

CHAPTER 299

PUBLIC CURATOR ACT

To provide for the establishment of the office of Public Curator.

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ACT X of 1982, as amended by Acts XIII of 1983 and XVI of 1997, and Legal Notice 423 of 2007.

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| <p>1. This Act may be cited as the Public Curator Act, and shall come into force on such date as the Minister responsible for justice may by notice in the Gazette appoint.</p> | <p>Short title and commencement.</p> |
| <p>2. (1) There shall be a Public Curator whose office shall be a public office, and who shall have the functions vested in him by or under this Act.</p> <p>(2) The Public Curator shall be appointed by the Prime Minister, for such time and under such terms and conditions as the Prime Minister may determine.</p> <p>(3) No person shall be eligible for appointment as Public Curator, unless he has attained the age of 25 years, and he is either an officer in the public service or is a person who in the opinion of the Prime Minister, having regard to his proficiency and experience in administration of estates, is suitable to be so appointed.</p> <p>(4) The Prime Minister may appoint any public officer or such number of persons not being public officers as he may determine, to be officers of the Public Curator for such time and under such terms and conditions as the Prime Minister may determine.</p> <p>(5) Upon their appointment the Public Curator and the officers of the Public Curator shall take an oath to perform faithfully and honestly all the functions which they may be required to perform under this Act. The oath shall be taken before the Attorney General.</p> | <p>Office of Public Curator.</p> |
| <p>3. (1) Subject to and in accordance with the provisions of this Act, the functions hereinafter mentioned may be conferred on and may be performed by the Public Curator:</p> <ul style="list-style-type: none"> (a) the administration of estates; (b) testamentary executorship; (c) the execution of wills to which article 778 of the Civil Code refers; (d) the function of judicial sequestrator referred to in Sub-Title III of the Title VI of Book Third of the Code of Organization and Civil Procedure; (e) curatorship to interdicted or incapacitated persons, absentees and vacant inheritances; (f) the examination of accounts of tutors, curators and other administrators. | <p>Functions of Public Curator.</p> <p>Cap. 16.</p> <p>Cap. 12.</p> |

*Not yet in force.

(2) In the exercise of such functions the Public Curator shall have all those rights and be subject to all those obligations which under any law are inherent to such functions:

Provided that the Public Curator shall be exempt from giving any bond or other security prior to or upon the vesting in him of any function under this Act:

Provided further that a record of the property over which the Public Curator exercises his functions shall be kept by the Public Curator and on such record being made and notice thereof given in the Gazette, the Public Curator shall not be bound to do any further act required by law in relation to the description of such property.

(3) (a) The Public Curator may authorise in writing any of his officers to perform on his behalf any of the functions vested in him in accordance with the provisions of this Act;

(b) in the exercise of their duties and functions the officers of the Public Curator shall be responsible to the Public Curator.

(4) Without prejudice to any right competent to him under any law, any person aggrieved by any act or omission of the Public Curator in the exercise of his function under this Act, may, by application, refer the matter to the Civil Court, Second Hall, and the court, after hearing the Public Curator, shall give such direction and advice as appears to the court to be conducive to a practical and equitable solution to the matter.

(5) The accounts relating to the property over which the Public Curator exercises his functions, together with a report of the administration thereof, shall be rendered annually to such person or authority, at such times and in such manner as may be prescribed under this Act:

Provided that in the case of property over which no person having an interest can be traced the Public Curator shall each year make a report of the administration of such property to the Minister responsible for justice. Such report shall include the accounts of the administration covering a period of twelve months ending on the 31st December, duly audited in terms of article 11, and shall be laid on the Table of the House of Representatives by the said Minister not later than the 31st day of the March following the year to which the report and accounts refer.

Procedure relating
to appointment of
Public Curator as
administrator, etc.

Cap. 12.

4. (1) The Public Curator shall be nominated, appointed, or confirmed to perform his functions as administrator, executor, sequestrator or curator in relation to any property mentioned in the instrument of nomination, appointment or confirmation, by any court having jurisdiction or by any person, as the case may be, in the like manner as is, in or under the provisions of the Code of Organization and Civil Procedure or any other law, applicable to such function, in so far as such provisions are not incompatible with the provisions of this Act:

Provided that the Public Curator shall be deemed to have

been confirmed as testamentary executor by the Civil Court, Second Hall on his filing a note in the registry of the said court, declaring that he has accepted the testamentary executorship.

(2) On the Public Curator undertaking by declaration published in the Gazette, to administer the property, such administration shall, by virtue of this Act and without the necessity of any other formality required by law, vest in him.

5. (1) The Public Curator may either absolutely or conditionally decline to administer any property:

Public Curator may not decline appointment.

Provided that the Public Curator may not decline any appointment by a court under this Act, unless the Civil Court, Second Hall, on the application of the Public Curator upon good cause being shown, shall authorise him so to do:

Provided further that the Public Curator shall not so decline, or be so authorised to decline, solely on the ground that the value of the estate to be administered is small.

(2) The Civil Court, Second Hall, may, on the application made by the Public Curator at any time after his appointment, substitute any person for, or appoint any person jointly with, the Public Curator in the discharge of all or any of his functions in relation to any property specified in the decree of the court.

(3) The Public Curator shall not accept any appointment which involves the management or carrying on of any business, except in the cases in which he may be authorised under the regulations made under this Act, nor shall he accept the administration of any estate which he has reasonable belief to be insolvent.

(4) The Public Curator shall not accept the administration of any property exclusively destined for religious or charitable purposes.

6. In the exercise of his functions under this Act, the Public Curator shall act in the best interests of the persons having a right in or over the property placed under his control in accordance with the provisions of this Act.

Public Curator to act in the interest of the estate.

7. (1) The fees payable for services performed under this Act shall be those prescribed under article 17 of the Act.

Fees payable to Public Curator.

(2) The Public Curator shall collect such fees on behalf of the Government.

8. (1) Any person having an interest in an estate, the gross capital value of which is less than twenty-three thousand, two hundred and ninety-three euro and seventy-three cents (23,293.73), may apply to the Civil Court, Second Hall, to direct that the administration of such estate be vested in the Public Curator.

Administration of small estate.
Amended by:
XIII. 1983.5;
L.N. 423 of 2007.

(2) Upon such application the court shall hear the Public Curator, and shall, unless it has grave reason not to do so in the interest of the persons concerned, vest the Public Curator with the administration of the estate.

(3) The Civil Court, Second Hall, may, without judicial

proceedings, give leave to the Public Curator to sell or otherwise transfer any property administered by him.

(4) Any person who, but for the decree of the court vesting the administration in the Public Curator, would have been entitled to administer the estate, shall be discharged from all liability attaching to the administration except in respect of any liability incurred prior to the decree.

Substitution of
testamentary
executor, etc., by
Public Curator.

9. Any person performing any function which may, in accordance with the provisions of article 3 be conferred on the Public Curator, notwithstanding that he has acted in the administration of the estate, may, with the sanction of the court, and after such notice being given to the persons beneficially interested, as the court may direct, transfer the administration of such estate to the Public Curator:

Provided that the court may direct that such estate be administered by the Public Curator solely or jointly with the applicant and/or any other person.

Public Curator may
act jointly with
others.

10. Subject to the provisions of this Act, the Public Curator may act either solely or jointly with any person in any function which he may be called to perform under this Act.

Accounts subject
to audit by Auditor
General.
*Amended by:
XVI.1997.8.*

11. The accounts relating to property placed under the control of the Public Curator shall be subject to audit by the Auditor General.

Examination of
accounts by the
Public Curator.
Cap. 12.

12. (1) Notwithstanding the provisions of article 513 of the Code of Organization and Civil Procedure or of any other law, the examination of the accounts of tutors, curators or other administrators shall be carried out by the Public Curator.

(2) On completion of such examination the Public Curator shall draw up a report and certify that the accounts show a true picture of the affairs of the administration or that such accounts are deficient in such respect as may be specified in such certificate.

(3) Such examination may be made at any time the Public Curator deems fit and shall also be made on the direction of the court or may be also made on the demand of any tutor, curator or other administrator responsible for, or of any beneficiary, having an interest in, the accounts to be examined, even though such administration may have commenced prior to the coming into force of this Act.

Public Curator
shall have access to
books.

13. The Public Curator shall have the right of access to the books of account and any other document pertaining to the administration and may require from any tutor, curator or other administrator such information and explanation as may be necessary for the performance of his duties.

Failure to produce
documents.

14. If any person having the custody of any book of accounts or other documents to which the Public Curator has a right of access under this Act, fails to produce to, or refuses to allow, the Public Curator to have access thereto or in any other way hinders

an examination, the Public Curator may apply to the Civil Court, Second Hall, and thereupon the court shall make such order as it deems fit to enforce the Public Curator's rights. Failure to abide by the decree given by the court shall amount to contempt of court and shall become punishable as such.

15. Any person having an interest in any property placed under the control of the Public Curator shall, subject to any regulation made under this Act, be entitled at all reasonable times to inspect and take copies of the accounts relating to such property, and, upon the payment of such fees as may be prescribed, to be furnished with copies thereof or extracts therefrom.

Interested persons
have right to
inspect accounts,
etc.

16. Unless the act constitutes a graver offence under any other law, any person who in any document, intended for the Public Curator, knowingly makes a false declaration or statement, or gives false information shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a term not exceeding six months or to a fine (*multa*).

Offences and
penalties.

17. The Minister responsible for justice may make regulations for prescribing -

Power to make
regulations.

- (a) the fees payable to the Public Curator for services performed under this Act;
 - (b) anything that may be prescribed under this Act;
 - (c) the manner in which property administered by the Public Curator or any other administrator, is to be offered for sale or any other form of transfer; and
 - (d) in general, for securing the better carrying out of any of the provisions of this Act.
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