

TRUST BILL

MEMORANDUM

The purpose of this Bill is to provide for the establishment of the Trust Commission and more clearly delineate the powers and duties of trustees and for the registration of non-governmental organisations.

Currently the law of trusts in Ghana is derived from the common law and the UK Act of 1860. Trust law was developed by the English Courts of equity and is a part of the common law which evolved into the laws of this country and is still retained as part of the existing law.

When the Courts Ordinance came into force in the then Gold Coast in 1876, one of the statutes of general application from the United Kingdom made to apply here was the U.K. Trustees Act of 1860 which dealt with the power of trustees to sell and renew leases and mortgages.

In 1925, the U. K. Parliament updated its law of trusts by passing the Trusts Act of 1925 but the old 1860 Act still applies in Ghana as part of the Statutes of General Application.

To date, the only other statutes concerning trusts in Ghana are the Public Trustee Ordinance of 1952 (No. 24) and the Trustees (Incorporation) Act, 1962 (Act 106). The Public Trustee Ordinance of 1952 creates the office of the Public Trustee and clothes the holder with corporate status. The Public Trustee operates under the Ordinance as a trustee with power to administer the properties of mentally incapacitated persons and to be appointed as an ordinary trustee among other functions.

Act 106 enables trustees of a voluntary association established for a religious, literary, scientific, sports or charitable purpose on registration under the Act, to become incorporated to hold immovable property in trust for the members of the relevant association. Since the enactments are restricted in their application, a law related to a trust which does not fall within their confines depends on the trust instrument as executed by the trustee. If the trust instrument does not state all the powers of the trustee and the rights of the beneficiaries, the Courts are left without adequate statutory guidance.

In the light of this situation, it is imperative to codify the law of trusts and non-governmental organisation for the benefit of all Ghanaians to make the legal position more certain.

The attached Bill was proposed by the Law Reform Commission and is based primarily on the U.K. Trusts Act as amended. This Bill however retains the strict accountability required of trustees who, once they accept to be trustees, must hold and manage the trust property with the same diligence and honesty as if the property were their own.

The Bill makes provision for the setting up of an independent body to oversee the activities of charities. The rate at which charities are springing up in the country is amazing. As a consequence, it has become necessary to set up a body to regulate the activities of these charities. Coupled with that, the head of the body who is designated as the Charities Commissioner is now to perform the functions of the Administrator-General and that of the Public Trustee. These functions currently by law are vested in the Registrar-General whose office is clearly over-burdened having regard to the enormous work on companies alone.

In accordance with the United Nations Security Council Resolution 1373, which enjoins United Nations Member States to enact laws criminalising the financing and other acts in support of terrorism, the Bill prohibits the use of charities to finance terrorists and other criminal acts.

The Bill is divided into groups of clauses. The Bill makes provision for the establishment of a Trust Commission which is a body corporate with the power to acquire movable and immovable property. Clause 1. The object of the Commission is spelt out in Clause 2. It is to provide for non-governmental organizations and trusts.

The Bill provides for the governing body of the Commission which is a Board consisting of a chairperson and representatives of various ministries, organizations, religious bodies and the Charities Commissioner (Clause 3). The functions of the Board are spelt out in Clause 4.

Clause 5 provides for the tenure of the office of the members of the Board which is for a period not exceeding four years.

The meetings of the Board is provided for under Clause 6. The Board shall meet at least once every three months for the dispatch of business at the times and in the places determined by the chairperson. The chairperson shall however in writing request one third of the membership of the Board to convene an extraordinary meeting of the Board.

The Bill also enjoins a member of the Board who has an interest in a matter for consideration by the Board to disclose it in writing the nature of that interest and

is disqualified from participating in the deliberations of the Board in respect of that matter (Clause 7).

The Bill also provides the Board with the discretion to appoint committees to perform functions for the Board or advise the Board (Clause 8)

Provision is made for the allowances of members of the Board under Clause 9. Under Clause 10 the Minister may give policy directives to the Commission to which the Commission shall comply.

The second group of clauses is under the heading – Non-governmental Organisations. The Bill spells out the meaning of a non-governmental organization as a civil society organisation formed independent of the government to pursue purposes that are not for profit but orientated towards public benefit. It may be national or international, secular or faith-based. It may also operate in fields such as health education, rural and urban development (Clause 11).

The privileges of non-governmental organizations and the taxation on incomes of employees of non-governmental organizations are provided for under Clauses 12 and 13.

Under Clause 14, non-citizens who propose to work for organisations are to be issued work permits.

The third group of clauses is on the creation and nature of trusts. The Bill on Clause 16 provides the essentials for the creation of a trust. It states that a person of full age and capacity may create a trust and vest the property in a trustee for a lawful purpose. A trust may be created through a bequest made in a will or by nomination for a benefit. The trust instrument must be in writing and signed by the creator of the trust in the presence of at least two witnesses.

Clause 17 states that a trust must be created for a lawful purpose while clause 18 indicates that a trust instrument must specify, inter alia, the intention to create a trust, the nature and purpose of the trust, its beneficiaries and the trust property. Furthermore, clause 18 (2) states that despite anything in the trust instrument, when all the beneficiaries of the trust attain the age of twenty-one they may terminate the trust.

Clause 19 stipulates that the trust property may consist of a movable or an immovable property or a legal or an equitable property. The clause further provides that the beneficial interest in a trust must be capable of being transferred to the beneficiary under the trust.

The qualifications of a trustee and the limitation on the number of trustees are specified in clause 21. A willing person with a capacity to contract and hold property may be appointed a trustee but no more than four trustees may be appointed except that where the property is immovable property at least two trustees shall be appointed (clause 20). As regards beneficiaries, a person may be made the beneficiary of a trust (clause 22).

The third group of clauses provides for the general powers of a trustee. Among these are the powers of a trustee to sell trust properties (clause 24). Under clause 25, a sale of property by a trustee cannot be challenged by a beneficiary unless it is shown that the purchase price was unduly low compared with prices of similar properties at the time of the sale or it appears that there was collusion between the purchaser and the trustee at the time of the contract for the sale.

The fourth group of clauses deals with the powers of a trustee to give a valid receipt for payments, transfers and deliveries made to the trustee in respect of trust property (clause 26); compound liabilities (clause 27) raising of money (clause 28), power to insure trust property (clause 30); power to deposit documents related to the trust for safe custody (clause 32); power to employ agents to act on behalf of trustees (clause 33); power to apply income from the trust for the maintenance of children (clause 34); to advance capital money of the trust for the benefit of a beneficiary (clause 35); circumstances under which liability is not incurred by a trustee when the trustee acts in good faith with a person holding a power of attorney (clause 36) and power to invest trust money (clause 38). Power is given to the court under clause 37 to suspend the exercise of these powers by a trustee by injunction or appointment of a receiver. The court is, however, enjoined not to interfere unless it considers that the trustee did not in the circumstances exercise a discretion in good faith.

The duties of a trustee are also specified under the fifth group of clauses. Once the trustee accepts the trust the trustee has a duty to comply with its terms and act impartially (clause 40 and 41). A trustee must be diligent (42), protect the beneficiary is not to challenge or assist a third party to challenge the beneficiary of the trust. (44) and pay trust money to persons entitled to it (clause 46). A trustee is in addition enjoined not to delegate the trustee's duties or powers except in specified circumstances set out under clause 47, among which are; where the trust instrument permits the delegation; necessity compels the delegation; or where the delegation relates to an administrative action or a matter not involved with the exercise of discretion.

Generally, it is the duty of a trustee to act jointly where there is more than one trustee, however, the trustee may act alone where the trust instrument so provides, a court so orders, or where the trustee is receiving trust money (clause

48). Under clauses 49 and 50 a trustee is to act gratuitously and not make profit from the trust property except in the given circumstances as set out in the clauses respectively. Under clause 51 a trustee is under a duty to keep current and accurate accounts of the trust and account to the beneficiary on request.

The sixth group of clauses deals with the death, retirement, removal of trustees and appointment of new trustees.

Under clause 52, when a trustee dies, the trustee's office passes to the remaining trustee. However, on the death of a sole trustee or a last surviving trustee, the personal representatives may exercise the powers of the deceased trustee.

Under sub-clause (3) of the clause, a person on whom the estate of a trust devolves is obliged to act as trustee but shall not act against the directions of a person vested with power to appoint a new trustee in substitution for the deceased one.

Clause 53 (1) deals with circumstances for retirement of trustees, these are - where the trust instrument expressly provides; on appointment of a new trustee by consent of all the beneficiaries being persons with capacity to contract; or by the order of a court.

Under clause 53 (2), a trustee may be removed from office where among others the trust instrument stipulates so in given circumstances; where the trustee is incapable of acting or refuses to act or if a court by order replaces the trustee.

Other circumstances for removal are: where the trustee behaves improperly; where the trustee is in a permanent condition of hostility with the trustee's co-trustee or the beneficiary; or if the trustee is convicted, adjudged bankrupt or stays permanently outside Ghana.

Clause 54 provides for circumstances for the appointment of new trustees. This happens where the trust instrument so provides or by an order of the court. Where a new trustee is appointed to a trust, the trustee is vested with the property jointly with existing trustees by transfer, a vesting declaration or a vesting order made by court (clause 55).

The seventh group of clauses deals with judicial trustees. A judicial trustee is a trustee appointed by the court on application by the creator of a trust, a trustee, beneficiary (clause 56). A judicial trustee must be a person with capacity to contract and hold property and may be a body corporate, a beneficiary, a spouse or a relation of a beneficiary, a lawyer to the trust or to any of the nominees earlier

mentioned or an existing trustee (clause 57). A judicial trustee is subject to the direction and supervision of the court in the exercise of the judicial trustee's powers. The judicial trustee's accounts are to be audited annually by an auditor appointed by the court. The court may at any time direct an inquiry into the administration of the trust and may with or without a request from a person give directions that it considers appropriate in respect of the trust. The court may order payment of remuneration for services of the judicial trustee. A judicial trustee may be suspended or removed by the court without an application from any person. The judicial trustee may however retire with the permission of the court.

The eighth group of clauses provides for charitable trusts. Clause 58 provides for the appointment of a Charities Commissioner who is a corporation sole. The functions of the Commissioner includes the registration of charities and non-governmental organisations, the investigation of the activities of a charity or a non-governmental organisation and the functions currently performed by the Administrator-General -clause 59. The President shall in accordance with article 195 of the Constitution appoint other staff of the Commission; the Commission shall engage other staff and public officers may be seconded (clause 60).

Under clause 61, it is provided that a charitable trust may be created for the benefit of a charity if the trust property is exclusively devoted to a charitable purpose, the object of the trust is not vague and uncertain, and the beneficiaries are reasonably identifiable. The clause further indicates some of the activities that constitute charitable purpose. This includes a trust for the advancement of education and religion.

The ninth group of clauses, clauses 62–64 deal with the registration of trustees of charities and organisations and the requirement for their registration. The charities which may apply for registration are similar to those under the existing Law, Act 106. In the case of these charities, however, it is mandatory that the association concerned must have at least three trustees and not more than seven trustees. The requirements of the registration of a charity are given in clause 63. The clause is a reproduction of the provisions of the existing Law, Act 106.

The Bill empowers the Board to refuse or revoke the registration of a charity where the Board has received information that an applicant for the registration of a charity is making available resources to a terrorist group or that the applicant is using the resource for any other criminal act (Clause 65). The applicant may apply to the High Court for a review of the decision of the Board to refuse or revoke that registration of the charity - clause 66. Where the Court upholds the decision of the Board, the Minister to whom functions under the Bill are assigned by the President, shall cause the refusal or revocation to be published in the *Gazette* - clause 67.

The effect of grant of certificate of incorporation is provided for in clause 68. A condition of direction contained in a certificate of incorporation is binding on the trustees - 69. The Commissioner is required under clause 70 to keep a record of applications for certificates of incorporation or charities and preserve a document sent to the Commissioner.

Where there are no trustees or a vacancy occurs in the number of trustees of a charity, the Commissioner may in writing direct the charity to appoint trustees to fill the vacancy - clause 71.

A charity including a non-governmental organisation shall keep books of account and proper records in respect of the accounts and also have their accounts audited by their auditors. A non-governmental organisation is required to submit an annual report of its activities to the Commissioner. The clause empowers the Commissioner to ask a charity to submit its accounts or a report as the Commissioner may determine - clause 72.

A charity may engage in a commercial activity if the charity pays the relevant tax - clause 73.

The tenth group of clauses deals with the role of the charities Commissioner. The Commissioner has corporate status and may act as an ordinary trustee, a custodian trustee, a judicial trustee or a trustee for mentally handicapped persons (clause 74). The Commissioner has the same powers, duties, liabilities, rights and immunities as a private trustee acting in the same capacity and is subject to the same control of the courts as any other trustee.

The Commissioner may decline to accept a trust but it should not be solely on the ground that the trust property is of little value (clause 74 (4)). However, the Commissioner must not accept a trust where the trust involves the management of business unless the Commissioner is authorised to do so by law; where the trust is to be managed under an arrangement for the benefit of creditors; or where the trust property is an estate known or believed by the Commissioner to be insolvent (clause 74 (4)).

Under clause 75 the Commissioner may be appointed as a custodian trustee in which event a managing trustee is appointed although the trust property will vest in the custodian trustee. The Commissioner may be appointed an original, new, sole or additional trustee under the same conditions as an ordinary trustee.

Under clause 78, the Commissioner may apply to the court to be directed to oversee settlement of the property of a person with mental disorders. The Commissioner may be requested by a receiver or a person who by law has an

interest in the property of a person with mental disorder to apply to the court for an order to administer the property of the person with mental disorder and where the Commissioner fails to do so, the person may make the application to the court with notice to the Commissioner.

The Commissioner is empowered to accept probate of a will or letters of administration (clause 80). Clause 81 deals with applications to the court by executors or administrators of the estate of a deceased for an order of the court to transfer the estate to the Commissioner to administer.

The eleventh group of clauses deals with finance and accounts. The Commissioner is entitled to charge fees prescribed by regulations for the Commissioner's services (clause 85). The Bill also deals with investigation and the audit of accounts of the Commissioner on the application to the court notified to the Commissioner.

The twelfth group of clauses deals with audit and inspection of trust accounts. The auditor who investigates the account is entitled to access the books and other information relevant to the trustee (clause 86). A beneficiary of a trust administered by the Commissioner may at any reasonable time inspect the accounts and other documents and at the beneficiary's own expense be supplied with copies (clause 88). An auditor examining the books of the Commissioner may be removed by the court and where the auditor dies or resigns, the court shall appoint a new auditor (clause 89). Where the auditor is obstructed an application may be made to the court for an access order (clause 90). An auditor appointed to investigate the books of the Commissioner is entitled to remuneration which is charged to the trust (clause 91).

The thirteenth group of clauses, 99-101 is on the rights of a trustee. These include the right to reimbursement and indemnity; the right to discharge after trusteeship; the right to pay funds into court.

The fourteenth group is clauses deals with the right of trustee or beneficiary to official audit; the right of trustee or beneficiary to seek the direction of court; and the right to have the trust administered under the direction of court.

The fifteenth group of clauses, clauses 105-108 deals with the protection of trustees in case of breach of trust. These include protection where trustee has acted reasonably and honestly (clause 105). In the case of the protection of protection of a trustee where there is found to be fraud on the part of the trustee the Limitation Decree, 1972 (SMCD 54) does not apply (clause 106). In case of recovery of property and action shall not be brought six years after the date of the accrual of the right to sue.

The sixteenth group of clauses deals with the liabilities of third party and beneficiaries. In clause 110 it is stated that a person who knowingly meddles with trust funds or aids in the commission of a breach of trust are jointly liable with the trustee of the trust and in this case may not plead the Limitation Decree, 1972, (NRCD 54). This is when an action is brought against the trustee based on fraud to recover trust property that is in possession or that has been used. The Bill also provides under clause 111 that trust property may be traced into the hands of third parties who will be mere trustees for the beneficiaries unless the person involved acquired the property for valuable consideration without notice before the completion of the transaction under certain circumstances. A sole beneficiary or all beneficiaries of twenty-one years and above as a trust may terminate the trust without the creator's consent (clause 112).

The seventeenth and last group of clauses are miscellaneous provision clauses 112–113. These include regulations to be made under this Bill. The Interpretation clause, clause 114, defines key words used in this Bill such as trust and trust property. Finally, the Repeals and Savings clause (clause 115) lists the enactments being repealed by the Bill and saves trusts and instruments legally made and in force at the commencement of the Act.

J. AYIKOI OTOO
ATTORNEY-GENERAL AND
MINISTER FOR JUSTICE

Accra

Date:

TRUSTS BILL

ARRANGEMENT OF SECTIONS

Trusts Commission

Section

1. Trusts Commission
2. Object of the Commission
3. Governing body of the Commission
4. Functions of the Board
5. Tenure of office of members
6. Meetings of the Board
7. Disclosure of interest
8. Appointment of committees
9. Allowances
10. Policy directives of the Minister

Creation and nature of trusts

11. Creation of trust
12. Lawful purpose
13. The trust instrument
14. Trust property
15. Two trustees at least for immovable property
16. Qualification to be a trustee and limitation on the number of trustees

Charitable Trusts

17. Kinds of charitable trusts
18. Creation of trusts for charity

Non-Governmental Organisations

- 19. Meaning of non-governmental organisation
- 20. Privileges of non-governmental organisations
- 21. Recommendations of Commission on organisations
- 22. District Assembly and applications for registration of organisations

Charities Commissioner

- 23. Charities Commissioner
- 24. Functions of the Commissioner
- 25. Appointment of other staff
- 26. Capacity of Commissioner
- 27. Commissioner as custodian trustee
- 28. Duties of a custodian trustee and managing trustee
- 29. Commissioner as an ordinary trustee
- 30. Appointment of the Commissioner to oversee property of a person with mental disorder
- 31. Execution of instrument to give effect to a settlement of a person with mental disorder
- 32. Commissioner's acceptance of probate of a will and letters of administration
- 33. Transfer of powers of executor or administrator to Commissioner

Registration of charities and organisations

- 34. Registration of trustees of charitable association
- 35. Requirements for registration of a charity
- 36. Requirements for registration of an organisation
- 37. Refusal or revocation of registration of a charity or organisation
- 38. Judicial review of refusal or revocation of registration of a charity or organisation

- 39. Determination by the Court
- 40. Effect of grant of certificate of incorporation
- 41. Compliance with conditions of certificate of incorporation
- 42. Record of applications
- 43. Vacancies and appointment of trustees
- 44. Annual reports, accounts and audit
- 45. Role of the Auditor-General
- 46. Engagement in business by charities and organisations

Duties of trustee

- 47. Acceptance of trust
- 48. Duty of trustee to comply with terms of the trust
- 49. Duty of trustee to act impartially
- 50. Duty to be diligent
- 51. Duty of trustee regarding perishable trust property
- 52. Duty of trustee to protect beneficiary
- 53. Duty of trustee in relation to the payment of outgoings out of capital and income
- 54. Duty of trustee to pay trust money to person entitled
- 55. Circumstances where a trustee may delegate the trustee's duties or powers
- 56. Duty of trustees to act jointly
- 57. Duty of trustee to act gratuitously
- 58. Duty of trustee not to make profit from trust property
- 59. Duty of trustee to keep current and accurate accounts

General powers of trustee

- 60. Restrictions on powers of trustee
- 61. Power of trustee to sell

- 62. Challenge to sale of trust property
- 63. Power of trustee to give valid receipt
- 64. Power to compound liabilities
- 65. Power of trustee to raise money
- 66. Joint trustees
- 67. Power to insure trust property
- 68. Application of insurance money
- 69. Deposit of documents for safe custody
- 70. Power to employ agents
- 71. Power to apply income for maintenance of a child
- 72. Power of advancement
- 73. Non-liability of trustee where acting with a person with power of attorney
- 74. Suspension of power of trustee by Court order
- 75. Power of investment

Rights of the trustee

- 76. Rights to reimbursement and indemnity
- 77. Rights to discharge after trusteeship
- 78. Right to pay trust funds into Court
- 79. Right of trustee or beneficiary to official audit
- 80. Right of trustee or beneficiary to seek the direction of the Court
- 81. Right to have the trust administered under direction of Court

Judicial trustee

- 82. Power of Court to appoint a judicial trustee
- 83. Persons for appointment as judicial trustees and their functions

Protection of trustee in case of breach of trust

- 84. Protection where trustee has acted reasonably and honestly
- 85. Limitation of actions by beneficiaries against trustee
- 86. Concurrence, waiver or release by the beneficiaries
- 87. Protection against acts of co-trustee

Death, retirement and removal of trustee and appointment of new trustee

- 88. Devolution of office and estate on death of trustee
- 89. Retirement and removal of trustee
- 90. Appointment of a new trustee
- 91. Vesting of trust property in new trustee

Finance and accounts

- 92. Funds of the Commission
- 93. Accounts and audit for the Commission
- 94. Annual report and other reports of the Commission
- 95. Chargeable fees by the Commissioner

Audit and inspection of trust accounts

- 96. Investigation and audit of trust account
- 97. Right of access to books of account, statement of account and other information
- 98. Right to inspect accounts
- 99. Removal or absence of auditor
- 100. Obstruction of auditor's access to documents
- 101. Remuneration of auditor
- 102. False statement

- [103. Commissioner to employ persons for trust](#)
- [104. Appointee of Commissioner](#)
- [105. Handling of bond or security](#)
- [106. Entry of Commissioner's name in company's books](#)
- [107. Official seal of a body corporate](#)
- [108. Redress against an act of the Commissioner](#)

Liability of third party and beneficiaries

- [109. Trustees entitled to contribution and indemnity by co-trustee or beneficiary](#)
- [110. Liability of third parties or beneficiaries as parties to a breach of trust](#)
- [111. Tracing trust property into the hands of third parties](#)
- [112. Power to terminate a trust](#)

Miscellaneous provisions

- [113. Regulations](#)
- [114. Interpretation](#)
- [115. Repeals and savings](#)

A
BILL
ENTITLED
THE TRUSTS ACT, 2006

AN ACT to establish the Trusts Commission, provide for the registration of trusts and non-governmental organisations and for related matters.

ENACTED by the President and Parliament:

Trusts Commission

Trusts Commission

1. (1) There is established by this Act a body to be known as the Trusts Commission.
- (2) The Commission is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) The Commission may for the performance of its functions acquire and hold movable and immovable property and may enter into a contract or any other transaction.
- (4) Where there is hindrance to the acquisition of property, the property may be acquired for the Commission under the State Property and Contracts Act, 1960 (C.A 6) or the State Lands Act, 1962 (Act 125) and the costs shall be borne by the Council.

Object of the Commission

2. The object of the Commission is to regulate trusts and non-governmental organisations.

Governing body of the Commission

3. (1) The governing body of the Commission is a Board consisting of
 - (a) the chairperson,

- (b) one representative from the Ministry of Manpower, Youth and Employment not below the rank of Director,
 - (c) one representative from the Ministry of Finance and Economic Planning not below the rank of Director,
 - (d) one representative from the Ministry of Local Government and Rural Development,
 - (e) one representative from the Registrar-General's Department not below the level of Principal State Attorney,
 - (f) one representative from the National House of Chiefs,
 - (g) one representative from the Christian group,
 - (h) one representative from the Federation of Muslim Councils and Ahmadiyya Mission,
 - (i) one representative from [a private voluntary organisation in development nominated by the Minister] the Ghana Association of Private Voluntary Organisation in Development,
 - (j) one representative from a corporate entity nominated by the Private Enterprise Foundation,
 - (k) one representative from a private trust nominated by the Minister,
 - (l) the Charities Commissioner, and
 - (m) one woman nominated by the Minister responsible for Women and Children's Affairs.
- (2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

Functions of the Board

4. The Board
- (a) shall register trusts and non-governmental organisations;
 - (b) shall maintain a register of trusts and non-governmental organisations and submit quarterly returns of the registration to the Ministry;
 - (c) shall oversee the activities of trusts and non-governmental organisations;

- (d) shall investigate the activities of a trust or a non-governmental organisation where it is considered expedient in the national interest to do so;
- (e) shall provide the procedure for the resolution of disputes among trusts and non-governmental organisations;
- (f) may register testate and intestate estates;
- (g) shall advise Minister on policy matters regarding non-governmental organisations;
- (h) shall promote effective working relationships between the government and non-governmental organisations;
- (i) shall ensure that trusts and non-governmental organisations fulfil their accountability obligations;
- (j) shall require trusts and non-governmental organisations to submit periodic reports on their activities to the Commission;
- (k) shall review the policy on non-governmental organisations when necessary;
- (l) shall develop a code of conduct for non-governmental organisations;
- (m) shall promote the formation of non-governmental organisations in the best interest of national development; and
- (n) shall perform any other function in furtherance of the object of the Commission.

Tenure of office of members

5. (1) A member of the Board shall hold office for a period not exceeding four years and is eligible for re-appointment but a member shall not be appointed for more than two terms.
- (2) Where a member of the Board, resigns, dies, is removed from office or is for a sufficient reason unable to act as a member, the Minister shall notify the President of the vacancy and the President shall, acting on the advice of the nominating authority and in consultation with the Council of State appoint another person to hold office for the unexpired portion of the member's term of office.
- (3) A member of the Board, may at any time resign from office in writing addressed to the President through the Minister.

- (4) A member of the Board, who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member of the Board.
- (5) The President may by letter addressed to a member revoke the appointment of that member.

Meetings of the Board

6. (1) The Board 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 convene an extra-ordinary meeting of the Board at the place and time determined by the chairperson.
- (3) The quorum at a meeting of the Board is six members of the Board or a greater number determined by the Board in respect of an important matter.
- (4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board elected by three members present from among their number shall preside.
- (5) Matters before the Board 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.
- (6) The Board may co-opt a person to attend a Board meeting but that person shall not vote on a matter for decision at the meeting.
- (7) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.
- (8) Subject to this section, the Board may determine the procedure for its meetings.

Disclosure of interest

7. (1) A member of the Board who has an interest in a matter for consideration by the Board shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board in respect of that matter.
- (2) A member who contravenes subsection (1) ceases to be a member.

Appointment of committees

8. The Board may appoint committees consisting of members of the Board or non-members or both
- (a) to perform a function of the Board determined by the Board, and
 - (b) to advise the Board on a matter referred to the committee.

Allowances

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

Policy directives of the Minister

10. The Minister may give policy directives in writing to the Commission and the Commission shall comply.

Creation and nature of trusts

Creation of trust

11. (1) A person of twenty-one years or above and of sound mind may create a trust and vest property in a trustee for a lawful purpose.
- (2) Despite anything contained in this section, a testator may state that the interest of a beneficiary under the testator's will shall be held in trust.
- (3) Where in a nomination for a benefit, a person names a beneficiary, the nomination constitutes, for the purposes of this Act, a trust in favour of the person so named.
- (4) A trust created after the commencement of this Act shall be in writing which shall constitute the trust instrument.
- (5) A person who creates a trust shall sign the trust instrument in the presence of at least two witnesses.

Lawful purpose

12. (1) A trust may be created for a lawful purpose.
- (2) The purpose of a trust is unlawful if

- (a) it is forbidden by or under a law,
 - (b) it is of a nature that if permitted it will contravene a law,
 - (c) it is fraudulent,
 - (d) it involves or implies injury to a person or damage to property of another, or
 - (e) a Court rules that it is immoral or against public policy or public interest.
- (3) A trust the purpose of which is unlawful is invalid; and where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is invalid.

The trust instrument

13. (1) A trust instrument shall specify,
- (a) the intention to create a trust,
 - (b) the nature and purpose of the trust,
 - (c) the beneficiaries of the trust,
 - (d) the conditions, under which the beneficiaries are to enjoy the benefits under the trust,
 - (e) the trust property,
 - (f) the date of the commencement of the trust,
 - (g) the duration of the trust,
 - (h) the circumstances under which the trust may be revoked,
 - (i) the method for appointment of a new trustee, where applicable, and
 - (j) the remuneration of the trustee.
- (2) Despite the provision on the duration of a trust in a trust instrument, when all the beneficiaries attain the age of twenty-one years, the beneficiaries may terminate the trust on that date.

Trust property

14. (1) The trust property may consist of movable or immovable property which is legal or equitable wherever it may be and an interest arising out of

that property unless the property is not transferable by an enactment or in relation to land, the condition under which the title is held is inconsistent with the trust intended to be created.

- (2) The beneficial interest in a trust is capable of being transferred to the beneficiary under the trust.
- (3) A person shall not create a trust in land located in Ghana for the benefit of a non-citizen which confers on the beneficiary a freehold interest in land or a leasehold interest in land of more than fifty years at any one time.

Two trustees at least for immovable property

15. Where the trust property consists of wholly or partly immovable property, the creator of the trust shall appoint at least two trustees.

Qualification to be a trustee and limitation on the number of trustees

16. (1) Subject to this section a person with capacity to contract and hold property may be appointed a trustee, except that a person is not bound to accept a trust and a proposed trustee may disclaim the office of trustee.
- (2) Except otherwise provided in this Act, the number of trustees shall not in any case exceed four and where more than four persons are named in the trust instrument as trustees, the first four named persons who qualify and are willing to act shall be the trustees.

Charitable Trusts

Kinds of charitable trusts

17. (1) A charitable trust shall be in the public interest and may be
 - (a) for the advancement of education,
 - (b) for the relief of poverty,
 - (c) for the advancement of religion,
 - (d) for the development of sports or recreational activities, or
 - (e) for any other purpose beneficial to a community.

- (2) A charitable trust may have access to public funds for development which may be from external development partners and the Government.

Creation of trusts for charity

18. A trust may be created for the benefit of a charity if
 - (a) the trust property is exclusively devoted to a charitable purpose,
 - (b) the object of the trust is not vague and uncertain, and
 - (c) the beneficiaries are reasonably identifiable.

Non-Governmental Organisations

Meaning of non-governmental organisation

19. (1) A non-governmental organisation is a civil society organisation formed to pursue purposes that are not for profit but orientated towards public benefit.
- (2) A non-governmental organisation may be national or international, secular or faith-based.
- (3) A non-governmental organisation may operate in a field which is not unlawful under this Act or under any other enactment.
- (4) A non-governmental organisation may operate across sectors or districts to provide service to the deprived, underprivileged and the general public.

Privileges of non-governmental organisations

20. (1) A non-governmental organisation registered under this Act
 - (a) qualifies for access to public funds for development which may be from external development partners and the Government,
 - (b) may benefit from tax exemption and customs duty waiver determined by the Minister in consultation with the Minister of Finance.
- (2) An application under subsection (1) shall be made to the Minister through the Board.

Recommendations of Commission on organisations

21. (1) The Commission shall make recommendations to the Minister for the Interior for the issue of work permits for non-citizens employed by an organisation.
- (2) The Commission shall recommend to the Commissioner of the Customs, Excise and Preventive Service for the waiver of customs duties on basic goods imported by an organisation to facilitate humanitarian assistance.

District Assembly and applications for registration of organisations

22. The Social Services Sub-Committee of a District Assembly shall forward the application for registration of an organisation to the Board for consideration.

Charities Commissioner

Charities Commissioner

23. (1) The President shall, in accordance with article 195 of the Constitution, appoint a Charities Commissioner.
- (2) The Charities Commissioner shall hold office on the terms and conditions in the letter of appointment.
- (3) The Charities Commissioner shall be the Chief Executive of the Commission.

Functions of the Commissioner

24. (1) The Commissioner is responsible for the day to day administration of the Commission and is answerable to the Board in the performance of duties.
- (2) The Commissioner shall perform the functions of the Administrator-General under the Administration of Estates Act, 1961 (Act 63).
- (3) Where in an enactment a reference is made to the Public Trustee or the Administrator-General, that reference shall be read and construed as a reference to the Commissioner appointed under section 23.

- (4) The Commissioner may delegate a function to an officer of the Commission but shall not be relieved from the ultimate responsibility for the performance of the delegated function.

Appointment of other staff

25. (1) The President shall in accordance with article 195 of the Constitution appoint other staff of the Commission.
- (2) The Commission shall have any other officers and staff that are necessary for the proper and effective performance of its functions.
- (3) The Commission may engage the services of consultants and advisers on the recommendations of the Board.
- (4) Other public officers may be transferred or seconded to the Commission or otherwise give assistance to it.

Capacity of Commissioner

26. (1) The Commissioner may, subject to this Act and the Regulations, act as
 - (a) a judicial trustee,
 - (b) a custodian trustee,
 - (c) a constructive trustee,
 - (d) an ordinary trustee, or
 - (e) trustee for a person with mental disorder.
- (2) Except otherwise provided in this Act, the Commissioner has the same powers, duties, liabilities, rights and immunities and is subject to the control and orders of the Court as an ordinary trustee acting in the same capacity.
- (3) The Commissioner may decline completely or on stated conditions to accept a trust but shall not decline to accept a trust on the sole ground that the value of the trust property is small.
- (4) The Commissioner shall not accept a trust
 - (a) that involves the management of a business unless the Commissioner is authorised to do so by law,
 - (b) that is under a deed of arrangement for the benefit of creditors, or

- (c) that relates to the administration of an estate known or believed by the Commissioner to be insolvent.

Commissioner as custodian trustee

- 27. (1) The Commissioner may be appointed a custodian trustee by
 - (a) an order of the Court made on an application of a person,
 - (b) the creator of the trust, or
 - (c) a person with power to appoint new trustees.
- (2) Where the Commissioner is appointed as a custodian trustee, there shall be appointed a managing trustee of the trust.

Duties of a custodian trustee and managing trustee

- 28. (1) Where the Commissioner is appointed a custodian trustee
 - (a) the trust property shall be transferred to the Commissioner and the Court may make an appropriate order for that purpose,
 - (b) the management of the trust property and the exercise of any power or discretion that could be exercised by a trustee shall remain in the managing trustee,
 - (c) the custodian trustee shall have custody of the securities or documents of title that relate to the trust property and the managing trustee shall have access to and may make copies of the documents of title,
 - (d) the custodian trustee shall agree to perform an act to enable the managing trustee exercise the powers or discretion unless the performance of an act will result in a breach of trust or involves a personal liability on the custodian trustee,
 - (e) the custodian trustee is not liable for an act or omission of the managing trustee if the custodian trustee has not agreed to the performance or omission of that act,
 - (f) a sum payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee, except that the custodian trustee may allow dividends and other income derived from the trust property to be paid to the managing trustee or to any other person or into a bank account to the credit of a person directed by the managing trustee,

- (g) the custodian trustee shall not be reckoned as a trustee in determining the number of trustees for the purpose of a law,
 - (h) the managing trustee shall exercise a power of appointment of new trustees,
 - (i) if the custodian trustee acts in good faith the custodian trustee is not liable for accepting as correct a written statement by the managing trustee that relates to the birth, death, marriage or other relationship on which the title to the trust property depends, or for acting on a legal advice obtained by the managing trustee,
 - (j) the Court may on the application of the custodian trustee, the managing trustee or any of the beneficiaries and on proof to its satisfaction that it is the wish of the beneficiaries to terminate the custodian trusteeship, make an order to that effect and make the ancillary orders as are necessary.
- (2) The provisions applicable to the Commissioner apply to a body corporate acting as a custodian trustee.

Commissioner as an ordinary trustee

29. (1) The Commissioner may be appointed to be the trustee of a will, settlement or any other instrument that creates a trust or to perform a duty for a trust that belongs to a class which the Commissioner is authorised under any other enactment or by Regulations made under this Act to accept.
- (2) Subject to this section, the Commissioner may be appointed as an original, new or additional trustee under the same conditions as an ordinary trustee.
- (3) Despite a provision of this Act, the Commissioner may be appointed as a sole trustee.
- (4) Where the Commissioner is appointed as a sole trustee, and there are two trustees, a co-trustee may retire from the trust.
- (5) Unless the Court otherwise orders, the Commissioner shall not be appointed as a new or additional trustee if the will, settlement or deed that created that trust contains a direction to the contrary.
- (6) A person who proposes to appoint the Commissioner as a new or additional trustee shall, where practicable, give written notice of this to a person who is beneficially interested in the trust resident in the country,

whose address is known to that person and if the beneficiary is a child, to the beneficiary's guardian.

- (7) If a person to whom a notice under subsection (6) is given applies to the Court within twenty one days from the receipt of the notice objecting to the appointment, the Court may, considering the interest of the beneficiary, make an order prohibiting the appointment of the Commissioner.

Appointment of the Commissioner to oversee property of a person with mental disorder

30. (1) The Commissioner may, without being appointed as a trustee or guardian for a person with mental disorder, apply to the Court to direct a settlement of the property of the person with mental disorder.
- (2) The Court may on the application direct settlement to be made of the property or an interest in the property of the person with mental disorder and may give directions where the
 - (a) property is acquired under a settlement, a will or an intestacy, or
 - (b) the Court is satisfied that a person may suffer injustice if the property devolves as undisposed of on the death intestate of the person with mental disorder or under a testamentary disposition executed by the person with mental disorder.

Execution of instrument to give effect to a settlement of a person with mental disorder

31. (1) The Court may direct the guardian or trustee of a person with mental disorder to execute a vesting instrument, trust instrument, conveyance or perform any act to give effect to a settlement.
- (2) A settlement to which effect is given and that is approved by the Court is binding on an interested person as if the settlement was executed by the person with mental disorder while of full capacity.
- (3) This section applies whether or not the person with mental disorder executes a testamentary disposition but does not apply if the person with mental disorder is a child.
- (4) A guardian or a person who by law has an interest in the property of a person with mental disorder may request the Commissioner to apply to the Court to administer the property of the person with mental disorder

and on the failure of the Commissioner to do so, may apply to the Court serving notice of the application on the Commissioner.

- (5) Where the devolution of the property of a person with mental disorder is subject to customary law, a person who has an interest according to the customary law has the same right as a person who under subsection (4) has an interest in the property of the person with mental disorder.
- (6) Subject to making provision out of the trust property for the maintenance of the person with mental disorder in accordance with the psychiatric patient's station in life, and to providing by a power of appointment, revocation or otherwise, for the possibility of the recovery of full capacity by the person with mental disorder, the Court may, in making an order under this section, have regard to
 - (a) the manner in which the property is settled, or dealt with on former occasions,
 - (b) the claims in the case of land, of relatives, employees or dependants to the use or occupation of land or houses built on it; and the expediency of the settlement of a personal estate to devolve from the land,
 - (c) the maintenance and education of the children of the person with mental disorder and the maintenance of the mother of the children,
 - (d) the maintenance of a spouse who does not have an interest in the trust property,
 - (e) the maintenance of the parents of the person with mental disorder,
 - (f) the provision of pensions or social security and the use of a part of the income for charitable purposes,
 - (g) the provision of a testamentary disposition of the person with mental disorder, and
 - (h) the expediency of providing for
 - (i) annual or capital charges and powers to create lease,
 - (ii) discretionary trust, trusts related to policies of insurance, sinking funds for making good loss by fire in line of or in addition to insurance,
 - (iii) the extension of a statutory power of investment, management or otherwise,

- (iv) the manner in which a cost is raised and paid,
 - (v) the beneficiaries, and
 - (vi) any other matter or thing that is material to the property to be settled.
- (7) At any time before the death of the person with mental disorder, the Court may on being satisfied in respect of a settlement made under this section that
- (a) a material fact was not disclosed to the Court when the settlement was made, or
 - (b) there has occurred a substantial change in the circumstances of the matter,
- by order vary the settlement and give any consequential directions.
- (8) For the purposes of this section, “testamentary disposition” means an instrument executed by the person with mental disorder while of full capacity which if unrevoked may on the death of the person with mental disorder be provided as a will or codicil.

Commissioner’s acceptance of probate of a will and letters of administration

32. (1) Where the Commissioner is authorised under an enactment to accept probate of a will or letters of administration, the Court may grant probate of the will or letters of administration to the Commissioner.
- (2) Where in an action of the estate of a deceased person, the Court decides that letters of administration shall be granted to the Commissioner, the consent of the Commissioner is not required for the grant of letters of administration except that the surviving spouse or next of kin, unless there is a good cause to the contrary, shall be preferred to the Commissioner in the grant of letters of administration.

Transfer of powers of executor or administrator to Commissioner

33. (1) An executor who has obtained probate or an administrator who has obtained letters of administration may with the permission of the Court and after notice to the persons beneficially interested in the estate as the Court may direct, transfer the estate to the Commissioner for the

administration either solely or jointly with the continuing executors or administrators, if any.

- (2) A Court that permits the transfer of an estate shall grant to the Commissioner the powers of the executor or administrator.
- (3) The executor or administrator is not liable for an act or a default in respect of the estate after a court order sanctions a transfer of that estate except that the executor or administrator is liable for the act or default of that executor or administrator or other persons for whose conduct the executor or administrator is in law responsible before the order.
- (4) The Court may, on the application of a person beneficially interested in a deceased's estate, appoint the Commissioner to replace the existing executor, administrator, guardian of a child or receiver of a person incapable of managing that person's own affairs.
- (5) Where the Commissioner may be appointed and a person beneficially interested in an estate is a child or incapacitated in law from managing that person's own affairs, the Commissioner may apply to the Court to be appointed to manage the affairs of the estate.

Registration of charities and organisations

Registration of trustees of charitable association

34. (1) The trustees of an unincorporated voluntary association of persons or body established for a religious, educational, literary, scientific, sports, social or any other charitable purpose may apply to the Board for registration as a charity.
- (2) An association or body shall not be registered under subsection (1) as a charity unless there are at least three trustees, but not more than seven trustees.

Requirements for registration of a charity

35. (1) The application for registration shall provide information regarding
 - (a) the object of the charity,
 - (b) the constitution, rules or regulations of the charity which shall include the tenure of office of the trustees and the method of appointing new trustees,

- (c) the dates and parties to a legal document or an instrument related to the trust,
 - (d) list of land that is held on behalf of the charity,
 - (e) the number, names, addresses and particulars of the trustees of the charity,
 - (f) the proposed title of the body corporate of which title the words “trustee” and “registered” shall form part,
 - (g) the proposed device of the official seal, and
 - (h) the regulations for the custody and use of the official seal.
- (2) The Commissioner may, having regard to the nature, object and any other circumstances of the association or body and that the trustees have been properly appointed, register the association or body as a charity and grant it a certificate of incorporation as a charity.

Requirements for registration of an organisation

36. (1) A person may apply to the Board for the registration of an organisation in the manner determined by the Board and pay the prescribed fee.
- (2) The application for registration shall include
- (a) the object of the organisation,
 - (b) the constitution of the organisation,
 - (c) the postal address and location of the organization,
 - (d) the name of the person establishing the organization.
- (3) The organisation shall submit an annual report of its activities to the Board within twelve months of registration.

Refusal or revocation of registration of a charity or organisation

37. (1) The Board may refuse or revoke the registration of a charity or organisation where information is received by the Board or a security service or an intelligence agency that there are reasonable grounds to believe that an applicant for registration of a charity or an organisation has made, is making, or is likely to make available resources directly or indirectly to a terrorist group or use the resources for any other criminal activity.

- (2) The Board may also refuse or revoke the registration of a charity or an organisation if there is reasonable cause to believe that it was founded unlawfully or for an unlawful purpose and is contrary to law, morals or the integrity of the Republic.
- (3) The refusal to register or the revocation of the registration of a charity or organisation shall be by a certificate issued by the Commissioner.
- (4) A copy of the certificate of refusal to register or the revocation certificate shall be served on the applicant personally or by registered letter sent to applicant's last known address.

Judicial review of refusal or revocation of registration of a charity or organisation

38. Within thirty days after receipt of the certificate of refusal to register or the revocation certificate, the applicant may apply to the Court for a review of the decision of the Board.

Determination by the Court

39. (1) The Court shall determine whether the refusal or revocation certificate is reasonable on the basis of the information available to the Court and if found unreasonable the Court, shall quash it and order the registration or continued registration of the charity or organisation by the Commissioner.
- (2) Where the Court determines that the issue of the refusal or revocation certificate was reasonable or if no application for judicial review is brought, the Minister shall cause the refusal or revocation certificate to be published in the *Gazette*.

Effect of grant of certificate of incorporation

40. (1) On the grant of a certificate of incorporation as a charity or registration as an organisation, the trustees or founders of the organisation shall
- (a) become a body corporate by the name described in the certificate, and
 - (b) as a body corporate have
 - (i) perpetual succession,
 - (ii) an official seal, and

- (iii) power to sue and be sued in its corporate name.
- (2) The trustees or founders may subject to conditions and directions in the certificate, hold and acquire, convey, assign and demise land belonging to or held for the benefit of the charity or organisation.
- (3) A certificate of incorporation as a charity or the registration of an organisation shall vest in the body corporate land that belongs to or is held by the charity or organisation.
- (4) A certificate of incorporation as a charity or the registration of an organisation is conclusive evidence that a preliminary requirement in respect of incorporation is complied with and the date of incorporation is the date specified in the certificate.
- (5) After the incorporation as a charity or the registration of an organisation, a donation, gift or disposition of land by deed, will or otherwise in favour of the charity or organisation, shall be made to and in the name of the body corporate.

Compliance with conditions of certificate of incorporation

- 41. (1) A condition or direction contained in a certificate of incorporation as a charity or the registration of an organisation is binding on the trustees.
- (2) The Board may, if the Commissioner is of the opinion that conditions contained in a certificate of incorporation or registration are not complied with or that the activities of the charity or an organisation are contrary to public interest, revoke the certificate of incorporation or registration.
- (3) On revoking a certificate of incorporation of a charity or the registration of organisation, the Board shall apply to the Court to make an order for the disposal of property held by the trustees or founder of the charity or organisation.

Record of applications

- 42. (1) The Board shall
 - (a) keep a record of applications for certificates of incorporation of charities or the registration of organisations, and
 - (b) preserve a document sent to the Board under this Act.

- (2) Where a person requires a copy or an extract of a document preserved under subsection (1)(b), the Commissioner may appoint any other person to certify the copy or extract of the document.

Vacancies and appointment of trustees

43. (1) The Commissioner may apply to the Court to appoint trustees of a charity or an organisation where there are no trustees or a vacancy occurs in the number of trustees of a charity or organisation.
- (2) Where a certificate of incorporation for a charity or the registration of an organisation is granted, a vacancy in the number of trustees shall be filled as required by
 - (a) the constitution of the charity or organisation,
 - (b) the conditions or directions previously stated, or
 - (c) the legal means available for the appointment of new trustees.
- (3) The appointment of a new trustee shall be notified to the Commissioner on appointment.

Annual reports, accounts and audit

44. (1) A charity or a registered organisation shall keep proper books of account and proper record in respect of the accounts.
- (2) A charity or a registered organisation shall have its accounts audited by its auditors.
- (3) The Board may require a charity or a registered organisation to submit accounts and reports as determined by the Board and a copy of the audit report shall be submitted with the annual report to the Commissioner.
- (4) A registered organisation shall submit an annual report in a prescribed form to the Commissioner covering its activities for the period from 1st January and ending on 31st December within three months after the 31st December of the preceding year.
- (5) An auditor under this section shall not be an employee, manager or director of the charity or registered organisation.

Role of the Auditor-General

45. (1) In accordance with the Audit Service Act, 2000 (Act 584) the Auditor-General may at the request of the Board, carry out a special audit or review of a charity or registered organisation in the public interest.
- (2) In exercise of the power under subsection 1, the Auditor-General shall have access to the books, records, returns and other documents including documents in computerized and electronic form related to the public funds of a charity or registered organisation.
- (3) The Auditor-General may issue instructions regarding the conduct of the audit or conduct a supplementary audit.

Engagement in business by charities and organisations

46. A charity or organisation may engage in trading or business in the course of carrying out its primary purpose, but the income derived shall be paid into its funds subject to the payment of the relevant tax.

Duties of trustee

Acceptance of trust

47. (1) On the acceptance of a trust, the trustee is in a fiduciary relationship and shall become acquainted as soon as possible with the nature and circumstances of the trust property, the terms of the trust and the contents of documents relating to the trust.
- (2) The trustee shall declare any circumstance that may lead to a conflict of interest.

Duty of trustee to comply with terms of the trust

48. (1) A trustee shall obey the lawful terms of the trust instrument except where the terms are modified by the consent of the beneficiaries.
- (2) Where a disposition or other transaction is expedient for the management or administration of a property vested in a trustee but cannot be effected because the relevant power is absent from the trust, the trustee may apply to the Court for an order generally or specifically for the purpose on the terms and conditions determined by the Court.

- (3) The Court may further order the manner in which costs of a transaction shall be paid as between capital and income and not as income.
- (4) A trustee who without an order of the Court deviates from the terms of the trust is under an obligation to satisfy the Court of the necessity for the deviation.

Duty of trustee to act impartially

49. (1) A trustee shall act impartially in the execution of the trust and shall not exercise the trustee's powers in a manner that confers an advantage on one beneficiary at the expense of another beneficiary of the trust.
- (2) Where the capital of trust property appreciates, the appreciation accrues for the benefit of the beneficiaries and shall be treated as capital.
- (3) Unless prohibited by the terms of the trust instrument, a trustee may pay over a share of the trust property to a beneficiary entitled, without liability for a subsequent inequality that may occur due to the depreciation of the investment of one share or the appreciation of the investment of any other share.

Duty to be diligent

50. (1) Subject to subsection (2), a trustee shall execute the trust and deal with the trust property as carefully as an individual of ordinary prudence would deal with the property if the property were that of the individual.
- (2) A trustee, whether remunerated for the services done or not shall exercise a high standard of diligence and act honestly and reasonably.
- (3) Where a trustee acts on the advice of the trustee's lawyer and a breach of the trust occurs, the trustee shall pay the costs of an action arising from the breach and may take action as the trustee considers fit against the lawyer.

Duty of trustee regarding perishable trust property

51. Where a trust is created for the benefit of several persons in succession and the property is of a perishable nature or a future or reversionary interest, the trustee shall, unless a contrary intention can be inferred from the trust instrument, convert the trust property into property of a permanent and profitable character.

Duty of trustee to protect beneficiary

52. A trustee shall not set up, nor assist a person to set up a title to the trust property or to a part of it which is adverse to the interest of a beneficiary and shall generally protect the interest of the beneficiary.

Duty of trustee in relation to the payment of outgoings out of capital and income

53. Subject to the terms of the trust instrument and the relevant enactment,
- (a) the capital of trust property shall bear interest,
 - (b) where the current income is insufficient for the purpose of the trust, the trustee shall pay the accrued arrears out of subsequent income,
 - (c) the trustee shall use the income of trust property to meet current expenses including the entire cost of keeping leaseholds in repair, and
 - (d) where a trust freehold property needs repairs or moneys are payable for the renewal of leases or repairs of leasehold property, the Court may confer power on the trustee to raise the necessary amount as is equitable between income and capital.

Duty of trustee to pay trust money to person entitled

54. A trustee shall pay trust money to a person entitled to it and where the trustee is in doubt the trustee shall apply to the Court for direction.

Circumstances where a trustee may delegate the trustee's duties or powers

55. A trustee shall not delegate a function of the trustee including the exercise of a discretion to a co-trustee or any other person except
- (a) where the trust instrument states so,
 - (b) where the trustee employs an agent in good faith to transact a business or to take an action in execution of the trust,
 - (c) where the trustee appoints a person to act as the trustee's attorney for the purpose of insurance, administering and managing trust property located outside Ghana, or to exercise a discretion or power vested in the trustee in relation to property with

ancillary powers subject to the restrictions as the trustee may consider,

- (d) where the trustee appoints a lawyer or banker to be the trustee's agent to receive and give a discharge for trust money or property executed by deed or under an insurance policy, provided the money or property does not remain in the agent's control longer than necessary,
 - (e) where the delegated duty is merely administrative and does not involve the exercise of discretionary power,
 - (f) where the trustee is obliged to do so out of necessity, or
 - (g) where the trustee intends to remain outside Ghana for more than six months.
- (2) For the purposes of subsection (1) (g) a trustee in delegating a function shall
- (a) not appoint a co-trustee to act for the trustee if there are more than two trustees, and
 - (b) file within ten days a power of attorney and a statutory declaration at the Court which states that the trustee intends to remain outside the country for more than one month and the trustee shall revoke the power of attorney on the return of the trustee.

Duty of trustees to act jointly

56. Two or more trustees of a private trust shall jointly execute a trust except where,
- (a) the trust instrument or the Court otherwise directs,
 - (b) a trustee is receiving trust income, or
 - (c) a trustee can delegate the function of the trustee in accordance with this Act.

Duty of trustee to act gratuitously

57. A trustee shall not be remunerated for the discharge of a duty except where
- (a) the trust instrument expressly provides for remuneration,

- (b) remuneration is specifically asked for at the time of accepting the trust and the beneficiaries of the trust willingly agree that the trustee be remunerated,
- (c) a person who is not a trustee trades with money in circumstances which make the trustee a constructive trustee of the profits,
- (d) the trust property is located outside the country and the local courts permit a trustee to receive remuneration, or
- (e) the Court so orders.

Duty of trustee not to make profit from trust property

58. (1) A trustee shall not use or deal with trust property for the trustee's own profit or for a purpose that is not connected with the trust.
- (2) A trustee may purchase, lease or accept a mortgage of trust property if it is directly from the beneficiaries of the trust.
- (3) A trustee shall not purchase, lease or accept a mortgage of trust property from any other trustee of the trust unless
- (a) the trust instrument expressly provides otherwise,
 - (b) the Court permits otherwise, or
 - (c) a contract made before the trustee was appointed states so.
- (4) Where a trustee purchases, leases or accepts a mortgage of trust property from the beneficiaries and the transaction is challenged the trustee shall prove that
- (a) the trustee did not influence the beneficiaries of the trust property,
 - (b) the transaction was to the advantage of the beneficiaries,
 - (c) full information was given to the beneficiaries of the value of the property, the nature of the trustee's interest and the circumstances of the transaction, and
 - (d) the trustee qualifies to become a purchaser on retiring from the trusteeship.
- (5) A trustee does not qualify to become a purchaser of a trust property except where the trustee retires from the trusteeship for that purpose.

Duty of trustee to keep current and accurate accounts

59. (1) A trustee shall keep current and accurate accounts of the trust property.
- (2) A trustee shall at the request of a beneficiary give the beneficiary full and accurate information of the value and condition of the trust property.
- (3) A trustee shall permit a beneficiary, a lawyer or any other professional representative of the beneficiary to inspect the accounts, vouchers and any other documents that relate to the trust property.
- (4) A trustee is not obliged to supply to a beneficiary copies of accounts or trust documents or to supply information which involves expenses unless it is asked for and paid for by the beneficiary.

General powers of trustee

Restrictions on powers of trustee

60. (1) A trustee shall not sell, mortgage, exchange, divide or partition the trust property unless the action is permitted
- (a) expressly or impliedly under the trust instrument;
- (b) under an enactment; or
- (c) by an order of the Court.

Power of trustee to sell

61. (1) Subject to this Act where power of sale of trust property is vested in a trustee, the trustee may
- (a) sell or agree with any other person to sell all or a part of the trust property
- (i) either subject to prior charges or not;
- (ii) either together or in lots;
- (iii) by public auction or by private contract; or
- (iv) subject to conditions relating to title or evidence of title or other matter as the trustee thinks fit;

- (b) vary a contract of sale;
 - (c) rescind a contract of sale; or
 - (d) resell the property.
- (2) Subject to a provision to the contrary in the trust instrument, a power to sell or dispose of land includes a power to sell or dispose of a part of the land irrespective of the type of division.

Challenge to sale of trust property

62. (1) A beneficiary shall not challenge a sale made by a trustee on the ground that the conditions subject to which the sale was made may have been unnecessarily depreciatory unless the beneficiary proves that the consideration for the sale was inadequate.
- (2) A sale made by a trustee in good faith shall not, after the execution of the conveyance, be challenged against a purchaser on the ground that a condition subject to which the sale was made may have been unnecessarily depreciatory, unless the beneficiary proves that the purchaser was acting in collusion with the trustee at the time the contract for sale was made.

Power of trustee to give valid receipt

63. (1) Subject to section 62 a receipt in writing given by a trustee for money, securities or any other personal property or effects paid, transferred, or delivered to the trustee in respect of a trust property is sufficient discharge to the person paying, transferring or delivering and shall exonerate that person from a loss or misapplication by the trustee.
- (2) Except in the case of a trust corporation, a sole trustee cannot give a valid receipt for the proceeds of a sale or other capital money arising from the sale of land subject to the trust.
- (3) This section applies despite anything to the contrary in the trust instrument.

Power to compound liabilities

64. (1) Subject to this Act, two or more trustees acting together or a sole trustee may
- (a) accept a property before the time at which it is made transferable or payable,

- (b) sever and apportion mixed trust funds or property,
 - (c) pay or allow a debt or claim on an evidence that the trustees or the sole trustee think sufficient,
 - (d) accept a composition or security for a debt or for a property claimed,
 - (e) allow time for payment of a debt;
 - (f) compromise, compound, abandon, submit to arbitration, or otherwise settle a debt, account, claim or thing that relates to the trust.
- (2) For the purposes under subsection (1), a trustee may enter into, give and execute agreements, instruments of composition or arrangement, releases and any other things that are expedient to the trustee, without being responsible for a loss caused by an act done by the trustee where the trustee acted in good faith, with due diligence and on competent professional advice.

Power of trustee to raise money

65. (1) Where a trustee is authorised by the trust instrument or by a law to pay or apply the capital money of the trust for a purpose or in a manner, the trustee may raise the money required by sale, conversion, calling in or mortgage of all or a part of the trust property.
- (2) Where a trustee is authorised to pay or apply capital money as provided in subsection (1), the trustee may raise money in the manner described despite a provision to the contrary in the trust instrument, but not where the property is held for a charitable purpose.

Joint trustees

66. (1) Where a power or trust is given or imposed on two or more trustees, it may be exercised by the survivors except that where the power is imposed on two trustees jointly, the survivor may not exercise the power until a new trustee is appointed.
- (2) Until the appointment of the new trustee under subsection (1) the personal representative of the deceased trustee may exercise the power of the deceased trustee.

Power to insure trust property

67. A trustee may insure a building or other insurable property against loss or damage, for an amount, including the amount of an insurance already in force, to the full value of the building or any other property concerned and pay the premium in respect of the insurance out of the income of the building or property concerned or out of the income of any other property subject to the same trust without obtaining the consent of the person who may be entitled wholly or partly to the income.

Application of insurance money

68. (1) Money received by a trustee or a beneficiary under a policy of insurance against loss or damage of a property subject to a trust is capital money for the purposes of the trust.
- (2) Where the insurance money is receivable by a person who is not a trustee, that person shall try to recover the money and shall, after paying for the cost involved in the recovery of the insurance money, pay the residue to the trustee or if there is no trustee capable of giving a discharge, pay it into Court.
- (3) Where the insurance money is received
- (a) in respect of property held on trust for sale, the provisions applicable to money received by a sale under the trust shall apply to the money;
 - (b) in any other case, the money shall be held on trust corresponding as nearly as may be to the trust affecting the property in respect of which it was paid.
- (4) Insurance money or a part of it may also be applied by the trustee, or if in Court, by the direction of the Court, in rebuilding, reinstating, replacing or repairing the property lost or damaged, but the application by the trustee is subject to the consent of the person whose consent is required under the trust instrument in respect of investment of money under the trust.
- (5) This section does not limit or affect the right of a person to require that the insurance money or part of it shall be applied in re-building, reinstating, repairing the lost or damaged property or the rights of the mortgagee, lessor, lessee, whether under a statutory provision or otherwise.

- (6) This section applies to insurance policies effected after the commencement of this Act.

Deposit of documents for safe custody

69. (1) A trustee may deposit for safe custody a document that relates to the trust or trust property with a bank or any other company that undertakes safe custody of documents.
- (2) A sum payable in respect of the deposit shall be charged on the trust income.

Power to employ agents

70. (1) Subject to this Act, a trustee may employ and pay an agent with the requisite qualification to transact business or do an act required to be done in the execution of the trust, including the receipt and payment of money.
- (2) A trustee is entitled to be paid the charges and expenses incurred in respect of the agency and is not responsible for the default of the agent if employed in good faith by the trustee.
- (3) A trustee may appoint an agent with the requisite qualification in respect of trust property located outside the country with ancillary powers which may include a power to appoint substitutes.
- (4) In addition to subsections (1), (2) and (3) a trustee
 - (a) may appoint a lawyer as agent to receive and give a discharge for money or valuable consideration received, supported by a deed executed by the person entitled to give a receipt for the money or consideration and the deed shall take effect as if the person appointing the lawyer had not been a trustee, and
 - (b) may appoint a banker to receive and give a discharge for money payable under a policy of insurance by permitting the banker to have the custody of and to produce the policy.
- (5) A trustee is absolved from a breach of trust with respect to the appointment of a banker or a lawyer as agent except where the trustee permits money or valuable consideration to remain with the banker or the lawyer for a longer period than necessary.

Power to apply income for maintenance of a child

71. (1) Where property is held in trust for a child, the trustee may, subject to a prior interest or charge affecting the property, apply all or a part of the income of the property for the maintenance, education or benefit of the beneficiary during childhood.
- (2) A trustee may exercise the power under subsection (1) whether or not there is another fund available for the same purpose or some other person is bound by law to provide for the maintenance and education of the child.
- (3) In deciding whether the whole or a part only of the income is to be applied for the purposes of subsection (1), the trustee shall consider
- (a) the age and requirements of the child,
 - (b) the special circumstances of the child, and
 - (c) any other income available for the child
- and where the trustee becomes aware of some other fund available for the child, unless the entire income of the funds is required for the purposes of this section or the Court directs otherwise, a proportionate part of the income of each fund shall be applied for the purposes of this section.
- (4) The income may be
- (a) paid to the parents or guardian of the child, or
 - (b) applied directly by the trustee
- and for the purposes of this section for the maintenance and education of the child.
- (5) Where part of the income is applied under this section, the trustee shall invest the unapplied income at compound interest and hold the accumulation but the trustee may at any time during the childhood of a beneficiary with a subsisting interest apply all or a part of the accumulated income over the years for the purposes of this section as if it were income of the current year.
- (6) Unless the beneficiary attains a vested interest or dies or the interest fails, the trustee shall pay the income of the property and the accumulation under subsection (5) to the beneficiary on the beneficiary attaining the age of twenty-one years.

- (7) The trustees shall hold the accumulation in trust for the beneficiary, where the beneficiary
 - (a) attains the age of twenty-one years or marries under that age and the beneficiary's interest in the income during childhood or until the beneficiary's marriage is vested interest; or
 - (b) on attaining the age of twenty-one years or on marriage under that age becomes entitled to the property from which the income arose.
- (8) A receipt given by a child beneficiary of the trust property who is married is a good discharge for the trustee.
- (9) Subject to subsections (5), (6) and (7), the trustee shall despite the beneficiary's vested interest in the income, hold the accumulation as accretion credit towards the capital of the property from which the accumulation arose.
- (10) This section applies to
 - (a) a contingent interest if the limitation or trust carries the intermediate income of the property;
 - (b) a future or contingent legacy by a parent or guardian of the legatee if the legacy carries interest for the maintenance of the legatee; and
 - (c) a vested annuity in the same manner as if the annuity were income of the trust property held by the trustee to pay the income to the annuitant for the period for which the annuity is payable; except that the accumulations made during the childhood of the annuitant is held in trust for the annuitant or the annuitant's personal representative.

Power of advancement

- 72. (1) Unless a contrary provision is contained in a trust instrument, a trustee may pay or apply capital money of the trust for the advancement or benefit of a beneficiary entitled to the capital of the trust property or a part of the capital on the beneficiary's attainment of a specified age or on the occurrence of any other event.
- (2) The capital money may be paid or applied although the beneficiary's interest may be
 - (a) diminished because of an increase of the class of beneficiary to which that beneficiary belongs, or

- (b) defeated by the exercise of a power of appointment or revocation.
- (3) The money paid or applied for the advancement or benefit of the beneficiary shall not exceed half of the presumptive or vested share or interest of that beneficiary in the trust property.
 - (4) Money paid or applied for the advancement or benefit of a person shall be taken into account when determining entitlements or shares in the trust property.
 - (5) A payment or application shall not be made under subsection (1) which adversely affects the vested or contingent interest of a person entitled to a prior life or other interest in the money applied unless the affected person is in existence, is of the age of twenty-one years and sound mind and consents in writing to the payment or application.
 - (6) The power of advancement under this section applies only where the trust property consists of money or securities other than land held on trust for sale.

Non-liability of trustee where acting with a person with power of attorney

73. (1) A trustee who acts with or pays money to a person in good faith without notice under a power of attorney held by that person, is not liable where at the time of the act or payment, the person who gave the power of attorney was subject to a disability, was bankrupt, was deceased or had taken some action to make the power invalid.
- (2) Subsection (1) does not affect the right of the person entitled to the money from claiming against the person to whom the payment is made.

Suspension of power of trustee by court order

74. (1) Where the Court gives judgment for the execution of a trust, grants an injunction or appoints a receiver, the trustee may not exercise the trustee's powers except with the approval of the Court.
- (2) Despite subsection (1) the Court shall not interfere with a discretion reposed in the trustee if it is exercised in good faith.
- (3) An order of the Court for administration does not absolve a trustee or a personal representative from the discharge of the trustee's duties but the approval of the Court shall be obtained for any transaction carried out and relevant to the order.

Power of investment

75. (1) Unless the trust instrument otherwise provides, a trustee may invest trust money in Government stocks, bonds and treasury bills.
- (2) A trustee shall not invest trust money in private companies or shares dealt in on a stock exchange except with the consent of the beneficiaries or in the absence of the consent, under an order of Court.

Rights of the trustee

Right to reimbursement and indemnity

76. (1) A trustee is entitled to be reimbursed out of the trust property for an expense properly incurred and with interest if the trustee has paid an interest bearing claim.
- (2) A trustee has a lien for expenses on both capital and income in priority to the claims of the beneficiaries of the trust.
- (3) Where the only beneficiary of a trust is a person of twenty-one years and of sound mind who knows that the legal ownership of the trust property is vested in the trustee, the right of the trustee to indemnity against liabilities incidental to the legal ownership is not limited to the trust property but enforceable in equity against the beneficiary personally unless the beneficiary can disclaim the property.
- (4) A trustee who commits a breach of trust is not entitled to the expenses unless the trustee remedies the breach.
- (5) Where a person has a claim against a trustee and by the terms of the trust, the trustee is entitled to be indemnified against the claim, that person may be substituted in place of the trustee to make the claim against the fund of the trust expressly dedicated for the purpose.

Right to discharge after trusteeship

77. (1) On completion of the trusteeship a trustee is entitled to have
- (a) the trustee's accounts examined and settled by the beneficiaries of the trust, and
- (b) a formal discharge given to the trustee or have the accounts taken in the Court,

but shall not demand a release under seal or keep deeds that relate to the trust or to the title of an assign of an original beneficiary.

- (2) A trustee shall on completion of the trusteeship be entitled to an examined copy of deeds that relate to the trust and to an acknowledgment for production and an undertaking for safe custody of the document.

Right to pay trust funds into Court

78. (1) A trustee or the majority of trustees who have in their possession or under their control money or securities that belong to a trust may pay them into the Court.
- (2) If a trustee pays money into court in order to raise an issue which can be determined by a cheaper means or where the equities are clear the trustee shall pay the costs of retrieving the money from court.

Right of trustee or beneficiary to official audit

79. Unless the Court otherwise orders, the condition and accounts of a trust shall on an application made and notice given by a trustee or beneficiary be investigated and audited by an accountant appointed by the applicant or by the Commissioner.

Right of trustee or beneficiary to seek the direction of the Court

80. (1) In addition to the right of action of a trustee or a beneficiary under a law, a trustee or beneficiary under a trust instrument may by an application to the Court seek relief in relation to any of the following issues
 - (a) the ascertainment of a class of creditors, legatees, or devisees, next of kin or others,
 - (b) the approval of a specific sale, purchase, compromise or any other transaction,
 - (c) the direction of the trustee to do or abstain from doing a specified act which is the trustee's duty,
 - (d) the direction for the payment into court of money that is in the hands of the trustee, and
 - (e) any other question arising out of the administration of the trust including the interpretation of the trust instrument.

- (2) Where a trustee seeks to have a trust instrument interpreted for guidance or to have an issue arising out of the administration determined, the Court shall not order the cost of a party to be paid out of the trust funds but shall be paid as legal fee between lawyer and client.
- (3) Where a beneficiary makes an application in the circumstances stated in subsection (2), the procedure applicable to costs shall operate except that the Court shall give a separate set of costs to a trustee who is allowed to sever from the trustee's co-trustee.

Right to have the trust administered under direction of Court

81. (1) A trustee who desires to be discharged from the office of trustee may institute an action for the administration of the trust by the Commissioner.
- (2) A trustee or beneficiary may institute an action for the administration of the trust where
- (a) issues arise that can only be determined by the Court, or
 - (b) it is dangerous to administer the trust except under the direction of the Court.
- (3) The Court is not obliged to make an order for administration if the issue among the parties can be determined without the Court.
- (4) A trustee shall bear the costs of an action the trustee institutes where,
- (a) the equities are clear and unambiguous,
 - (b) the trustee desires to be released from the trust for no tangible reason,
 - (c) there is no genuine difficulty in administering the trust,
 - (d) there is no reasonable allegation of dishonesty or incompetence against any other trustee, or
 - (e) the trustee acts bona fide but without genuine cause.
- (5) Where payment into court or a summons in chambers may determine an issue and a trustee institutes an action in respect of the issue, the trustee is liable for the consequent extra costs.

Power of Court to appoint a judicial trustee

82. The Court may on an application made to it by or on behalf of

- (a) a person creating a trust,
- (b) a trustee, or
- (c) a beneficiary of a trust,

appoint a person to be a judicial trustee for the trust, jointly with any other person or as a sole trustee in place of an existing trustee.

Persons for appointment as judicial trustees and their functions

83. (1) The Court may appoint as a judicial trustee a person with capacity to contract and hold property, nominated in the application made to the Court.

(2) The judicial trustee may be

- (a) a body corporate,
- (b) the Charities Commissioner appointed under section 43,
- (c) a spouse or relative of a beneficiary,
- (d) a lawyer to the trust or to any of the parties mentioned in paragraphs (a) to (c), or
- (e) an existing trustee.

(3) In the absence of a nomination in an application or where the Court disapproves a nomination, the Court may appoint any other person as a judicial trustee.

(4) A judicial trustee shall give security.

(5) The Court may order that a judicial trustee is paid remuneration for the judicial trustee's services.

(6) A judicial trustee shall within one month from the date of appointment furnish the Court with a statement of the trust property indicating an estimate of the income and capital value of each item.

(7) An officer shall audit annually the accounts of a judicial trustee or a professional accountant appointed by the Court.

- (8) The person appointed to audit the accounts of a judicial trustee shall file the accounts in a form as directed by the Court.
- (9) A judicial trustee shall send a copy of the accounts or a summary of the accounts to the beneficiaries of the trust and any other person as directed by the Court.
- (10) A judicial trustee shall pay the money that the judicial trustee receives within two weeks of its receipt into the trust account at a bank appointed by the Court and in default, the judicial trustee is liable to pay interest at the prevailing commercial bank rate at the time of payment.
- (11) The Court may direct an inquiry into the administration of the trust and may with or without request give directions that relate to the trust or its administration.
- (12) A judicial trustee is subject to the control and supervision of the Court and may request for directions from the Court.
- (13) A judicial trustee may be suspended or removed by the Court without an application.
- (14) A judicial trustee may with the permission of the Court retire.

Protection of trustee in case of breach of trust

Protection where trustee has acted reasonably and honestly

84. (1) The Court may relieve a trustee from personal liability for a breach of trust if the trustee has acted in good faith.
- (2) The burden of proving honesty or reasonableness is on the trustee and is a question of fact dependent on the circumstances of each case.

Limitation of actions by beneficiaries against trustee

85. (1) A statutory period of limitation does not apply to an action by a beneficiary under a trust against a trustee of that trust if the action relates to
 - (a) an offence under the Criminal Code, 1960 (Act 29) to which the trustee is a party or privy, or
 - (b) the recovery from the trustee of the trust property or its proceeds in the possession of the trustee or used by the trustee.

- (2) Subject to subsection (1) an action to recover trust property in respect of a breach of trust shall not be brought six years after the date on which the cause of action accrues.
- (3) A right of action is not considered to have accrued to a beneficiary entitled to a future interest in the trust property until the interest falls into possession.
- (4) A beneficiary against whom there is a defence under the Limitation Decree, 1972 (N.R.C.D. 54) shall not receive a benefit from a judgment or order obtained by any other beneficiary that the beneficiary could have obtained if that beneficiary had brought the action.
- (5) Subject to subsection (1), an action shall not be brought in respect of a claim to the personal estate of a deceased person after the expiration of twelve years from the date when the right to receive a part of the personal estate accrued.
- (6) A statutory limitation period may be extended if a party to an action is or is an enemy or prisoner of war except that the period shall not expire twelve months after that party ceases to be an enemy or prisoner.

Concurrence, waiver or release by the beneficiaries

86. (1) A beneficiary who assents or consents to a breach of trust or who subsequently releases or confirms the breach cannot hold the trustee responsible if the beneficiary
 - (a) was twenty-one years and without mental disorder at the date of the assent or release,
 - (b) had knowledge of the facts and was aware of the legal effect of the beneficiary's actions, and
 - (c) was not unduly influenced to assent or grant the release.
- (2) Where a beneficiary obtains judgment in an action for breach of trust or breach generally in the administration of a trust the beneficiary shall not after that action
 - (a) charge the trustee with a breach of trust committed before the action which is not alleged in the pleadings or proved at the trial,
 - (b) request for the removal of the trustee on that ground, or
 - (c) bring a new action without leave of the Court.

Protection against acts of co-trustee

87. (1) Subject to this section, a trustee is not liable for a breach of trust committed by the trustee's co-trustee.
- (2) A trustee is liable for a breach of trust committed by the trustee's co-trustee if
- (a) the trustee delivers the trust property to the co-trustee without supervising its proper application,
 - (b) the trustee allows the co-trustee to receive the trust property and fails to make due enquiry as to the co-trustee's dealings with it, or
 - (c) the trustee becomes aware of a breach of trust committed or intended by the co-trustee and does not take the necessary steps to protect the trust.
- (3) Despite subsection (2) a trustee may be absolved from responsibility by clear declaration in the trust instrument.

Death, retirement and removal of trustee and appointment of new trustee

Devolution of office and estate on death of trustee

88. (1) Where a trustee dies, the trustee's office and estate passes to the remaining trustee who may exercise the powers given to the deceased trustee.
- (2) On the death of a sole or a last surviving trustee the personal representative may exercise any power of the trust given to the deceased trustee.
- (3) A person on whom the estate of a trust devolves is obliged to act as trustee but shall not act against the directions of a person vested with power to appoint a new trustee in substitution for the deceased one.

Retirement and removal of trustee

89. (1) A trustee may retire from office
- (a) where the trust instrument expressly states so,
 - (b) on the appointment of a new trustee,

- (c) by consent of the beneficiaries if they are competent to contract, or
 - (d) by an order of the Court.
- (2) A trustee may be removed from office
- (a) by an express provision in the trust instrument,
 - (b) where the trustee remains outside Ghana for more than twelve consecutive months,
 - (c) if the trustee is incapable of acting or refuses to act,
 - (d) if the Court appoints a new trustee,
 - (e) at the instance of a beneficiary or a co-trustee where the trustee behaves improperly,
 - (f) if the trustee is in a permanent condition of hostility with any of the co-trustees, or a beneficiary,
 - (g) if the trustee is convicted of an offence,
 - (h) if the trustee is adjudged bankrupt or insolvent, or
 - (i) if the trustee decides to leave Ghana permanently.

Appointment of a new trustee

90. (1) A new trustee shall be appointed for a trust
- (a) by an express power in the trust instrument, or
 - (b) by the Court
 - (i) on the application of an existing trustee or beneficiary,
 - (ii) where the trustee is convicted of an offence,
 - (iii) where the trustee is adjudged bankrupt or insolvent,
 - (iv) where the trustee becomes legally or physically incapacitated, or
- in the case of a corporate body, where it is in liquidation or is dissolved.
- (2) Where a person is vested with power to appoint a new trustee and the person exercises that power, the Court shall not appoint a new trustee contrary to that person's appointment.

- (3) A newly appointed trustee shall, before and after the trust property is vested in the trustee, have the same power and discretion as any other trustee.
- (4) Where there are more than two trustees, provided under a trust instrument that relates to land, a new trustee shall not be appointed unless the number of trustees is reduced to one.
- (5) An original trustee remains liable in respect of the trust if the appointment of a new trustee is invalid and a new trustee is liable if the new trustee intermeddles with the trust property.

Vesting of trust property in new trustee

91. (1) Where a new trustee is appointed to a trust, the trustee shall be vested with the trust property jointly with the existing trustees.
- (2) Trust property may be vested in a new trustee by a constructive trust which is created by construction of equity in order to justify the demands of justice and good conscience without reference to the presumed intention of the parties such as by
- (a) a vendors lien for unpaid purchase money, or
 - (b) a purchasers lien for prematurely paid purchase money.
- (3) Where a new trustee is appointed by the Court, a vesting order made shall vest the trust property in the new trustee or jointly with the continuing trustee.

Finance and accounts

Funds of the Commission

92. The funds of the Commission include
- (a) moneys provided by Parliament,
 - (b) moneys derived from fees,
 - (c) donations, grants and gifts, and
 - (d) any other moneys approved by the Minister responsible for Finance.

Accounts and audit for the Commission

93. (1) The Board shall keep proper books of account and proper records in relation to them in the form approved by the Auditor-General.
- (2) The Board shall submit the accounts of the Council 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 Council is the same as the financial year of the Government.

Annual report and other reports of the Commission

94. (1) The Board shall within one month after the receipt of the audit report, submit an annual report to the Minister covering the activities and the operations of the Council 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 shall also submit to the Minister any other reports as the Minister may require in writing.

Chargeable fees by the Commissioner

95. (1) The Board may charge fees as prescribed by regulations made under this Act for the discharge of its duties.
- (2) Fees collected under this section shall be paid into the Consolidated Fund.

Audit and inspection of trust accounts

Investigation and audit of trust account

96. (1) The accounts of a trust under the Commissioner shall on an application to the Court on notice made by a beneficiary, be investigated and audited by an auditor agreed on by the applicant and the Commissioner.

- (2) Except with leave of Court an investigation or audit of an account shall not be required within twelve months after a previous investigation or audit of the account.
- (3) A trustee or a beneficiary shall not be appointed under this section to investigate or audit accounts.

Right of access to books of account, statement of account and other information

97. (1) An auditor who makes an investigation or audit of a trust for the purposes of section 96 (1) shall have access to
- (a) books, accounts and vouchers of the Commissioner, and
 - (b) the securities and documents of title related to the trust,
- and may require from the Commissioner information and explanation necessary for the discharge of the auditor's duties.
- (2) On completion of an investigation and audit, the auditor shall forward to the applicant and the Commissioner a copy each of the accounts with a report on it and a certificate signed by the auditor.
 - (3) The certificate signed by the auditor shall reflect the true state of the affairs of the trust and indicate its deficiencies and state the securities of the trust fund investments that have been verified by the auditor.

Right to inspect accounts

98. A beneficiary of a trust administered by the Commissioner may at a reasonable time inspect the accounts, reports and certificates and at the beneficiary's own expense be furnished with copies.

Removal or absence of auditor

99. (1) An auditor may be removed by an order of the Court.
- (2) Where an auditor is removed by a court order, resigns, dies or becomes incapable of acting before an investigation and the audit is completed, a new auditor shall be appointed.

Obstruction of auditor's access to documents

100. Where a person who has custody of a document to which the auditor has a right of access, fails or refuses to allow access to the documents

or obstructs the investigation or audit, the auditor may apply to the Court which shall make an order for access.

Remuneration of auditor

101. The remuneration of an auditor for an investigation and audit and the expenses of the investigation shall, unless the Commissioner otherwise directs, be charged to the trust property.

False statement

102. A person who knowingly makes a false statement in a statement of accounts, report or certificate commits an offence and is on summary conviction liable to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding twelve months or to both.

Commissioner to employ persons for trust

103. (1) The Commission may direct that a lawyer, banker, accountant, broker or any other person the Commissioner considers appropriate be employed for the purposes of a trust under the Commission.
- (2) The Commission in asking for the employment of a person in relation to a trust shall consider the interest of the trust and the express or implied wishes of the creator and beneficiaries of the trust.

Appointee of Commissioner

104. The Commissioner may appoint a person to act on the Commissioner's behalf and that person may take an oath or do an act or thing which the Commissioner is required to do.

Handling of bond or security

105. Where a bond or security is required from a private person on the grant to that person of letters of administration or to act in a capacity, the Commissioner if appointed to act in that person's stead is not required to give the bond or security but is subject to the same liabilities and duties as if that person had given the bond or security.

Entry of Commissioner's name in company's books

106. (1) The entry of the Commissioner's name in the books of a company shall not constitute notice of a trust.
- (2) A company shall not object to the entry of the name of the Commissioner in its books by reason that the Commissioner is a corporation.
- (3) Where there is a transaction concerning the property of a trust, the involvement of the Commissioner shall not constitute notice of a trust.

Official seal of a body corporate

107. The official seal of the Commissioner shall have a device which is approved by the Minister.

Redress against an act of the Commissioner

108. A person who is aggrieved by an act, omission or decision of the Commissioner in relation to a trust or an organisation may apply for redress to the Court which may make an order that the Court considers appropriate.

Liability of third parties and beneficiaries

Trustees entitled to contribution and indemnity by co-trustee or beneficiary

109. (1) Where several trustees commit a breach of trust that does not amount to fraud, any one of them who has to make good the loss occasioned by the breach may recover from any of the other trustees, a contribution that is appropriate or proportionate, but where one of the trustees is guilty of fraud or is the lawyer of the co-trustees, that trustee may indemnify the others and bear the loss.
- (2) Subsection (1) does not apply to a trustee who commits a breach of trust against a new trustee although that trustee insisted in rectifying the breach on the appointment of the new trustee.
- (3) Where a trustee commits a breach of trust at the instance or with the consent in writing of a beneficiary, the Court may make an order to impound a part of the beneficiary's interest in the trust property by way of indemnity to the trustee or trustee's heirs.

- (4) The Court may order the payment of a contribution or an indemnity in an action in which the liability for a breach of trust is established without a counterclaim.

Liability of third parties or beneficiaries as parties to a breach of trust

110. (1) A person who knowingly meddles with trust funds or aids in the commission of a breach of trust is jointly liable with the trustee of the trust and shall not plead the Limitation Decree, 1972 (N.R.C.D. 54) in an action based on fraud or to recover trust property that is in that person's possession or which that person has used.
- (2) Where a person who is indebted to a trust property has an equitable interest in the trust property, that person's interest may be impounded to make good that person's liability to the trust property.

Tracing trust property into the hands of third parties

111. (1) Where a trust property received by a person is inconsistent with the terms of the trust, the person will be a trustee for the beneficiaries under the trust unless that person or the person through whom that person claims, acquired the property for valuable consideration without notice before the completion of the transaction which is a breach of trust and that person is a constructive trustee of that property and
 - (a) that person has the legal title,
 - (b) that person has an equitable title acquired by virtue of the fraud or negligence of the person who had legal title, or
 - (c) the property consists of a negotiable instrument or instrument transferable free from all equities.
- (2) A person who has notice of a trust shall disclose that notice.

Power to terminate a trust

112. A sole beneficiary or all the beneficiaries of twenty-one years or above of a trust may, without the consent of the creator or trustee of the trust, terminate the trust.

Miscellaneous provisions

Regulations

113. (1) The Minister may, by legislative instrument, make Regulations for carrying this Act into effect.
- (2) In addition to subsection (1), Regulations may be made
- (a) to prescribe the trusts or duties which the Commissioner is authorised to accept;
 - (b) for organisations;
 - (c) for the transfer to and from the Commissioner of a property;
 - (d) to authorise the deposit or investment of trust funds in a bank or the purchase of a security;
 - (e) for the keeping, auditing of trust accounts and submission of reports;
 - (f) for the form and manner in which notices under this Act is given;
 - (g) for the code of conduct and quality standards for organisations;
 - (h) for the application for exemption for tax liability;
 - (i) for the charging of fees for services rendered under this Act;
- and
- (ii) generally for the effective implementation of this Act.

Interpretation

114. In this Act, unless the context otherwise requires
- “body corporate” includes a corporation sole or a sole trustee;
 - “charity” has the meaning assigned to it under section 62 and includes a trust;
 - “child” means a person under the age of eighteen years;
 - “Christian group” means the National Catholic Secretariat, the Christian Council and the Pentecostal Council;
 - “Commissioner” means the Charities Commissioner appointed under section 23;

“Court” means a court of competent jurisdiction;

“creator” means a person who creates a trust;

“development partners” include international non-governmental organisations with development as a core function;

“district” means the area of authority of a District Assembly, or a municipality or a metropolis;

“expenses” includes costs and charges;

“guardian” means a person legally appointed to take care of the interest of a person with mental disorder;

“humanitarian assistance” means help concerned with the health, education and development of the people;

“intelligence agency” means an agency established under the Security and Intelligence Agencies Act, 1996 (Act 526);

“letters of administration” means letters of administration with or without a will annexed of the estate of a deceased person;

“Minister” means the Minister to whom functions under this Act are assigned by the President;

“new trustee” means a person who is appointed to be responsible and manage a trust in the place of any other trustee;

“organisation” means non-governmental organisation;

“private trustee” means a trustee other than the Commissioner;

“Regulations” means Regulations made under this Act;

“specified entity” means a person, group, trust-partnership, fund, body corporate or unincorporated or an organisation declared to be a specified entity under the Anti-Terrorism Act (Act);

“terrorist group” means

- (a) an entity that has as one of its activities and purposes, the commission of, or the facilitation of the commission of a terrorist act; or
- (b) a specified entity;

“trust” includes an executorship, administratorship, guardianship of children or the office, committee or receiver of the estate of a

person incapable of managing that person's own affairs, a charitable trust and organisation;

“trust property” includes the property in the possession or under the control wholly or partly of a trustee by virtue of a trust.

Repeals and savings

115. (1) The following are repealed

Trustees (Incorporation) Act, 1962 (Act 106);

Trustees Incorporation (Amendment) Law, 1993 (P.N.D.C.L. 311);

Public Trustees Ordinance, 1952 (No. 24); and

In the Second Schedule to the Courts Act, 1993 (Act 459) the following:

“1860 (23 and 24 VIC, C.I) Trustee Act sections 1 to 5 and 7 to 34”;

“1869 (32 and 33 VIC, C.110) Charitable Trusts Act section 12”.

- (2) Despite the repeal under subsection (1) a trust created under the repealed enactment and a statutory instrument made under any of the repealed enactments and in force at the commencement of this Act continues in force until altered or revoked under this Act.
- (3) Until the appointment of the Charities Commissioner provided for under section 23, a person charged with the performance of a function assigned to the Commissioner under this Act shall continue to perform those functions.