

Chapter 287.
Trust Accounts Act 1961.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 287.

Trust Accounts Act 1961.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Trust Accounts Act 1961,

Being an Act to provide for the regulation and management of trust accounts, and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**the regulations**” means any regulations made under this Act;

“**this Act**” includes the regulations;

“**trustee**” includes a lawyer, public accountant, auctioneer or commission agent acting in the course of the conduct of his business as such, and any other prescribed person.

2. SAVING OF OTHER REMEDIES.

This Act does not affect any right or remedy of any person under any other law.

PART II. – TRUST MONEYS AND PROPERTY GENERALLY.

3. GENERAL DUTIES AS TO TRUST MONEYS.

(1) All moneys received for or on behalf of a person by a trustee shall be paid by the trustee into a bank carrying on business in the country to a general or separate trust account, until the moneys have been applied by the trustee to the purposes for which they have been received by him.

(2) Moneys referred to in Subsection (1) are not–

- (a) available for payment of the debts of any other creditor of the trustee; or
- (b) liable to be attached or taken in execution under the order or process of a court at the instance of any such creditor.

(3) Notwithstanding anything in any other law, a manager or other principal officer of a bank with which a trustee has deposited moneys, whether in his own account or in a general or separate trust account, who fails–

- (a) to disclose every such account to an auditor appointed under this Act, on demand made by the auditor; or
- (b) to permit the auditor to make a copy of or extract from any such account,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(4) This section does not take away or affect any claim of lien that a trustee has against any moneys received by him.

4. RETURNS AS TO CERTAIN TRUST PROPERTY.

(1) A trustee who, on 30 June in any year, has in his possession or under his control any property, to which a beneficiary referred to in Subsection (2)–

- (a) is on that date; and
- (b) was during the whole of the year ended on that date,

absolutely entitled must, within 31 days after that date, furnish to the Attorney-General a written return signed by him, setting out particulars of the property, and accompanied by a statement of–

- (c) all costs, charges and expenses (if any) claimed by the trustee to be chargeable in his favour against or payable to him out of the property; and
- (d) any lien claimed by the trustee; and
- (e) the reasons why the property has not been transferred, assigned, delivered or paid over to the beneficiary.

Penalty: A fine not exceeding K200.00.

(2) A return under Subsection (1) shall be made—

- (a) if the beneficiary has no agent in the country with authority to take possession of or receive the property; or
- (b) where it is not known who the beneficiary is; or
- (c) where it is not known where the beneficiary is; or
- (d) where it is not known whether the beneficiary is alive or dead; or
- (e) where a dead beneficiary has left executors or administrators who are dead or whose whereabouts are unknown.

(3) In a prosecution for an offence against this section, the burden of proof that no circumstance had arisen that under this Act would make it necessary to make a return is on the defendant.

PART III. – POWERS, ETC., OF PUBLIC CURATOR.

Division 1.

General.

5. COMPULSORY TRANSFER TO PUBLIC CURATOR.

(1) On receipt of a return under Section 4, the Attorney-General may, by notice under his hand, require the trustee to transfer, assign, deliver or pay over (as the case requires) to the Public Curator all the property within such time as is fixed by the Attorney-General.

(2) On a requirement being made by the Attorney-General under Subsection (1), any lien claimed against the property by the trustee ceases to have any legal effect.

(3) If a trustee fails to comply with a requirement under this section, the Public Curator may obtain an order from the National Court or a Judge that the trustee immediately transfer, assign, deliver or pay over the property, subject to the pains and penalties of contempt of court.

(4) An order under Subsection (3) may be made in the absence of the trustee if–

- (a) the notice of motion has been duly served on him; or
- (b) the Court or Judge is satisfied that reasonable efforts have been made to serve it.

(5) A certificate under the hand of the Attorney-General that he has made a requirement under this section is conclusive evidence of the facts set out in the certificate.

(6) When property is transferred, assigned, delivered or paid over to the Public Curator under this section, the Public Curator shall–

- (a) deal with and apply the property as the trustee of the property under the *Trustees and Executors Act 1961*; and
- (b) without delay, use every endeavour to ascertain the beneficiary or beneficiaries and to hand over or distribute the property to him or amongst them.

(7) Any costs, charges or expenses that are claimed by a trustee to be chargeable in his favour against, or payable to him out of, property referred to in this section shall be properly vouched by the trustee and investigated by the Public Curator.

(8) If the Public Curator is satisfied that any costs, charges or expenses to which Subsection (7) applies are correct–

- (a) the sum allowed by him; or
- (b) if the trustee requires that his claim be taxed–the sum allowed by the Registrar of the National Court after taxation,

shall, subject to Subsection (9), be paid to the trustee as and when moneys in respect of the property become available.

(9) In the discretion of the Public Curator, the sum may be paid without delay to the trustee, in which case it is part of the costs, charges and expenses of the Public Curator against the property.

Division 2.

Trustees other than Lawyers.

6. INTERPRETATION OF DIVISION 2.

In this Division, “trustee” does not include a lawyer acting as a trustee in the course of the conduct of his profession.

7. CONTROL OF CERTAIN TRUST ACCOUNTS.

(1) If the Public Curator is of opinion that a trustee—

- (a) is an undischarged bankrupt; or
- (b) has stolen or fraudulently misapplied any trust moneys; or
- (c) has a general deficiency in his trust account,

he may, under, subject to and in accordance with this section, control operations on any or all trust accounts of which the trustee is a trustee, whether solely or jointly with any other person.

(2) The Public Curator shall serve written notice on—

- (a) the trustee concerned; and
- (b) any other person authorized to operate on a trust account in respect of which the notice is served; and
- (c) the manager or other principal officer of the office or branch of the bank with which a trust account in respect of which the notice is served is kept,

stating that the Public Curator requires the trust account or trust accounts specified in the notice to be operated on under his control.

(3) After a notice has been served on the manager or other principal officer of an office or branch of a bank under Subsection (2) and until the notice ceases to be effective (whether or not a copy of the notice has been served on the trustee concerned or on any other person), no payment shall be made by the bank on any cheque or other instrument drawn on a trust account specified in the notice unless it bears, in addition to the signature of the trustee or other person authorized to operate on the trust account, the signature of the Public Curator, or of a person authorized for the purpose by the Public Curator.

(4) If a trustee or other person authorized to operate on a trust account to which Subsection (3) applies is unwilling to operate on the account in conjunction

with the Public Curator or a person authorized for the purpose by the Public Curator, the Public Curator, or with his written consent a person authorized by him under Subsection (3), may operate on the trust account alone.

(5) A statutory declaration made by the Public Curator or a person authorized by him under Subsection (3) to the effect that the trustee or other person authorized to operate on a trust account is unwilling to operate on the account in conjunction with the Public Curator or the person authorized by the Public Curator is sufficient evidence to the trustee's banker of that fact.

(6) After a notice under this section has been served on the trustee concerned and until the notice ceases to be effective, the trustee must not sign any cheque or other instrument drawn on a trust account specified in the notice unless the cheque or other instrument has first been signed by the Public Curator or a person authorized by him under this section.

(7) After a notice under this section has been served on a person (other than the trustee concerned) who is authorized to operate on a trust account specified in the notice and until the notice ceases to be effective, he must not sign any cheque or other instrument drawn on a trust account specified in the notice unless the cheque or other instrument has first been signed by the Public Curator or a person authorized by him for the purpose.

(8) A trustee in respect of whose trust account a notice is served under this section may appeal to a Judge, who may make such order in the matter as he thinks proper.

(9) A notice under this section ceases to have effect—

- (a) at the end of the period of 12 months from the date on which it purports to have been signed by the Public Curator; or
- (b) if the Public Curator rescinds the notice, on the date on which it is rescinded; or
- (c) if a Judge on appeal orders that the notice shall cease to be effective, on the date specified by the Judge as the date on which the notice shall cease to be effective or, if no date is specified, on the date of the order.

(10) Where a notice under this section has ceased to have effect, otherwise than under Subsection (9)(a), the Public Curator shall, as soon as practicable, serve on all persons who have been served with the notice a further written notice that it has ceased to be effective.

(11) A notice or further notice required by this section to be served on a person may be served—

- (a) by delivering it to the person; or
- (b) by sending it by prepaid registered post to the person at his usual place of abode or business, or at his place of abode or business last known to the Public Curator.

(12) A bank, or a manager or other officer of a bank, does not incur liability to a person for dishonouring or refusing or failing to make payment on a cheque or other instrument that—

- (a) is drawn on a trust account in respect of which the Public Curator has served a notice under this section; and
- (b) is not signed by the Public Curator or a person authorized by him for the purpose,

if the dishonour or refusal or failure to make payment occurs—

- (c) within 12 months after the date on which the notice purports to have been signed by the Public Curator; and
- (d) before the manager or other officer who was served with the notice is served by the Public Curator with a further notice under Subsection (11).

(13) A trustee, a manager, principal officer or other officer of a bank, or a person authorized to operate on the trust account of a trustee (including a trustee who is authorized to operate on the trust account of another trustee) who knowingly acts contrary to this section is guilty of an offence.

Penalty: A fine not exceeding K200.00.

8. TRUST ACCOUNTS OF DECEASED TRUSTEES, ETC.

(1) If the Public Curator is of opinion that a trustee—

- (a) has died; or
- (b) is, because of mental or physical illness, incapable of operating on a trust account; or
- (c) cannot be found,

and that the trustee is (or, if he has died, was immediately before his death), solely or jointly with any other person, a trustee of a trust account, he may, under, subject to and in accordance with this section, act as a trustee of the trust account in his place.

(2) At least 14 days before commencing to act as a trustee under this section, the Public Curator shall forward by prepaid registered post, to each of the following persons, at his usual place of abode or business or at his place of abode or business last known to the Public Curator, written notice that any person may forward a written objection to the Public Curator:—

- (a) the trustee of the trust account in question, if he is alive;
- (b) a person who is a partner of the trustee or, if the trustee is dead, who was at the date of the death a partner of the trustee;
- (c) if the trustee is dead, any person who has notified the Public Curator that he is the executor or administrator of the trustee;

(d) the manager or other principal officer of the office or branch of the bank with which the trust account in question is kept.

(3) The Public Curator shall consider any objection forwarded under Subsection (2), but the fact that the objection has been made does not prevent the Public Curator from acting as trustee of the trust account.

(4) If, at the end of the period of 14 days after forwarding the notices as required by Subsection (2), the Public Curator decides to act, notwithstanding any objections forwarded in answer to the notices, as a trustee of the trust account in question, he shall forward by prepaid registered post a further notice to each of the persons to whom a notice in respect of the trust account in question was required by Subsection (2) to be forwarded, stating that he will act as a trustee of the trust account.

(5) After a notice has been served under Subsection (4), and until it ceases to be effective, the Public Curator is for all purposes a trustee of the trust account specified in the notice in place of the trustee referred to in Subsection (1).

(6) Any of the following persons may appeal to a Judge in Chambers against a decision of the Public Curator to act as a trustee under this section:—

- (a) the trustee in whose place the Public Curator has decided to act;
- (b) a person who is a partner of the trustee in whose place the Public Curator has decided to act or, where the trustee is dead, who was at the date of his death a partner of the trustee;
- (c) any other trustee of the trust account in respect of which the Public Curator is acting;
- (d) a person entitled as beneficiary to part or all of the trust account;
- (e) an executor or administrator of a trustee who has died and in whose place the Public Curator is acting;
- (f) any other person aggrieved by the Public Curator's so acting.

(7) On an appeal under Subsection (6), the Judge may make such order in the matter as he thinks proper.

(8) A notice under Subsection (4) ceases to have effect—

- (a) if the Public Curator rescinds it—on the date on which it is rescinded; or
- (b) if a Judge on appeal orders that the Public Curator cease to act as trustee in respect of the trust account in question—on the date specified by the Judge as the date on which the Public Curator shall cease or, if no such date is specified, on the date of the order.

(9) Where a further notice under Subsection (4) has ceased to have effect, the Public Curator shall, as soon as practicable, notify by prepaid registered post each of the persons to whom a copy of the notice was forwarded, at his usual place of abode or business or at his place of abode or business last known to the Public Curator, that it has ceased to have effect.

(10) When the manager or other principal officer of an office or branch of a bank has received from the Public Curator a notice under Subsection (4) in respect of a trust account kept with the office or branch, and the manager or other principal officer has not been notified that the notice has ceased to have effect—

- (a) the manager or officer is not bound to inquire whether the requirements of this section have been complied with; and
- (b) a bank that makes any payment in good faith in the belief that the notice is in force does not incur any liability that it would not have incurred if the notice had been in force.

PART IV. – SPECIAL PROVISIONS RELATING TO CERTAIN CONTRACTS.**9. INTERPRETATION OF PART IV.**

In this Part–

“**contract**” includes–

- (a) a contract or arrangement (whether made orally or in writing, and whether or not legally binding) for–
 - (i) the construction, repair, extension, alteration, renovation or painting; or
 - (ii) the performance of work or labour for the supply of materials for or in connection with the construction, repair, extension, alteration, renovation or painting,

of a dwelling-house or other fixed improvement on land; and

- (b) a representation, promise or undertaking (whether made orally or in writing, and whether or not legally binding) made by a person to another that he or some other person will–
 - (i) construct, repair, alter, extend, renovate or paint; or
 - (ii) perform work or labour or supply materials for or in connection with the construction, repair, alteration, extension, renovation or painting of,

a dwelling-house or other fixed improvement on land;

“**contractor**” includes–

- (a) in relation to a contract or arrangement specified in Paragraph (a) of the definition “contract” in this section, the person by whom the contract or arrangement is to be performed or caused to be performed; and
- (b) in relation to a representation, promise or undertaking specified in Paragraph (b) of that definition, the person making the representation, promise or undertaking;

“**price**”, in relation to a contract, includes consideration.

10. APPLICATION OF PART IV.

This Part does not apply with respect to the payment in advance of wages under a contract or engagement solely for the performance of work or labour.

11. DUTIES OF CONTRACTORS.

A contractor who received money on terms requiring him to apply it in or towards defraying the price of a contract shall–

- (a) pay the money without delay into an office or branch in the country of a bank, to the credit of a general or separate trust account; and
- (b) not withdraw it or any part of it from the trust account except as authorized by this Part; and
- (c) not draw against or cause a payment to be made from the trust account unless the drawing or payment is made by or on his crossed cheque—
 - (i) requiring payment to be made to or to the order of the person to whom the sum for which the cheque is drawn is payable; and
 - (ii) bearing across its face the words “Not Negotiable”; and
- (d) where the trust account is a general trust account—not pay to the credit of the account moneys other than moneys required by this Part to be paid to the credit of the account; and
- (e) where the trust account is a general trust account—not withdraw from the account by means of a single cheque moneys or parts of moneys respectively standing in the account to the credit of two or more contracts; and
- (f) where—
 - (i) the trust account is a general trust account; and
 - (ii) moneys paid in respect of two or more contracts are standing to the credit of the account,

not make from the account any drawing by which the aggregate balance remaining to the credit of the trust account immediately after the time of the drawing is decreased below the amount required by this Part to be retained in the account.

12. WITHDRAWALS BY CONTRACTORS FROM TRUST ACCOUNTS.

(1) Subject to Section 11(c), (d), (e) and (f) and to Subsection (2), a contractor may withdraw money paid by him to the credit of a trust account in accordance with this section for the purpose of—

- (a) paying a person other than the contractor for work, labour or materials actually performed or supplied for or in connection with the carrying out of the contract; and
- (b) lawful progress payments to himself for or in connection on with the carrying out of the contract.

but for no other purpose.

- (2) Notwithstanding Subsection (1), a contractor may, by his cheque—
- (a) requiring payment to be made to himself or his order; and
 - (b) bearing across its face the words “Not Negotiable”,

withdraw from a trust account referred to in this section moneys standing in the account to the credit of any contract for the payment of wages due and payable to employees employed by him in the performance of the contract.

(3) A progress payment made under Subsection (1) is lawful only if—

- (a) it is made after the contractor has commenced to perform the contract (or, if it is a second or subsequent progress payment, only if it is made after the contractor has progressed further with the performance of the contract after making to himself the previous progress payment); and
- (b) it is fair and reasonable having regard to the progress made in performing the contract and any previous progress payments relating to the contract.

13. CERTAIN DUTIES OF BANKS, ETC., APPLY TO CONTRACTORS.

Section 3(3) applies in respect of a trust account required by this Part to be opened and kept by a contractor as if the references in that subsection to a trustee were references to a contractor.

14. OFFENCES AGAINST PART IV.

(1) An offence against this Part may be prosecuted summarily or on indictment.

(2) A person who contravenes or fails to comply with any provision of this Part is guilty of an offence.

Penalty: On summary conviction—a fine not exceeding K800.00 or imprisonment for a term not exceeding 12 months or, if the offender is a corporation, a fine not exceeding K4,000.00.

On conviction on indictment—a fine not exceeding K2,000.00 or imprisonment for a term not exceeding three years or, if the offender is a corporation, a fine not exceeding K10,000.00.

PART V. – MISCELLANEOUS.**15. REGULATIONS.**

(1) In this section, “**trustee**” includes a contractor within the meaning of Section 9.

(2) The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular–

- (a) for providing for an audit of the trust accounts of such trustees or classes of trustees as are prescribed, and for a report of the result of the audit; and
- (b) for requiring the production, subject to such conditions as are prescribed, to the auditor by the trustee, the servants and agents of a trustee or a bank, of books, papers and accounts relating to trust accounts; and
- (c) for prescribing the persons to whom the reports of auditors shall be sent for inspection, information or record; and
- (d) for providing that the auditor is subject to an obligation not to divulge, otherwise than as prescribed, a matter of which he is informed in the course of the audit, and is also subject to the same liability and damages to a client or beneficiary of the trustee as the trustee would be if the trustee divulged the matter; and
- (e) for prescribing a scale of fees to be paid for audits; and
- (f) for prescribing that, in the absence of a written agreement to the contrary, the audit fees shall be paid by the trustee; and
- (g) for requiring such trustees or classes of trustees as are prescribed to deposit with the prescribed officer moneys, prescribed securities or the prescribed fidelity bond, up to an amount in each case not exceeding K10,000.00, by way of guarantee for the proper application by the trustees of trust moneys coming into their possession; and
- (h) for providing that–
 - (i) the interest (if any) on deposits made under Paragraph (g) shall be payable to the trustees; and
 - (ii) the deposits shall vary in amount according to the amount of trust moneys in the possession of the trustees during any prescribed period or according to such other conditions as are prescribed; and
- (i) in respect of moneys, securities and bonds deposited as prescribed by trustees, by way of guarantee, for providing for the recovery of moneys secured and the application of moneys deposited or recovered; and

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- (j) generally, for ensuring by the prescribed means that—
 - (i) trust accounts are kept and audited; and
 - (ii) persons beneficially entitled to moneys and securities held by trustees on trust are informed of their entitlements and of the investment of those moneys or securities; and
- (k) for prescribing penalties of fines not exceeding K200.00 for offences against the regulations.

Office of Legislative Counsel, PNG