

Major Mahama Trust Fund Bill, 2017

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Major Mahama Trust Fund Bill, 2017

A
BILL

ENTITLED
MAJOR MAHAMA TRUST FUND BILL, 2017

AN ACT to establish the Major Mahama Trust Fund and to provide for related matters.

PASSED by Parliament and assented to by the President:

Establishment of the Major Mahama Trust Fund

Private Act

1. This Act is a private Act.

Establishment of the Trust Fund

2. (1) There is established by this Act a body corporate to be known as the Major Mahama Trust Fund.

(2) For the performance of its functions, the Trust Fund may acquire and hold movable and immovable property, dispose of property and enter into a contract or any other transaction.

(3) Where there is a hindrance to the acquisition of immovable property, the property may be acquired for the Trust Fund under the State Lands Act, 1962 (Act 125) and the cost shall be borne by the Trust Fund.

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Object of the Trust Fund

3. The object of the Trust Fund is to cater adequately for the wife and children of the late Major Maxwell Adam Mahama and any other related matters.

Sources of money for the Trust Fund

4. The sources of money for the Trust Fund are

- (a) seed money specifically allocated for the start-up of the Trust Fund;
- (b) moneys approved by Parliament for payment into the Trust Fund;
- (c) grants, donations and other voluntary contributions to the Trust Fund;
- (d) moneys that accrue to the Trust Fund from investments made by the Board of Trustees;
- (e) moneys that may become lawfully payable to the Trust Fund or moneys accruing to the Trust Fund from property that may become lawfully payable to the Trust Fund; and
- (f) any other moneys that the Board of Trustees in consultation with the Minister responsible for Finance may determine.

Bank account of the Trust Fund

5. The moneys for the Trust Fund shall vest in the Board of Trustees and shall be paid into a bank account opened for the Trust Fund with the approval of the Controller and Accountant-General.

Exemption from tax

6. The Trust Fund is exempt from the payment of tax.

Application of Trust Fund

7. (1) For the purpose of achieving the object of the Trust Fund, the Board of Trustees shall apply the moneys for the Trust Fund for

- (a) the acquisition and furnishing of an appropriate three or four bedroom house for the widow of the late Major Maxwell Adam Mahama, Mrs. Barbara Mahama, and her children by the late Major Maxwell Adam Mahama, namely Jaden Mahama and Jeremiah Boressah Mahama, for life, at a location determined by Mrs. Barbara Mahama;

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- (b) the education of the children of the late Major Maxwell Adam Mahama up to a standard that the Board of Trustees may determine
 - (i) having regard to the ability and the aptitude of each of the children; and
 - (ii) for the purpose of ensuring that each of the children is adequately equipped to earn a living;
- (c) the maintenance of the wife of the late Major Maxwell Adam Mahama, Mrs. Barbara Mahama, through the provision of
 - (i) adequate allowances for living expenses;
 - (ii) a means of transportation, specifically a suitable vehicle periodically as reasonably necessary;
 - (iii) educational expenses; and
 - (iv) any other facility determined by the Board of Trustees;
- (d) the maintenance of the children of the late Major Maxwell Adam Mahama up to the completion of tertiary education and until they secure employment; and
- (e) any other purpose in furtherance of the object of this Act determined by the Board of Trustees.

(2) The maintenance of the wife of the late Major Maxwell Adam Mahama, Mrs. Barbara Mahama, shall continue until she remarries.

Residue of Trust Fund

8. The residue of the Trust Fund shall revert to the Government when the object of the Trust Fund is achieved by reason of

- (a) the death or remarriage of Mrs. Barbara Mahama;
- (b) the completion by Jaden Mahama and Jeremiah Boressah Mahama of tertiary education or education to a standard determined by the Board to be sufficient to adequately equip each of the children to earn a living having regard to the ability and the aptitude of each of the children; and
- (c) the securing of an employment by Jaden Mahama and Jeremiah Boressah Mahama.

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The Board of Trustees and Management of the Trust Fund

The Board of Trustees

9. (1) The governing body of the Trust Fund is a Board of Trustees consisting of

- (a) the chairperson who is the Minister for Defence;
- (b) the Administrator of the Trust Fund;
- (c) the Chairman of the Parliamentary Select Committee on Defence and Interior;
- (d) the Ranking Member of the Parliamentary Select Committee on Defence and Interior;
- (e) the Tumu Kuro; and
- (f) Dr. Grace Bediako.

(2) The members of the Board of Trustees shall be appointed by the President in accordance with article 70 of the Constitution.

Functions of the Board of Trustees

10. (1) The Board of Trustees is responsible for the management of the Trust Fund.

- (2) For the purpose of subsection (1), the Board of Trustees shall
- (a) monitor and evaluate the operations and performance of the Trust Fund;
 - (b) ensure accountability of the Trust Fund by defining appropriate procedures for the management of the Trust Fund;
 - (c) invest moneys of the Trust Fund that are not required for immediate use in safe securities that are financially beneficial to the Trust Fund;
 - (d) organise fundraising activities to raise moneys for the Trust Fund; and
 - (e) perform any other functions incidental to the achievement of the object of the Trust Fund.

Tenure of office of members of the Board of Trustees

11. (1) A member of the Board of Trustees shall hold office for a period of not more than four years and is eligible for re-appointment but a member shall not be appointed for more than two terms.

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(2) Subsection (1) does not apply to the Administrator of the Trust Fund.

(3) A member of the Board of Trustees may, by letter addressed to the President through the chairperson, resign at any time from office.

(4) A member of the Board of Trustees, other than the Administrator of the Trust Fund, who is absent from three consecutive meetings without sufficient cause ceases to be a member of the Board of Trustees.

(5) The President may by letter addressed to a member of the Board of Trustees, revoke the appointment of that member.

(6) Where a member of the Board of Trustees is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(7) Where there is a vacancy

(a) under subsection (3) or (4) or section 13 (2),

(b) as a result of a declaration under subsection (6), or

(c) by reason of the death of a member,

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

Meetings of the Board of Trustees

12. (1) The Board of Trustees shall meet at least once every three months for the despatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall, at the request in writing of not less than one-third of the membership of the Board of Trustees, convene an extraordinary meeting of the Board of Trustees at the place and time determined by the chairperson.

(3) The quorum at a meeting of the Board of Trustees is two-thirds of the membership or a greater number determined by the Board of Trustees in respect of an important matter.

(4) The chairperson shall preside at meetings of the Board of Trustees and in the absence of the chairperson, a member of the Board of Trustees elected by the members present from among their number shall preside.

(5) Matters before the Board of Trustees shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

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(6) The Board of Trustees may co-opt a person to attend a meeting of the Board of Trustees but that person shall not vote on a matter for decision at the meeting.

(7) The proceedings of the Board of Trustees shall not be invalidated by reason of a vacancy or a defect in the appointment of a member.

(8) Subject to this section, the Board of Trustees may determine the procedure for its meeting.

Disclosure of interest

13. (1) A member of the Board of Trustees who has an interest in a matter for consideration shall

(a) disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and

(b) not be present at, or participate in the deliberations of the Board of Trustees in respect of the matter.

(2) A member ceases to be a member of the Board of Trustees if that member has an interest in a matter before the Board of Trustees and

(a) fails to disclose that interest; or

(b) is present at or participates in the deliberations of the matter.

Establishment of committees

14. (1) The Board of Trustees may establish committees consisting of members or non-members or both to perform a function.

(2) A committee consisting of non-members only is advisory.

(3) Section 13 applies to members of committees of the Board of Trustees.

Allowances

15. Members of the Board of Trustees and members of a committee of the Board of Trustees shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

Ministerial directives

16. The Minister may give written directives to the Board of Trustees on matters of policy and the Board of Trustees shall comply.

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Administrative Provisions

Appointment of Administrator

17. (1) The President shall, in accordance with article 195 of the Constitution, appoint an Administrator for the Trust Fund.

(2) The Administrator shall hold office on the terms and conditions specified in the letter of appointment.

Functions of Administrator

18. (1) The Administrator

(a) is the secretary to the Board of Trustees in addition to being a member of the Board of Trustees;

(b) is the head of the secretariat of the Trust Fund;

(c) is responsible for the day to day administration of the Trust Fund;

(d) is responsible for ensuring the implementation of the decisions of the Board of Trustees; and

(e) shall perform any other function assigned to the Administrator by the Board of Trustees.

(2) The Administrator may delegate a function to an officer of the Trust Fund but shall not be relieved of the ultimate responsibility for the performance of the delegated function.

Appointment of other staff

19. (1) The President shall, in accordance with article 195 of the Constitution, appoint other staff that are necessary for the proper and effective performance of the functions of the Trust Fund.

(2) The Board of Trustees may, on the recommendation of the Administrator, engage the services of advisers and consultants.

Financial Provisions

Expenses of the Trust Fund

20. The administrative expenses of the Trust Fund related to the management of the Trust Fund shall be paid out of the Trust Fund subject to the approval of the Minister in consultation with the Minister responsible for Finance.

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Accounts and audit

21. (1) The Board of Trustees shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The Board of Trustees shall submit the accounts of the Trust Fund to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall, not later than three months, after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

(4) The financial year of the Trust Fund is the same as the financial year of Government.

Annual report and other reports

22. (1) The Board of Trustees shall within one month after the receipt of the audit report, submit to the Minister, an annual report covering the programmes, activities and operations of the Trust Fund for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board of Trustees shall submit to the Minister any other report that the Minister may require in writing.

Miscellaneous Provisions

Regulations

23. The Minister may, on the advice of the Board of Trustees, by legislative instrument, make Regulations

(a) for the procedure for the disbursement of the Trust Fund;
and

(b) generally for the effective implementation of the provisions of this Act.

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Interpretation

24. In this Act, unless context otherwise requires,
- “Board of Trustees” means the governing body of the Trust Fund established under section 9;
 - “Trust Fund” means the Major Mahama Trust Fund established under section 2;
 - “Tumu Kuro” means the paramount chief of the Tumu traditional area;
 - “Minister” means the Minister responsible for Defence; and
 - “private Act” has the meaning assigned in section 1 of the Interpretation Act, 2009 (Act 792).

Date of *Gazette* notification: 12th September, 2017.

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MEMORANDUM

The object of the Bill is to cater adequately for the wife and children of the late Major Maxwell Adam Mahama, an officer of the 5th Infantry Battalion of the Ghana Armed Forces, who was lynched by a mob at Denkyira Obuasi in the Upper Denkyira West District of the Central Region of the Republic of Ghana on Monday, 29 May 2017, while on detachment duties.

His Excellency, the President of the Republic and Commander-In-Chief of the Ghana Armed Forces, subsequent to the sad death, pledged to establish a Memorial Trust Fund with a seed money of Five Hundred Thousand Ghana Cedis (GH¢500,000.00) in honour of the deceased officer.

To give effect to His Excellency's vision and commitment towards the welfare of the deceased soldier's young widow, Mrs. Barbara Mahama and his infant children, Jaden Mahama and Jeremiah Boressah Mahama, it has become necessary to draft this Bill considering the circumstances under which the officer died while on a national duty.

The Bill, with the sole object of catering adequately for the widow of the late officer until she remarries and catering adequately for the children of the late officer, will therefore ensure that all moneys intended for the welfare and upkeep generally, and particularly the education of the infant children of the late officer are properly administered by a Board of Trustees who have a fiduciary relationship with the beneficiaries of the Fund and the Republic of Ghana.

The setting up of the Trust Fund will therefore guarantee that the proceeds of the Trust Fund are properly managed to the benefit of the beneficiaries.

Under the Bill, the Trustees have a duty to account for the Trust Fund regularly and as prescribed by law. The Trustees are also to keep account of the trust property and to produce them to any beneficiary when required; as well as to provide all reasonable information regarding how

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the trust property has been dealt with. The trustees also have a duty to invest the trust property in safe securities.

Clause 1 of the Bill provides that it is a private Act. This is in accordance with section 5 (1) of the Interpretation Act, 2009 (Act 792) which provides that an Act is a public Act and shall be judicially noticed as a public Act unless the contrary is expressly provided by the Act. Since the object of this Bill when passed will be for the purpose of affecting or benefiting a particular person, then it accords with the definition of a private Act as specified in section 1 of Act 792 and therefore it is necessary to expressly state in the Bill that it is a private Act.

Clause 2 establishes the Major Mahama Trust Fund as a body corporate with perpetual succession. In the light of the corporate status of the Trust Fund, it may for the purposes of performing its functions acquire, hold and dispose of property and enter into contract or any other transaction.

The object of the Trust Fund as stated in *clause 3* is to cater adequately for the wife and children of the late Major Maxwell Adam Mahama and any other related matters.

Clause 4 provides for the sources of money for the Trust Fund. These are seed money specifically allocated for the start-up of the Trust Fund; moneys approved by Parliament for payment into the Trust Fund; grants, donations and other voluntary contributions to the Trust Fund; moneys that accrue to the Trust Fund from investments made by the Board of Trustees; moneys that may become lawfully payable to the Trust Fund or moneys accruing to the Trust Fund from property that may become lawfully payable to the Trust Fund; and any other moneys that the Board of Trustees in consultation with the Minister responsible for Finance may determine.

Clause 5 deals with the Bank account of the Trust Fund and provides that the moneys for the Trust Fund shall vest in the Board of Trustees and shall be paid into a bank account opened for the Trust Fund with the

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approval of the Controller and Accountant-General. *Clause 6* provides that the Trust Fund is exempt from the payment of tax.

The application of the Trust Fund is dealt with in *clause 7*. For the purpose of achieving the object of the Trust Fund, the Board of Trustees shall apply the moneys for the Trust Fund for the acquisition and furnishing of an appropriate three or four bedroom house for the widow of the late Major Maxwell Adam Mahama, Mrs. Barbara Mahama, and her children by the late Major Maxwell Adam Mahama, namely Jaden Mahama and Jeremiah Boressah Mahama, for life, at a location determined by Mrs. Barbara Mahama; the education of the children of the late Major Maxwell Adam Mahama up to a standard that the Board of Trustees may determine having regard to the ability and the aptitude of each of the children and for the purpose of ensuring that each of the children is adequately equipped to earn a living; the maintenance of the wife of the late Major Maxwell Adam Mahama, Mrs. Barbara Mahama, through the provision of adequate allowances for living expenses, a means of transportation, specifically a suitable vehicle periodically as reasonably necessary, educational expenses and any other facility determined by the Board of Trustees; the maintenance of the children of the late Major Maxwell Adam Mahama up to the completion of tertiary education and until they secure employment; and any other purpose in furtherance of the object of the Act determined by the Board of Trustees. The maintenance of the wife of the late Major Maxwell Adam Mahama, Mrs. Barbara Mahama, shall continue until she remarries.

Clause 8 deals with the residue of the Trust Fund. The residue of the Trust Fund shall revert to the Government when the object of the Trust Fund is achieved by reason of the death or remarriage of Mrs. Barbara Mahama; the completion by Jaden Mahama and Jeremiah Boressah Mahama of tertiary education or education to a standard determined by the Board to be sufficient to adequately equip each of the children to earn a living having regard to the ability and the aptitude of each of the children; and the securing of an employment by Jaden Mahama and Jeremiah Boressah Mahama.

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The Board of Trustees is provided for in *clause 9*. The governing body of the Trust Fund is a Board of Trustees consisting of the chairperson who is the Minister for Defence. Other members of the Board of Trustees are the Administrator of the Trust Fund, the Chairman of the Parliamentary Select Committee on Defence and Interior, the Ranking Member of the Parliamentary Select Committee on Defence and Interior, the Tumu Kuro and Dr. Grace Bediako.

Clause 10 deals with the functions of the Board of Trustees. The Board of Trustees is responsible for the management of the Trust Fund and for that purpose, is required to monitor and evaluate the operations and performance of the Trust Fund; ensure accountability of the Trust Fund by defining appropriate procedures for the management of the Trust Fund; invest moneys of the Trust Fund that are not required for immediate use in safe securities that are financially beneficial to the Trust Fund; organise fundraising activities to raise moneys for the Trust Fund and perform any other functions incidental to the achievement of the object of the Trust Fund.

Clause 11 to 14 contains the standard provisions on tenure of office of members of the Board of Trustees, meetings of the Board of Trustees, disclosure of interest and establishment of committees.

Members of the Board of Trustees and members of a committee of the Board of Trustees are to be paid allowances approved by the Minister in consultation with the Minister responsible for Finance, *clause 15*. The Minister is permitted under *clause 16* to give directives to the Board on matters of policy and the Board is obliged to comply with the directives.

Clause 17 provides for the appointment of an Administrator for the Trust Fund by the President in accordance with article 195 of the Constitution. The functions of the Administrator are provided for in *clause 18*. The Administrator is the secretary to the Board of Trustees in addition to being a member of the Board of Trustees and the head of the secretariat of the Trust Fund. The Administrator is responsible for the day to day administration of the Trust Fund and for ensuring the implementation of

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the decisions of the Board of Trustees and is required to perform any other function assigned to the Administrator by the Board of Trustees. The Administrator may delegate a function to an officer of the Trust Fund but shall not be relieved of the ultimate responsibility for the performance of the delegated function. The appointment of other staff is provided for in *clause 19*.

Clause 20 deals with the expenses of the Trust Fund. The administrative expenses of the Trust Fund related to the management of the Trust Fund are required to be paid out of the Trust Fund subject to the approval of the Minister in consultation with the Minister responsible for Finance.

The standard provisions on accounts and audits and annual report and other reports are provided for in *clauses 21 and 22*.

Clause 23 empowers the Minister to, on the advice of the Board of Trustees, by legislative instrument, make Regulations for the procedure for the disbursement of the Trust Fund and generally for the effective implementation of the provisions of the Act. *Clause 24* is on interpretation.

HON. DOMINIC NITIWUL, MP
Minister responsible for Defence

Date: 4th September, 2017.

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