

OFFICIAL TRUSTEES ACT, 1913

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OFFICIAL TRUSTEES ACT, 1913

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An Act to consolidate and amend the law constituting the office of Official Trustee. It is hereby enacted as follows :-

PART 1 PRELIMINARY

1. Short title, extent and commencement :-

- (1) This Act may be called the Official Trustees Act, 1913.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government, by notification in the Official Gazette may direct.

2. Interpretation clause :-

In this Act, unless there is anything repugnant in the subject or context,-

(1) "Government" or "the Government" means, in relation to a State, the State Government and, in relation to a Union territory, the Central Government.

(2)**

(3) "Prescribed" means prescribed by rules under this Act.

3. Extent of jurisdiction of High Court :-

The High Court shall, in respect of proceedings instituted by or against the Official Trustee under this Act or the Trusts Act, 1882 , be a competent Court throughout the territories in relation to which it exercises civil appellate jurisdiction: Provided that nothing in this section shall be construed as affecting the jurisdiction of any district court.

PART 2

THE OFFICE OF OFFICIAL TRUSTEE

4. Official Trustees :-

(1) The Government shall appoint an Official Trustee for each State : Provided that nothing herein contained shall be deemed to bar the appointment of the same person as Official Trustee for two or more States.

(2) No person shall be appointed to the office of Official Trustee unless he has been for at least-

(a) seven years, an advocate ; or

(b) seven years, an attorney of a High Court ; or

(c) ten years, a member of the judicial service of a State ; or

(d) five years, a Deputy Official Trustee.

5. Appointment and powers of Deputy Official Trustee :-

(1) The Government may appoint a Deputy or Deputies to assist the Official Trustee; and any Deputy so appointed shall, subject to the control of the Government and the general or special orders of the Official Trustee, be competent to discharge any of the duties and exercise any of the powers of the Official Trustee, and, when discharging such duties or exercising such powers, shall have the same privileges and be subject to the same liabilities as the Official Trustee.

(2) No person shall be appointed as a Deputy unless he has been

for at least three years-

- (a) an advocate ; or
- (b) an attorney of a High Court ; or
- (c) a member of the judicial service of a State.

6. Official Trustee to be corporation sole, to have perpetual succession and official seal, and to sue and be sued in his corporate name :-

The Official Trustee shall be a corporation sole by the name of the Official Trustee of the State for which he is appointed and, as such Official Trustee, shall have perpetual succession and an official seal, and may sue and be sued in his corporate name.

PART 3

RIGHTS, POWERS, DUTIES AND LIABILITIES OF OFFICIAL TRUSTEE

7. General powers and duties of Official Trustee :-

(1) Subject to, and in accordance with, the provisions of this Act and the rules made thereunder, the Official Trustee may, if he thinks fit,-

- (a) act as an ordinary trustee;
- (b) be appointed trustee by a Court of competent jurisdiction.

(2) Save as hereinafter expressly provided, the Official Trustee shall have the same powers, duties and liabilities and be entitled to the same rights and privileges and be subject to the same control and orders of the Court as any other trustee acting in the same capacity.

(3) The Official Trustee may decline, either absolutely or except on such conditions as he may impose, to accept any trust.

(4) The Official Trustee shall not accept any trust under any composition or scheme of arrangement for the benefit of creditors, nor of any estate known or believed by him to be insolvent.

(5) The Official Trustee shall not, save as provided by any rules made under this Act, accept any trust for a religious purpose or any trust which involves the management or carrying on of any business.

(6) The Official Trustee shall not administer the estate of a

deceased person, unless he is expressly appointed sole executor of, and sole trustee under, the will of such person.

(7) The Official Trustee shall always be sole trustee, and it shall not be lawful to appoint the Official Trustee to be trustee along with any other person.

8. Official Trustee may with consent be appointed trustee of settlement by grantor :-

(1) Any person intending to create a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act may by the instrument creating the trust and with the consent of the Official Trustee, appoint him by that name or any other sufficient description to be the trustee of the property subject to such trust: Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Upon such appointment the property subject to the trust shall vest in such Official Trustee, and shall be held by him upon the trusts declared in such instrument.

9. Appointment of Official Trustee as trustee by will :-

When the Official Trustee has by that name or any other sufficient description been appointed trustee under any will, the executor of the will of the testator or the administrator of his estate shall, after obtaining probate or letters of administration, notify in the prescribed manner the contents of such will to such Official Trustee ; and, if such Official Trustee consents to accept the trust, then upon the execution by such executor or administrator of an instrument in writing transferring the property subject to the trust to the Official Trustee, such property shall vest in such Official Trustee, and shall be held by him upon the trusts expressed in the said will : Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

10. Power of High Court to appoint Official Trustee to be trustee of property :-

(1) If any property is subject to a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and there is no trustee within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court

willing or capable to act in the trust, the High Court may on application make an order for the appointment of the Official Trustee by that name with his consent to be the trustee of such property.

(2) Upon such order such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such order, and the previous trustee or trustees (if any) shall be exempt from the liability as trustees of such property save in respect of acts done before the date of such order.

(3) Nothing in this section shall be deemed to affect the provisions of the Trusts Act, 1882 .

11. Power of private trustees to appoint Official Trustee to be trustee of property :-

(1) If any property is subject to a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and all the trustees or the surviving or continuing trustee or trustees and all persons beneficially interested in the trust are desirous that the Official Trustee shall be appointed in the room of such trustee or trustees, it shall be lawful for such trustee or trustees, by an instrument in writing to appoint the Official Trustee by that name or any other sufficient description with his consent to be the trustee of such property : Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by him.

(2) Upon such appointment such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such appointment, and the previous trustee or trustees shall be exempt from all liability as trustees of such property save in respect of acts done before the date of such appointment.

12. Executor or administrator may pay to Official Trustee legacy, share etc., of minor or lunatic :-

(1) If any minor or lunatic is entitled to any gift, legacy or share of the assets of a deceased person, it shall be lawful for the person by whom such gift is made, or executor or administrator by whom such legacy or share is payable or transferable or any trustee of such gift, legacy or share, to transfer the same by an instrument in writing to the Official Trustee by that name or any other sufficient

description with his consent : Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Any money or property transferred to the Official Trustee under this section shall vest in him and shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee.

13. Official Trustee not to be required to give bond or security :-

(1) No Official Trustee shall be required by any Court to enter into any bond or security on his appointment in any capacity under this Act.

(2) No Official Trustee shall be required to verify otherwise than by his signature any petition presented by him under the provisions of this Act, and if the facts stated in any such petition are not within his personal knowledge, the petition may be verified and subscribed by any person competent to make the verification.

14. Entry of Official Trustee not to constitute notice of a trust :-

The entry of the Official Trustee by that name in the books of a company shall not constitute notice of a trust; and a company shall not be entitled to object to enter the name of the Official Trustee on its register by reason only that the Official Trustee is a corporation; and, in dealing with property, the fact that the person dealt with is the Official Trustee shall not of itself constitute notice of a trust.

15. Liability of Government :-

(1) The Government shall be liable to make good all sums required to discharge any liability which the Official Trustee, if he were a private trustee, would be personally liable to discharge, except when the liability is one to which neither the Official Trustee nor any of his officers has in any way contributed or which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in either of those cases the Official Trustee shall not, nor shall the Government, be subject to any liability.

(2) Nothing in sub-section (1) shall be deemed to render the Government or any Official Trustee appointed under this Act liable

for anything done by or under the authority of any Official Trustee before the commencement of this Act.

16. Notice of suit not required in certain cases :-

Nothing in Section 80 of the Code of Civil Procedure, 1908 , shall apply to any suit against the Official Trustee in which no relief is claimed against him personally.

PART 4
FEES

17. Fees :-

(1) There shall be charged in respect of the duties of the Official Trustee such fees, whether by way of percentage or otherwise, as the Government may prescribe.

(2) The fees under this section may be at different rates for different properties or classes of properties or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act (including such sum as Government may determine to be required to insure the Government against loss under this Act).

18. Disposal of fees :-

(1) All expenses which might be retained or paid out of the trust fund, if the Official Trustee were a private trustee, shall be so retained or paid, and any fees leviable under this Act shall be retained or paid in like manner as and in addition to such expenses.

(2) The Official Trustee shall transfer and pay to such authority and in such manner and at such times as the Government may prescribe, all fees received by him under this Act, and the same shall be carried to the account and credit of the Government.

PART 5
AUDIT

19. Auditors to be appointed to examine Official Trustees accounts, etc., and to report to Government :-

(1) The accounts of the Official Trustee shall be audited at least once annually and at any other time if the Government so direct by the prescribed person and in the prescribed manner.

(2) The auditor shall examine such accounts, and shall forward to

Government a statement thereof in the prescribed form, together with a report thereon and a certificate signed by him showing,-

(a) whether the accounts have been audited in the prescribed manner, and whether, so far as can be ascertained by such audit, the accounts contain a full and true account of everything which ought to be contained there- in ;

(b) whether the books, which by any rules made under this Act are directed to be kept by the Official Trustee, have been duly and regularly kept; and

(c) whether the trust funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act or any rules made thereunder;

20. Auditors power to summon witnesses and to call for documents :-

(1) Every auditor shall have the powers of a Civil Court under Code of Civil Procedure, 1908 .

(a) to summon any person whose presence he may think necessary to attend him from time to time ; and

(b) to examine any person, on oath to be by him administered ; and

(c) to issue a commission for the examination on interrogatories or otherwise of any person ; and

(d) to summon any person to produce any document or thing, the production of which appears to be necessary for the purposes of such audit or examination.

(2) Any person who, when summoned, refuses, or without reasonable cause neglects to attend or to produce any document or thing or attends and refuses to be sworn, or to be examined shall be deemed to have committed an offence within the meaning of, and punishable under Section 188 of the Indian Penal Code, 1860 , and the auditor shall report every case of such refusal or neglect to Government.

21. Costs of audit, etc., how paid :-

The cost of and incidental to every such audit and examination shall be determined in accordance with rules made by the Government and shall be defrayed in the prescribed manner.

22. Right of beneficiary to inspection and copies of accounts

:-

Every beneficiary under a trust which is being administered by the Official Trustee shall, subject to such conditions and restrictions as may be prescribed, be entitled, at all reasonable times, to inspect the accounts of such trust, and the report and certificate of the auditor and, on payment of the prescribed fee, to be furnished with copies thereof or extracts therefrom, and nothing in the Trusts Act, 1882, shall affect the provisions of this section.

PART 6

MISCELLANEOUS

23. Transfer to Government of accumulations in the hands of Official Trustee :-

When any moneys payable to a beneficiary under a trust have been in the hands of any Official Trustee for a period of twelve years or upwards whether before or after the commencement of this Act in consequence of the Official Trustee having been unable to trace the person entitled to receive the same, such moneys shall be transferred in the prescribed manner to the account and credit of the Government : Provided that no such moneys shall be so transferred if any suit or proceeding is pending in respect thereof in any Court.

24. Mode of proceeding by claimant to recover money so transferred :-

(1) If any claim is made to any moneys so transferred and such claim is established to the satisfaction of the prescribed authority, the Government shall pay to the claimant the amount in respect of which the claim is established.

(2) If such claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such moneys, apply by petition to the High Court against the Government, and after taking such evidence as it thinks fit, such Court shall make such order on the petition in regard to the payment of such moneys as it thinks fit, and such order shall be binding on all parties to the proceedings.

(3) The Court may further direct by whom all or any part of the costs of such proceedings shall be paid.

25. Power of High Court to make orders in respect of property vested in Official Trustee :-

The High Court may make such orders as it thinks fit respecting any trust property vested in the Official Trustee, or the income or produce thereof.

26. Who may apply for order under Act :-

Any order under this Act may be made, on the application of any person beneficially interested in any trust property or of any trustee thereof.

27. Order of Court to have effect of a decree :-

Any order made by a High Court under this Act shall have the same effect as a decree.

28. General powers of administration :-

The Official Trustee may, in addition to and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure-

(a) on such acts as may be necessary for the proper care and management of any property belonging to any trust administered by him ; and

(b) with the sanction of the High Court on such religious, charitable and other objects and on such improvements as may be reasonable and proper in the case of such property.

29. Transfer of trust property by Official Trustee to original trustee or any other trustee :-

(1) Nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to-

(a) the original trustee (if any) ; or

(b) any other lawfully appointed trustee ; or

(c) any other person if the Court so directs.

(2) Upon such transfer such property shall vest in such trustee, and shall be held by him upon the same trusts as those upon which it was held prior to such transfer, and the Official Trustee shall be exempt from all liability as trustee of such property except in respect of acts done before such transfer. Provided that, in the case of any transfer under this section, the Official Trustee shall be entitled to retain out of the property any fees leviable in

accordance with the provisions of this Act.

30. Rules :-

(1) The Government shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Official Trustee in the discharge of his duties.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the accounts to be kept by the Official Trustee and the audit and inspection thereof;

(b) the safe custody, and deposit of the funds and securities which come into the hands of the Official Trustee ;

(c) the remittance of sums of money in the hands of the Official Trustee in cases in which such remittances are required ;

(d) the statements, schedules and other documents to be submitted by the Official Trustee to Government or to any other authority and the publication of such statements, schedules or other documents ;

(e) the realization of the cost of preparing any such statements, schedules or other documents;

(f) subject to the provisions of this Act, the fees to be paid thereunder and the collection and accounting for any fees so fixed ;

(g) the manner in which and the person by whom. the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed;

(h) the manner in which summonses issued under the provisions of section 20 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination ;

(i) the acceptance by the Official Trustee of trusts for religious purposes and trusts which involve the management or carrying on of business ; and

(j) any matter in this Act directed to be prescribed.

(3) Rules made under the provisions of this section shall be published in the Official Gazette, and shall thereupon have effect as

if enacted in this Act.

¹[(3A) Every rule made by the State Government under this section shall be laid, as soon as it is made, before the State Legislature.]

(4) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or ² [in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid], both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

1. Inserted by the Delegated Legislation Provisions (Amendment) Act, 1983, w.e.f. 15-3-1984.

2. Substituted for "in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following", by the Delegated Legislation Provisions (Amendment) Act, 1983.

31. Division of Presidency into Provinces :-

Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.]

32. Saving of provisions of Indian Registration Act, 1908 :-

Nothing contained in this Act shall be deemed to affect the provisions of the Registration Act, 1908 .

32A. Saving :-

(1) The amendments of this Act which come into force on the 26th day of January, 1950, shall not affect any legal proceedings pending in any court on that date or be construed as automatically transferring any property from any Official Trustee to any other Official Trustee ; but nothing in this section shall be construed as preventing a transfer of any such property in accordance with any of the other provisions of this Act.

(2) The amendments of this Act, which come into force on the 26th day of January, 1950 shall not affect any legal proceeding arising

out of application of this Act to any person in a Part B State and pending in any Court on the said date or the administration of any property or estate of any such person which was immediately before that date vested in an Official Trustee under this Act, and the provisions of this Act shall, notwithstanding the said amendments, continue to apply with necessary modifications, in relation to such proceedings or such property or estate, as the case may be.

32B. Special provision regarding certain Official Trustees affected by States reorganisation :-

The amendments of this Act which come into force on the 1st November, 1956, shall not affect any legal proceedings pending in any Court on that date and where, on account of the reorganisation of States under the States Reorganisation Act, 1956 or the Bihar and West Bengal (Transfer of Territories) Act, 1956 (40 of 1956), the whole or any part of a State is transferred to any other State, such transfer of the territory of the State shall not be construed as automatically transferring any property from any Official Trustee to any other Official Trustee ; but if, by reason of such transfer of territory, it appears to the Central Government that the whole or any part of the property vested in an Official Trustee, should be vested in another Official Trustee, that Government may direct that the property will be so vested and thereupon it shall vest in that other Official Trustee and his successors as fully and effectually for the purposes of this Act, as if it had been originally vested in him under this Act.

33. Repeals :-

Repealed by the Repealing Act, 1927 (12 of 1927)].