

CHAPTER 58

JUDICIAL TRUSTEES

JUDICIAL TRUSTEE RULES

SI 61/1970

(SECTION 4)

1. These Rules may be cited as the Judicial Trustee Rules, and shall apply as far as practicable to all matters and proceedings under the Judicial Trustees Act. Title and application.

2. In these Rules — Interpretation.
 “Act” means the Judicial Trustee Act;
 “court” means the Supreme Court;
 “officer of the court” means the Registrar or Deputy Registrar of the Supreme Court.

APPOINTMENT OF JUDICIAL TRUSTEE

3. An application to the court to appoint a judicial trustee shall be made on the Equity Side of the court, and — Mode of making application.

- (a) if not made in a pending cause or matter, shall be made by originating summons; and
- (b) if made in a pending cause or matter, shall be made as part of the relief claimed, or by summons in the cause or matter.

4. (1) The summons shall be served — Service of summons.
 (a) where the application is made by or on behalf of a trustee on the other trustee (if any); and
 (b) where the application is made by or on behalf of a beneficiary, on the trustees (if any), and in either case on such (if any) of the beneficiaries as the court may direct.

(2) Where the application is made by or on behalf of a person creating or intending to create a trust, the summons subject to any direction of the court, need not be served on any person.

(3) The court may give any directions it thinks fit, either dispensing with the service of the summons on any person on whom it is required to be served under this rule, or requiring the service of the summons on any person on whom it is not required to be served under this rule.

Statement to be
supplied on
application

5. (1) Where an application is made for the appointment of a judicial trustee by originating summons the applicant must, when he takes out the summons, supply for the use of the court a written statement signed by him containing the following particulars so far as he can gain information with regard to them —

- (a) a short description of the trust and instrument by which it is, or is to be created, and of the relation which the applicant bears to the trust;
- (b) if a person is nominated as judicial trustee, the name and address of the person nominated and short particulars of the reasons which lead to his nomination;
- (c) if a person is nominated as judicial trustee, a statement whether it is proposed that the person nominated should be remunerated or not;
- (d) short particulars of the trust property, with an approximate estimate of its income, and capital value;
- (e) short particulars of the incumbrances (if any) affecting the trustee property;
- (f) a statement whether it is proposed that the judicial trustee should be a sole trustee or should act jointly with other trustees;
- (g) particulars as to the persons who are in possession of the documents relating to the trust;
- (h) the names and addresses of the beneficiaries and short particulars of their respective interests;
- (i) any exceptional circumstances specially affecting the administration of the trust.

(2) An affidavit by the applicant verifying the statement shall be sufficient *prima facie* evidence of the particulars contained in the statement.

(3) Where the applicant cannot gain the information necessary for making the required statement on any point, he must mention the fact in his statement.

6. (1) The court shall not be precluded by any existing practice as to the appointment of trustees from appointing any person to be a judicial trustee by reason of that person being a beneficiary, or a relation or husband or wife of a beneficiary, or acting in the capacity of a solicitor to the trust or to the trustee, or to any beneficiary or a married woman, or standing in any special position with regard to the trust.

Removal of restrictions as to appointment of trustees

(2) A person may be appointed to be a judicial trustee of a trust although he is already a trustee of the trust.

7. On the appointment of any person to be judicial trustee the court shall make such vesting or other orders and exercise such other powers as may be necessary for vesting the trust property in the judicial trustee either as sole trustee or jointly with any other trustee as the case requires.

Vesting orders

APPOINTMENT OF OFFICIAL OF COURT TO BE JUDICIAL TRUSTEE

8. (1) Where an official of the court is appointed judicial trustee, the Registrar or Deputy Registrar of the court shall be so appointed, unless, for special reasons, the court directs that some other official of the court should be so appointed.

Official judicial trustee

(2) Any official of the court appointed to be a judicial trustee shall, on his ceasing to hold office, cease to be such a trustee without any formal resignation.

(3) Where an official of the court is judicial trustee, any trust properly vested in and held by him shall be vested in and held by him under his official title and not in his own name.

(4) Where an official of the court appointed to be a judicial trustee of a trust dies, or ceases to hold office, his successor in office shall, unless the court otherwise directs, become judicial trustee of the trust without any order of the court or formal appointment, and the trust property shall, without any conveyance, assignment, or transfer, in such a case become vested in the successor as it was vested in his predecessor in office.

(5) For the purpose of the definition of “official of the court”, in section 2 of the Act, any paid office in or connected with the court shall be a prescribed office.

ADMINISTRATION OF THE TRUSTStatement of
trust property

9. (1) A judicial trustee must, unless in any case the court considers that it is unnecessary, as soon as may be after his appointment, furnish the court with a complete statement of the trust property, accompanied by an approximate estimate of the income and capital value of each item.

(2) It shall be the duty of the judicial trustee to give such information to the court as may be necessary for the purpose of keeping the statement of the trust property correct for the time being.

Security

10. (1) A judicial trustee, if not an official of the court, must give security to the court for the due application of the trust property, unless the court dispenses with security under this rule.

(2) The court may, on the appointment of a judicial trustee, or at any time during his continuance in office as judicial trustee, dispense with security on the application either of the person who is to be appointed or is judicial trustee, or of any person appearing to the court to be interested in the trust, and shall do so where a judicial trustee is appointed on the application of a person creating or intending to create a trust, and that person desires that security should be dispensed with, unless for special reasons the court considers that security is in such a case necessary or desirable.

(3) The security must be given, either by recognisance, bond, or otherwise, as the court directs, and with such sureties as the court approves.

(4) If the court is satisfied that sufficient provision is made for the safety of the capital of the trust property, the amount of the security shall, in ordinary cases, be an amount exceeding by twenty per centum the income of the trust property as estimated by the court.

(5) The court may at any time require that the amount or nature of the security given by a judicial trustee under this rule be varied or that security be given where it has previously been dispensed with, and a judicial trustee shall comply with any such requirement.

(6) It shall be a condition of every recognisance, bond or other form of security given under this rule that the judicial trustee shall give immediate notice to the court of the death or insolvency of any of his sureties.

(7) Any recognisance, bond, or other form of security given for the purpose of this rule may be vacated in such manner and subject to such conditions as the court may direct.

(8) Where security is not dispensed with, the appointment of a person to be judicial trustee shall not take effect until he has given the security required by the court under this rule.

(9) Any premium payable by a judicial trustee to any guarantee company on account of his security may, if the court so directs, be paid out to the trust property.

11. (1) When a judicial trustee is appointed, a separate account for receipts and payments on behalf of the trust must be kept in the name of the trustees at some bank approved by the court.

Trust account at
bank and
custody of
documents

(2) All title deeds and all certificates and other documents which are evidence of the title of the trustee to any of the trust property shall be deposited either with that bank or in such other custody as the court directs.

(3) The deeds or documents must be deposited in the names of the trustees, and the judicial trustee must give notice to the body or person with whom the deeds or documents are so deposited not to deliver any of them over to any person except on a request signed by the judicial trustee and countersigned by the officer of the court, and also to allow any person authorised by the officer of the court in writing to inspect them during business hours.

(4) The judicial trustee must deposit with the court a list of all deeds or documents deposited in any custody in pursuance of this rule, and must give information to the court from time to time of any variation to be made in the list.

(5) The judicial trustee must, if at any time directed by the court, give an order to the bank at which the trust account is kept, not to pay at any one time any sum over a specified amount out of the trust account except on an order countersigned by the officer of the court.

(6) Any payments on account of the income of the trust property may be provided for by means of a standing order to the bank at which the trust account is kept.

(7) The court may give such directions to the judicial trustee as may, in the opinion of the court, be necessary or expedient for carrying this rule into effect, and for securing the safety of the trust property.

(8) Where an official of the court is judicial trustee, the court may direct that, instead of a separate account of the receipts and payments on behalf of the trust being kept at some bank approved by the court, all receipts on behalf of the trust may be dealt with, and all payments on behalf of the trust may be made, in such manner, and subject to such regulations as to the accounts to be kept of the receipts and payments and the procedure to be followed in dealing therewith, as the Minister of Finance may direct.

Judicial trustee
not to keep
money in his
hands

12. A judicial trustee must pay all money coming into his hands on account of his trust without delay to the trust accounts at the bank, and if he keeps any such money in his hands for a longer time than the court considers necessary, he shall be liable to pay interest thereon at such rate not exceeding five per centum as the court may fix for the time during which the money remains in his hands.

Directions to
judicial trustees

13. (1) A judicial trustee may at any time request the court to give him directions as to the trust or its administration.

(2) The request must be accompanied by a statement of the facts with regard to which directions are required, and by the fee required under these Rules in respect of a communication from the court with regard to the administration of the trust.

(3) The court may require the trustee or any other person to attend at Chambers if it appears that such an attendance is necessary or convenient for the purpose of obtaining any information or explanation required for properly giving directions, or for the purpose of explaining the nature of the directions.

Power to
dispense with
formal evidence

14. The court, if satisfied that there is no reasonable doubt of any fact which affects the administration of a trust by a judicial trustee, may give directions to the judicial trustee to act without formal proof of the fact.

ACCOUNTS AND AUDIT

15. (1) The court shall give directions to a judicial trustee as to the date to which the accounts of the trust are to be made up in each year and shall fix in each year the time after that date within which the accounts are to be delivered to it for audit.

Accounts and audit.

(2) The accounts shall in ordinary cases be audited by an officer of the Audit Department, but the court, if it considers that the accounts are likely to involve questions of difficulty, may refer them to a professional accountant in private practice for report, and order the payment to him of such amount in respect of his report as the court may fix.

16. (1) The accounts of any trust of which there is a judicial trustee, with a note of any corrections made upon the audit, shall be filed as the court directs.

Filing and inspection of accounts.

(2) The judicial trustee shall send a copy of the accounts, or, if the court thinks fit, of a summary of the accounts, of the trust to such beneficiaries or other persons as the court thinks proper.

(3) The court may, if it thinks fit, having regard to the nature of the relation of the applicant to the trust, allow any person applying to inspect the filed accounts so to inspect them on giving reasonable notice to the officer of the court.

17. A judicial trustee shall, unless the court otherwise directs, be allowed on the audit of his accounts deductions made on the account of his remuneration and allowances under these Rules and also on account of the fees paid by him under these Rules, but shall not be allowed any deduction on account of the expenses of professional assistance, or his own work, or personal outlay, unless the deduction has been authorised by the court in pursuance of the Act, or the court is satisfied that the deduction is justified by the strict necessity of the case.

Deductions allowed.

REMUNERATION AND ALLOWANCES

18. (1) Where a judicial trustee is to be remunerated, the remuneration to be paid to him shall be fixed by the court and may be altered by the court from time to time.

Remuneration of judicial trustee.

(2) In fixing the remuneration, regard shall be had to the duties entailed upon the judicial trustee by the trust.

(3) The court may make, if it thinks fit, special allowances to judicial trustees for the following matters to be paid out of the trust property —

- (a) for the statement of trust property prepared by a judicial trustee on his appointment, an allowance not exceeding two hundred and fifty dollars;
- (b) for realising and re-investing trust property, where the property is realised for the purpose of re-investment, an allowance not exceeding one and a half per centum on the amount realised and re-invested;
- (c) realising or investing trust property in any other case, an allowance not exceeding one per centum on the amount realised or invested.

(4) The court may also in any year make a special allowance to a judicial trustee, if satisfied that in that year more trouble has been thrown upon the trustee by reason of exceptional circumstances than would ordinarily be involved in the administration of the trust.

(5) Where a trustee is remunerated, any allowance under this rule must be paid in addition to his remuneration.

(6) Any remuneration or allowance payable to a judicial trustee shall be paid or allowed to him at such times and in such manner as the court directs.

Application of remuneration of official of the court

19. Where an official of the court is appointed to be a judicial trustee, any remuneration, allowances, or other payments payable to him on account of his services, as trustee shall be paid, accounted for, and applied in such manner as the Minister of Finance may direct.

Forfeiture of remuneration

20. (1) If the court is satisfied that a judicial trustee has failed to comply with the Act, or with these Rules, or with any direction of the court or officer of the court made in accordance with the Act or these Rules, or has otherwise misconducted himself in relation to the trust, the court may order that the whole or any part of the remuneration of the trustee be forfeited.

(2) This rule shall not affect any liability of the judicial trustee for breach of trust or to be removed or suspended.

(3) A judicial trustee shall have an opportunity of being heard by the court, before any order is made for the forfeiture of his remuneration or any part thereof.

**REMOVAL AND SUSPENSION OF
JUDICIAL TRUSTEE**

21. (1) The court may at any time, either without any application or on the application of any person appearing to the court to be interested in the trust, suspend a judicial trustee, if the court considers that it is expedient to do so in the interests of the trust, and a judicial trustee while suspended shall not have power to act as trustee.

Suspension of
judicial trustee

(2) When a judicial trustee is suspended, the court shall cause notice to be given to such persons appearing to the court to be interested in the trust as the court directs, and also to the persons having custody of the trust property, and shall give any other directions which appear necessary for securing the safety of the trust property.

22. (1) The court may, either without any application or on the application of any person appearing to the court to be interested in the trust, remove a judicial trustee if the court considers that it is expedient to do so in the interests of the trust.

Removal of
judicial trustee

(2) Any application to remove a judicial trustee must be made by summons.

(3) A judicial trustee shall not be removed by the court without any application for the purpose, except after notice has been given to him by the court of the grounds on which it is proposed to remove him, and of the time and place at which the matter will be heard.

(4) The court shall cause a copy of the notice to the trust to be sent to such persons appearing to the court to be interested in the trust as the court directs, and the same procedure shall be followed in the matter so far as possible as on a summons to remove a judicial trustee.

23. Where an inquiry into the administration by a judicial trustee of any trust, or into any dealing or transaction of a judicial trustee is ordered, the inquiry shall, unless the court otherwise directs, be conducted by the officer of the court, and he shall have the same powers in relation thereto as he has in relation to any other inquiry directed by the court.

Inquiry into
conduct of
judicial trustee

RESIGNATION AND DISCONTINUANCE OF JUDICIAL TRUSTEE

Resignation of
judicial trustee

24. (1) If a judicial trustee desires to be discharged from his trust he must give notice to the court, stating at the same time what arrangements he proposes to make with regard to the appointment of a successor.

(2) The court shall give facilities for the appointment on a proper application of an official of the court to be judicial trustee in place of a judicial trustee who desires to be discharged, in cases where no fit and proper person appears available for the office, or where the court considers that such an appointment is convenient or expedient in the interests of the trust.

Discontinuance
of judicial
trustee

25. (1) Where there is a judicial trustee of a trust, the court may at any time on the application made by summons of any person appearing to the court to be interested in the trust, order that there shall cease to be a judicial trustee of the trust, whether the person who is judicial trustee continues as trustee or not.

(2) If the court is satisfied that all the persons appearing to the court to be interested in the trust concur in an application under this rule, the court shall accede to the application, and in any case shall ascertain as far as may be the wishes of those appearing to the court to be interested in the trust with regard to the application.

(3) Where an order is made under this rule, the court shall make all such orders as may be necessary for carrying it into effect, and where in pursuance of any such order a new trustee is appointed in the place of an official of the court, shall make all such vesting or other orders and exercise all such other powers as may be necessary for vesting the trust property in the new trustee either as sole trustee or jointly with other trustees as the case requires.

SPECIAL TRUSTS

Executors and
administrators

26. (1) Any person who is an executor or administrator may be appointed a judicial trustee for the purpose of the collection and distribution of the estate of a deceased person in the same manner and subject to the same provisions as in the case of an ordinary trust.

(2) Where an administrator has given an administration bond, he need not give security as a judicial trustee under these Rules unless the court directs that he is to do so.

27. (1) An official of the court shall not be appointed or act as judicial trustee for any persons in their capacity as members or debenture holders of, or being in any other relation to, any incorporated or unincorporated company or any club. Special trusts

(2) Where the circumstances of any trust of which an official of the court is a judicial trustee, or of which it is proposed to appoint an official of the court to be a judicial trustee, involve the carrying on of any trade or business, special intimation of the fact shall be given to the court either by the judicial trustee or by the person making the application for the appointment of the judicial trustee, as the case may be, and the court shall specially consider the facts of the case with a view to determining whether the official of the court should continue or be appointed as judicial trustee and whether any special condition should be made or directions given with a view to ensuring the proper supervision of the trade or business.

EXERCISE OF THE POWERS OF THE COURT

28. For the purpose of the Act or these Rules the officer of the court may exercise any power which may be exercised by the court except the power of making an order for the appointment of a judicial trustee or making any vesting order, and may perform any duty to be performed by the court, and may hear and investigate any matter which may be heard or investigated by the court, subject in any case to the right of any party to bring particular points before the judge. Exercise of powers of court

29. (1) It shall not be necessary to take out a summons for any purpose under the Act or these Rules, except in cases where a summons is required by these Rules, or where the court directs a summons to be taken out. Communication between judicial trustee and court

(2) Where a judicial trustee desires to make any application or request to the court, or to communicate

with the court as to the administration of his trust, he may so do by letter addressed to the officer of the court without any further formality.

(3) The court may give any direction to a judicial trustee with regard to the administration of his trust by letter signed by the officer of the court, and addressed to the trustee without drawing up any order or formal document.

(4) For the purpose of the attendance at Chambers of the judicial trustee or any other person connected with the trust for purposes relating to the administration of the trust the officer of the court may make such appointments as he thinks fit by letter without the service of formal notices.

(5) Any document may be supplied for the use of the court by leaving it with, or sending it by registered post to the officer of the court.

FEEES

Fees
Schedule

30. (1) The fees set out in the second column of the Schedule shall be paid in respect of each of the matters mentioned in the first column of the said Schedule opposite thereto.

(2) The fees paid by a judicial trustee may be deducted out of the income of the trust property unless the court otherwise directs.

(3) Any fees payable under these Rules may be remitted by post, and may be so remitted in any manner except by means of postage stamps or coin.

(4) All fees payable under these Rules shall, except as provided by these Rules, be subject to similar provisions as to payment, account, and application as other fees payable in the court.

SCHEDULE (Rule 30(1))

1. On any matter for which a fee is provided under the Rules of the Supreme Court.....The fee so provided.
2. On a request to the court for —
 - (a) directions; or
 - (b) approval of any step taken, or to be taken, in relation to the administration of a trust.....\$2.00.

3. On filing a statement of trust property, for every \$100.00 or fraction thereof of the estimated value of the property then in possession..... \$0.50 subject to a maximum fee of \$100.00

4. On filing an amended statement of trust property, for every \$100.00 or fraction thereof of the estimated value of the property in possession shown therein:..... \$0.50 subject to a maximum fee of \$100.00.

Provided that, in estimating the value of such property there shall be excluded any asset (or the proceeds thereof or any property acquired with such proceeds) on which Fee No. 3 in this Schedule has already been paid.

- 5. On filing —
 - (a) the accounts of a trust;\$2.00.
 - (b) any other document relating to a trust.....\$1.00.

- 6. On —
 - (a) auditing the accounts of a trust when audited by an officer of the Audit Department; or
 - (b) referring the accounts of a trust to a professional accountant in private practice for a report;

for every \$250.00 or fraction thereof of the gross amount of the income without allowing for any deduction therefrom.....\$0.50 subject to a maximum fee of \$50.00.

7. On inspection of filed accounts, for each hour or part of an hour occupied.....\$1.00 subject to a maximum fee of \$5.00.