

25.(1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether a solicitor, banker, stockbroker or other person, to transact any

business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.

(2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of —

- (a) selling, converting, collecting, getting in, and executing and perfecting assurances of, or managing or cultivating, or otherwise administering any property, movable or immovable, subject to the trust or forming part of the testator's or intestate's estate, in any place outside Singapore; or
- (b) executing or exercising any discretion or trust or power vested in them in relation to any such property,

with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising thereby.

(3) Without prejudice to such general power of appointing agents as mentioned in subsection (2) —

- (a) a trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustees under the trust, by permitting the solicitor to have the custody of, and to produce, a deed having in the body thereof or endorsed thereon a receipt for such money or valuable consideration or property, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration;
- (b) a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the production of any such deed by the solicitor shall have the same statutory validity and effect as if the person appointing the solicitor had not been a trustee;
- (c) a trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance, by permitting the banker or solicitor to have the custody of and to produce the policy of insurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.

(4) Nothing in subsection (3) shall exempt a trustee from any liability which he would have incurred if this Act and any previous written law relating to trustees had not been passed, in case he permits any such money, valuable consideration or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor, as the case may be, to pay or transfer the same to the trustee.

(5) Subsections (3) and (4) shall apply whether the money or valuable consideration or property was or is received before, on or after 1st September 1929.

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.

Power to delegate trusts during absence abroad

27.(1) A trustee intending to remain out of Singapore for a period exceeding 14 days may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person (including a trust corporation) the execution or exercise during his absence from Singapore of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person or persons.

(1A) A person being the only other co-trustee and not being a trust corporation shall not be appointed to be an attorney under subsection (1).

(2) 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.

(3) The power of attorney shall not come into operation unless the donor is out of Singapore and shall be revoked by his return.

(4) The power of attorney shall be attested by at least one witness, and shall be deposited in the Registry of the Supreme Court within 10 days after the execution thereof, or where not executed in Singapore within 10 days after its receipt in Singapore, with a statutory declaration by the donor that he intends to remain out of Singapore for a period exceeding 14 days from the date of the declaration, or from a date therein mentioned.

(5) The execution of any such instrument and statutory declaration shall be verified in such manner as is required by statute in the case of powers of attorney deposited in the Registry of the Supreme Court.

(6) The statutory declaration mentioned in subsections (4) and (5) and a statutory declaration by the donee of the power of attorney that the power has come into operation and has not been revoked by the return of the donor shall be conclusive evidence of the facts stated in favour of any person dealing with the donee.

(7) In favour of any person dealing with the donee, any act done or instrument executed by the donee shall, notwithstanding that the power has never come into operation or has

become revoked by the act of the donor or by his death or otherwise, be as valid and effectual as if the donor were alive and of full capacity, and had himself done that act or executed that instrument, unless the person had actual notice that the power had never come into operation or of the revocation of the power before that act was done or instrument executed.

(8) 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 law or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer but not including the power of delegation conferred by this section.

(9) 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 the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.

(10) No power of attorney shall be operative for the purposes of this section for a longer period than 18 months after the date of execution.

PART INDEMNITIES

Protection against liability in respect of rents and covenants

28.(1) Where 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),

satisfies all liabilities under the lease or grant which may have accrued and been claimed, up to the date of the conveyance hereinafter mentioned, and, 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 may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof and thereafter —

- (i) he 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 aforesaid) 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 said lease or grant;

- (ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.

(2) 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.

(3) 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 as aforesaid 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.

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.

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.

Implied indemnity of trustees

32.(1) 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.

(2) A trustee may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers.

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 in the way of compound interest by investing the same and the resulting income thereof 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.

(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 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.

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.

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) the said 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 the said 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 the said income shall fail or determine;
- (b) if the trust aforesaid 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.

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.

Power of appointing new or additional trustees

37.(1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of Singapore for more than 12 months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or is an infant, then, subject to the restrictions imposed by this Act on the number of trustees —

- (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 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, as aforesaid.

(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.

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.

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.

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, if such trustee by deed declares that he is desirous of being discharged from the trust, and 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.

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 aforesaid 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 aforesaid 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.

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.

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.

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.

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.

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.

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.

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.

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.

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 said 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.

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.

Vesting orders as to stock and thing in action

52.(1) In any of the following cases, namely:

- (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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Incorporation of Trustees

Grant of certificate of registration of trustees as corporate body

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 hereinafter provided, to the Minister for a certificate of registration of the trustees of such body or association of persons as a corporate body.

(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.

Estate to vest in corporate body

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.

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.

(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.

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 such conditions or directions as aforesaid, 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 aforesaid.

(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.

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.

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.

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.

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.

Applications and certificates to be stamped

73. Every application for a certificate of incorporation under this Part, and every such certificate, shall be charged with a stamp duty of \$50, and a stamp denoting the payment of that duty shall be impressed or affixed upon such application or certificate.

Gifts to vest in corporate body

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 corporate body or otherwise for the like purposes.

Common seal

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

(2) Any instrument to which the common seal of the corporate body 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 corporate body, notwithstanding any defect or circumstance affecting the execution of such instrument.

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 such incorporation had taken place as aforesaid, shall be valid and binding although the same shall not have been made or entered into under the common seal of the trustees.

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.

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 said trustees 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 said body or association of persons:

- (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 said trustees who are in Singapore and shall be audited by the auditor of such body or association of persons (if any).

(4) The said trustees shall, within 14 days after the day appointed for making out the said accounts, 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 said trustees 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.

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

79.(1) When any question arises as to whether any person is a member of such corporate body, 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 on the person in respect of whom the question arose and upon all members of the said corporate body and upon that person interested in the question and upon any persons to whom notice of the hearing has been given in accordance with any direction of the court.

Dissolution of corporate body

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 corporate body created under this Part, the Minister may, by order, direct the Public Trustee to strike the name of the corporate body off the register.

(2) The Public Trustee shall publish the order in the *Gazette* and on publication in the *Gazette* of the order, the corporate body 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.(1) The Minister may, by order, declare to be an authorised unit trust scheme for the purposes of this Act any unit trust scheme in relation to which the Minister is satisfied that the following conditions are fulfilled:

- (a) that each of the persons who are respectively the manager and the trustee under the scheme is a corporation incorporated under the law of Singapore or of some part of Malaysia, and having a place of business in Singapore at which notices and other documents are received on behalf of the corporation;
- (b) that the scheme is such that the effective control over the affairs of the corporation, which is the manager under the scheme, is and will be exercised independently of the corporation which is the trustee under the scheme;
- (c) that the scheme is such as to secure that any trust created in pursuance of the scheme is expressed in a deed providing, to the satisfaction of the Minister, for the matters specified in the Third Schedule; and
- (d) as respects the corporation being the trustee, either —
 - (i) that the corporation has a capital (in stock or shares) for the time being issued of not less than \$5 million, of which an

amount of not less than \$2,500,000 has been paid up, and that the assets of the corporation are sufficient to meet its liabilities (including liabilities in respect of the repayment of its capital); or

- (ii) that more than four-fifths of the said capital of the corporation is held by another corporation being a corporation in relation to which the conditions as to capital and assets specified in subparagraph (i) are fulfilled.

(2) If, with respect to any trust, the Minister is satisfied that, by reason of the special circumstances of the trust, the fulfilment in relation thereto of the condition specified in subsection (1) (c) is impracticable, the Minister may dispense with the fulfilment of that condition in relation to that trust, so far as it appears to him that he can properly do so without prejudicing the interests of the beneficiaries.

(3) If, with respect to any authorised unit trust schemes, the Minister considers that the order declaring the scheme to be an authorised unit trust scheme ought to be revoked on either of the following grounds:

- (a) that the conditions specified in subsection (1) (a) to (d) are no longer fulfilled in the case of that scheme; or
- (b) that the circumstances relevant to the making of an order have materially changed since the making thereof,

the Minister may serve on the manager and on the trustee under the scheme a written notice that he is considering the revocation of the order on that ground, specifying the respect in which the said conditions are no longer fulfilled or the said circumstances have changed, as the case may be, and inviting the manager and the trustee to make to the Minister, within a period of one month from the date of the service of the notice, any representations which they desire to make with respect to the proposed revocation of the order.

(4) The Minister may revoke the order after the expiration of the said period, but, before deciding whether or not to revoke the order, shall take into consideration any representations so made by the manager or trustee and, if he so requests, afford him an opportunity of being heard by the Minister within that period.

(5) The Minister shall, not less often than once a year, cause particulars of every unit trust scheme which is for the time being an authorised unit trust scheme, to be published in such manner as he thinks proper.

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

84.(1) The Minister may appoint one or more competent inspectors to investigate and report on the administration of any unit trust scheme, if it appears to the Minister —

- (a) that it is the interest of unit holders to do so; and
- (b) that the matter is one of public concern.

(2) The provisions contained in section 236 of the Companies Act (Cap. 50) shall apply in relation to an inspector appointed under this section as they apply in relation to an inspector appointed under section 232 of that Act but with the substitution for references to the company or other body corporate and its affairs of references to the manager under the scheme and to the administration of the scheme.

(3) The expenses of any investigation under this section shall be defrayed by the unit trust scheme investigated.

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.

FIRST SCHEDULE

Sections 4, 5 and 6

MANNER OF INVESTMENT

PART I

1. In any securities of the Government.
2. In any securities the repayment of the amount received and the interest on which is or shall be guaranteed by the Government.
3. In fixed income securities issued in Singapore by any public authority established under written law.
4. In any interest bearing deposits held in Singapore currency in a bank or finance company in Singapore.
5. In negotiable certificates of deposits denominated in Singapore currency and issued by any bank in Singapore.

PART II

1. In any units, or any shares of the investments subject to the trusts, of an authorised unit trust scheme.
2. In any securities issued by a company (whether incorporated in Singapore or elsewhere) —
 - (a) which are listed on the Stock Exchange of Singapore; or
 - (b) for which prices are quoted on the Central Limit Order Book (CLOB) International.
3. In bank bills and trade bills denominated in Singapore currency which —
 - (a) are endorsed by a bank in Singapore; and
 - (b) will mature not later than 3 months after the date of the investment.
4. In any land or building (not being a building under construction) in Singapore of the following tenure:
 - (a) freehold, including a grant in perpetuity; or
 - (b) leasehold (other than a mining lease) with an unexpired term of not less than 30 years at the time of such investment.

PART III

In any fixed income securities of —

- (a) a government outside Singapore; or
- (b) an entity owned or controlled by 2 or more governments (which may include the Government), irrespective of whether such ownership or control is shared with any other non-governmental entity,

having a Triple A credit rating or equivalent given by one of the following credit rating agencies:

—

- (i) Moody's Investors Service, Inc., USA;
- (ii) Standard and Poor's Corporation, USA,

and to hedge the foreign currency exposure from such investments back into Singapore currency.

PART IV

1.(1) Paragraph 2 of Part II shall not apply to securities of any company unless —

- (a) the total issued and paid-up share capital of the company, if incorporated in Singapore, is not less than \$15 million and, if incorporated elsewhere, is not less than \$30 million;
- (b) the company has, in each of the 3 financial years immediately preceding the financial year in which the investment is made, paid a dividend on all shares issued by the company, excluding any shares issued after the dividend was declared and any shares which by their terms of issue did not rank for the dividend for that financial year;
- (c) the shareholders equity of the company is not less than \$30 million; and
- (d) the company has reported a profit (excluding any extraordinary item) in the profit and loss account in the annual accounts of the company in the financial year immediately preceding the financial year in which the investment is made.

(2) A company formed —

- (a) to take over the business of another company or other companies; or
- (b) to acquire the securities of, or control of, another company or other companies,

or for either of those purposes and for other purposes, shall be deemed —

- (i) to have paid a dividend as mentioned in sub-paragraph (1) (b) in any financial year in which such a dividend has been so paid by the other company or each of the other companies, as the case may be;
- (ii) to have had a shareholders equity of not less than \$30 million as mentioned in sub-paragraph (1) (c) if the other company or companies, as the case may be, had a shareholders equity of not less than \$30 million; and
- (iii) to have reported a profit as mentioned in sub-paragraph (1) (d) in the financial year in which such a profit has been so reported by the other company or each of the other companies, as the case may be.

(3) For the purposes of sub-paragraph (1) (a) and (c), the issued and paid-up share capital and the shareholders equity shall, if they are in a currency other than Singapore currency, be converted into Singapore currency at a rate of exchange certified by a bank licensed under the Banking Act (Cap. 19) to be appropriate on the day the trustee exercises his power to invest in such securities.

(4) The securities referred to in paragraph 2 of Part II do not include shares or debenture stock not fully paid-up, except shares or stock which by the terms of issue are required to be fully paid-up within 9 months of the date of issue.

(5) Where immediately before 26th June 1992 the securities of a company were investments in which trustees were authorised by this Act to invest and the total issued and paid-up capital of that company, if incorporated in Singapore, was less than \$15 million and, if incorporated elsewhere, was less than \$30 million, sub-paragraph (1) (a) shall have effect in relation to those securities only after the expiry of 3 years from that date.

(6) Where immediately before 26th June 1992 the securities of a company were investments in which trustees were authorised by this Act to invest and the shareholders equity of that company was less than \$30 million, sub-paragraph (1) (c) shall have effect in relation to those securities only after the expiry of 3 years from that date.

2. Not more than 30% of the funds belonging to the trust shall at any time be invested in the investments in Part III taken together.

PART V

1. In relation to the investments specified in paragraphs 1, 2 and 3 of Part II and in Part III, proper advice for the purposes of section 5 (2) means the advice of an investment adviser licensed under the Securities Industry Act (Cap. 289) or a bank licensed under the Banking Act (Cap. 19) or a merchant bank approved under the Monetary Authority of Singapore Act (Cap. 186) as to the matters referred to in section 5 (1).

2. In relation to the investments specified in paragraph 4 of Part II, proper advice for the purposes of section 5 (2) means advice given by an appraiser who is —

- (a) licensed under the Appraisers and House Agents Act (Cap. 16) to value or appraise land; and
- (b) instructed and employed independently of any owner of the land or building

on the following:

- (i) the value of the land or building at the time of the investment; and
- (ii) the gross rental at which the land or building may reasonably be expected to be let from year to year.

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 corporate body, 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 83 (1)

MATTERS FOR WHICH TRUSTS DEEDS PURSUANT TO UNIT TRUST SCHEMES MUST PROVIDE

- 1.** For determining the manner in which the manager's prices for units on a sale and a purchase respectively, and the yield from the units, are to be respectively calculated, and for entitling the holder of any units to require the manager to purchase them at a price calculated accordingly.
- 2.** For regulating the mode of execution and the issue of unit certificates, and, in particular, for securing that no unit certificate shall be executed or issued in respect of rights or interests in any property until steps have been taken, to the satisfaction of the trustee, to secure that the property will be vested in him or, subject to any prescribed conditions, in a nominee for him approved by the Minister.
- 3.** For prohibiting or restricting the issue by or on behalf of the manager of advertisements, circulars or other documents containing any statement with respect to the sale price of units, or the payments or other benefits received or likely to be received by holders of units, or containing any invitation to buy units, unless the document in question also contains a statement of the yield from the units.
- 4.** For the establishment of a fund to be applied in defraying the expenses of the administration of the trust and for regulating the application of that fund.
- 5.** For requiring the manager (subject to any provisions as to appeal contained in the deed) to retire from the trust if the trustee certifies that it is in the interest of the beneficiaries under the trust that he should do so.
- 6.** In this Schedule, «units» means securities (described whether as units or otherwise) which may be created in pursuance of the unit trust scheme, and «unit certificates» means certificates of the acquisition of such securities.