



LAWS OF MALAYSIA

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Act 208

TRUSTEE ACT 1949

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TRUSTEE ACT 1949

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LAWS OF MALAYSIA

Act 208

TRUSTEE ACT 1949

An Act relating to Trustees.

*[Peninsular Malaysia—31 December 1949;
Sabah and Sarawak—30 June 1965]*

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Trustee Act 1949.

Application

2. (1) This Act, except where otherwise expressly provided, applies to trusts including, so far as this Act applies thereto, executorships and administratorships constituted or created either before or after the commencement of this Act.

(2) The powers conferred by this Act on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

(3) This Act does not affect the legality or validity of anything done before the commencement of this Act, except as otherwise expressly provided.

Interpretation

3. (1) In this Act, unless the context otherwise requires—

“approved company” means a company—

- (a) incorporated in Malaysia or, if incorporated prior to Malaysia Day, in Sabah or Sarawak, and having a place of business in Malaysia;
- (b) having as its sole or primary object the promotion of home ownership by advancing for the purchase of lands and buildings sums of money, repayable by instalments of principal and interest over a fixed period of years, not exceeding at any time the valuation of such lands and buildings made by an approved valuer; and
- (c) approved by the Minister by notification in the *Gazette* for the purpose of receiving loans from trustees in accordance with paragraph 4(1)(e);

“approved valuer” means a registered or licensed surveyor or a licensed appraiser and includes any other person approved by the Minister;

“authorized investments” means investments authorized by the instrument, if any, creating the trust for the investment of money subject to the trust, or by law;

“charge”, “chargee” and “chargor” include “mortgage”, “mortgagee” and “mortgagor” respectively, and further include and relate to every estate and interest regarded in equity as merely a security for money and every person lawfully claiming under the original chargee;

“contingent right” as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future and whether vested or contingent;

“convey” and “conveyance” as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is proprietor or possessed or wherein he is entitled to a contingent right, either for his whole interest or for any less interest, together with the performance of all formalities required by law to the validity of the conveyance;

“the Court” means the High Court in Malaya or the High Court in Sabah and Sarawak, as the case may be;

“instrument” includes a written law;

“land” means immovable property and includes any interest therein and also an undivided share of land;

“material” date means—

- (a) in respect of Peninsular Malaysia (other than Malacca and Penang), the 9 September 1932;
- (b) in respect of the States of Malacca and Penang, the 1 September 1929;
- (c) in respect of the State of Sabah (other than Labuan), the 30 April 1953;
- (d) in respect of Labuan, the 1 September 1929; and
- (e) in respect of the State of Sarawak, the 30 June 1965;

“mentally disordered person” means any person found by due course of law to be unsound mind and incapable of managing his affairs;

“pay” and “payment” as applied in relation to stocks and securities and in connection with the expression “into Court”, include the deposit or transfer of the same in or into Court;

“person of unsound mind” means any person, not a minor, who, not having been found to be a mentally disordered person, is incapable from infirmity of mind of managing his own affairs;

“personal representative” means the executor, original or by representation, or administrator for the time being of a deceased person;

“possession” includes receipt of rents and profits or the right to receive the same, if any; “income” includes rents and profits; and

“possessed” applies to receipt of income of and to any vested interest less than a life interest in possession or in expectancy in any land;

“property” includes movable and immovable property, and any interest in any property, movable or immovable, and any debt, and any thing in action, and any other right or interest, whether in possession or not;

“rights” includes estates and interests;

“sale” includes an exchange;

“securities” includes stocks, funds and shares; and so far as relates to payments into Court has the same meaning as in the written law relating to funds in Court; and “securities payable to bearer” includes securities transferable by delivery or by delivery and endorsement;

“solicitor” means advocate and solicitor in Peninsular Malaysia or advocate in Sabah or Sarawak, as the case may be;

“stock” includes fully paid up shares and, so far as relates to vesting orders made by the Court under this Act, includes any fund, annuity, or security transferable in books kept by any corporation, company, association, or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein;

“transfer”, in relation to stock or securities, includes the execution and performance of every instrument, power of attorney, act, and

thing on the part of the transferor to effect and complete the title in the transferee;

“trust” does not include the duties of chargee, but with this exception the expressions “trust” and “trustee” extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incidental to the office of a personal representative and “trustee”, where the context admits, includes a personal representative, and “new trustee” includes an additional trustee;

“trust corporation” means the Public Trustee^{*} or a corporation appointed by the Court in any particular case to be a trustee, or registered as a trust company under the Trust Companies Act 1949 [Act 100];

“trust for sale”, in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale; “trustees for sale” means the persons (including a personal representative) holding land on trust for sale.

†“Peninsular Malaysia” has the meaning assigned by section 3 Interpretation Acts 1948 and 1967 [Act 388], and includes the Federal Territory.

(2) In relation to the application of this Act to Sabah and Sarawak, references in this Act to any written law in force in Peninsular Malaysia or any part thereof shall—

- (a) if such written law has been extended to apply to Sabah and Sarawak, be construed as references to that law as so extended; or

^{*}NOTE—The words “Public Trustee” is now referred to as “corporation” under the name of Amanah Raya Berhad incorporated under the Companies Act 1965 [Act 125] pursuant to section 3—see section 2 and subsection 43(3) of the Public Trust Corporation Act 1995 [Act 532].

[†]NOTE—All references to “West Malaysia” shall be construed as references to “Peninsular Malaysia”—see Interpretation (Amendment) Act 1997 [Act A996], subsection 5(2).

- (b) if such written law has not been extended to Sabah or Sarawak, be construed as reference to the corresponding written law, if any, in force in Sabah or Sarawak, as the case may be.

(3) References in this Act to the commencement of this Act mean, in the case of Peninsular Malaysia, 31 December 1949; and, in the case of Sabah and Sarawak, 30 June 1965.

PART II

INVESTMENTS

Authorized investments

4. (1) A trustee may invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following:

- (a) in any of the securities of the Federal Government or the Government of the State of Sabah or the State of Sarawak or of the Republic of Singapore;
- (b) in any securities the interest on which is or shall be guaranteed by Parliament or by the Federal Government;
- (c) in or upon titles to immovable property in Malaysia, such titles being freehold titles or grants in perpetuity or leases (other than mining leases) for a term thereof sixty years at least is unexpired at the time of such investment:

Provided that—

- (i) the land to which any such title relates shall be situate within the limits of any City, Municipality, Town Council or Town Board area; and
- (ii) there be erected on the land to which such title relates houses or other buildings the gross rental whereof, together with the land appurtenant

thereto, is at the time of such investment not less than seven *per centum* of the purchase price of the land, in the case of the purchase price, or of the value of such land, as ascertained under paragraph 12(1)(a), in the case of a charge.

- (d) in fixed interest securities issued in Malaysia with the approval of the Treasury by any public authority established under federal or State law;
- (e) in loans to an approved company;
- (f) in loans the principal and interest on which is or shall be guaranteed by the Federal Government,

and may also from time to time vary any such investment as aforesaid.

(2) No trust funds shall be invested under paragraph (1)(e) unless—

- (a) the paid up ordinary share capital of the approved company is not less than five million ringgit; and
- (b) the approved company has paid a dividend at the rate of not less than five *per centum* upon such ordinary share capital during each of the last three years prior to the time of investment, and where the approved company is a company which has acquired the assets and liabilities of another approved company, payment of a dividend by that other company during each of the last three years prior to the time of such acquisition shall be treated as payment by the approved company; and
- (c) the total amount of the borrowings of the approved company from all sources, whether trustee or not, accepted by the approved company on loan and deposit, and including interest due and thereon not repaid by the approved company, does not at any time exceed two thirds of the amount, excluding prospective interest, for

the time being secured to the approved company from its borrowers.

(3) Paragraph (1)(e) shall not be taken to override the provisions of paragraph 4(2)(c) of the *Employees Provident Fund Act 1951 [Act 272] (which confer express powers on the Trustees of the Employees Provident Fund to invest in loans to an approved company).

Further powers of investment of trustee

5. (1) The investments specified in section 4 shall include any security to which this section applies and any units, or any shares of the investments subject to the trust, of a unit trust scheme approved by the Yang di-Pertuan Agong by notification published in the *Gazette*.

(2) Subject to this section, this section applies to any securities issued by a company (whether incorporated in Malaysia or elsewhere) prices for which are quoted on the Stock Exchange of Malaysia.

(3) This section does not apply to securities of any company unless—

- (a) the total issued and paid-up share capital of the company is, or if converted into ringgit from currency other than ringgit is, five million ringgit or more; and
- (d) the company has in each of the five years immediately preceding the calendar year in which the investment is made paid a dividend on all the shares issued by the company, excluding any shares issued after the dividend was declared and any shares which by their terms of issue did not rank for the dividend for that year,

*NOTE—Employees Provident Fund Act 1951 [Act 272] has been repealed by Employees Provident Fund Act 1991 [Act 452]—see paragraph 75(a) of Act 452.

and the rate exchange in relation to the conversion of issued and paid-up share capital shall be that certified by a bank manager, as defined in paragraph 6(3)(b), to be appropriate on the day a trustee exercises his power to invest in such securities.

- (4) For the purposes of paragraph 3(b), a company formed—
 - (a) to take over the business of another company or other companies; or
 - (b) to acquire the securities, or control, of another company or other companies; or
 - (c) for either of those purposes and for other purposes,

shall be deemed to have paid a dividend as mentioned in that paragraph in any year in which such a dividend has been so paid by the other company or all of the other companies, as the case may be.

(5) This section does not apply to shares or debenture stock not fully paid up, except shares or stock which by the terms of issue are required to be fully paid up within nine months of the date of issue.

(6) No provision relating to the powers of the trustee contained in any instrument made before 30 June 1965 shall limit the powers conferred by this section, but those powers are exercisable only in so far as a contrary intention is not expressed in any instrument so relating which is made after 29 June 1965.

Duty of trustees in choosing investments

- 6.** (1) In the exercise of any of his powers of investment a trustee shall have regard—
- (a) to the need for diversification of the investments of the trust, in so far as is appropriate to the circumstances of the trust, and to the degree of risk attaching to the holding of any particular investment or of investments of any particular description; and

- (b) to the suitability to the trust of investment of the description of investment proposed and of the investment proposed as an investment of that description.

(2) A trustee whose power of investment is restricted to the making of investments specified in section 4, shall, before exercising any power to invest in such securities, units or shares as are mentioned in section 5, obtain proper advice on the question whether the investment is satisfactory having regard to the matters mentioned in paragraphs (1)(a) and (b), and shall consider the advice obtained:

Provided that this subsection shall not apply to the Public Trustee* and to trust companies defined in the Trust Companies Act 1949.

(3) (a) For the purposes of subsection (2) proper advice is either the advice of a stock broker obtained through the trustee's bank manager or the advice of an authorized accountant.

(b) In this subsection "bank manager" means the manager of a bank (including a branch of a bank) licensed under section 3 of the Banking Act 1973 [*Act 102*]***, and "authorized accountant" means a person authorized in writing under any written law relating to companies, to be an auditor of companies generally.

(4) A trustee retaining any such security, unit or part as is mentioned in section 5 shall determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice as aforesaid, and shall obtain and consider such advice accordingly.

(5) A trustee shall not be treated as having complied with subsections (2) to (4) unless the advice was given, or has been subsequently confirmed, in writing.

*NOTE—The words "Public Trustee" is now referred to as "corporation" under the name of Amanah Raya Berhad incorporated under the Companies Act 1965 [*Act 125*] pursuant to section 3—see section 2 and subsection 43(3) of the Public Trust Corporation Act 1995 [*Act 532*].

**NOTE—Banking Act 1973 [*Act 102*] has been repealed by Banking and Financial Institutions Act 1989 [*Act 372*]—see subsection 128(1) of Act 372. Now Banking and Financial Institutions Act 1989 [*Act 372*]—was repealed by Financial Services Act 2013 [*Act 758*]—see section 271 of Act 758.

(6) Subsections (2) to (4) shall not apply to one of two or more trustees where he is the person giving the advice required by this section to his co-trustee or co-trustees.

Statutory powers of investment

7. (1) In the case of trustees constituted under any written law, section 5 shall apply only in so far as the Minister may direct.

(2) Where any body of persons, not being trustees, have under any written law power (however expressed) to make the like investments as trustees are for the time being authorized by law to make, section 5 shall not apply to the body except in so far as the Minister may direct.

(3) The Minister may direct that any specified body of persons, not being trustees constituted under any written law, which apart from this subsection would not have the like power of investment as is conferred by section 5, shall have that power to such extent as may be specified in the direction.

(4) Any direction under this section may be given generally or in a particular case, and unconditionally or subject to conditions.

Purchase at premium of redeemable stocks; change of character of investments

8. (1) A trustee may under the powers of this Act invest in any of the securities mentioned or referred to in section 4, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

(2) A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act, or any written law replaced by this Act.

Discretion of trustees

9. Every power conferred by sections 4 and 8 shall be exercised according to the discretion of the trustee, but subject to any consent or direction, with respect to the investment of the trust funds, required by the instrument, if any, creating the trust or by any written law.

Power to retain investment which has ceased to be authorized

10. A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorized by the trust instrument or by this Act.

Investment in bearer securities

11. (1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorized investments.

(2) Securities payable to bearer retained or taken as an investment by a trustee shall, until sold, be deposited by him for safe custody and collection of income with a banker or banking company.

(3) A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of this section, be deemed to be such an express prohibition as aforesaid.

(4) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property.

Loans and investments by trustees not chargeable as breaches of trust

12. (1) A trustee lending money on the security of any property on which he can properly lend shall not be chargeable with breach of

trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the Court—

- (a) that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere;
- (b) that the amount of the loan does not exceed two third parts of the value of the property as stated in the report; and
- (c) that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making the loan he dispensed either wholly or partly with the production or investigation of the lessor's title.

(3) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase, or in lending money upon the security, of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the Court the title accepted be such as a person acting with prudence and caution would have accepted.

(4) This section applies to transfers of existing securities as well as to new securities and to investments made before as well as after the commencement of this Act.

Liability for loss by reason of improper investment

13. (1) Where a trustee improperly advances trust money on the security of a charge which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually

advanced thereon, the security shall be deemed an authorized investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2) This section applies to investments made before as well as after the commencement of this Act.

Powers supplementary to powers of investment

14. (1) Trustees lending money on the security of any property on which they can lawfully lend may contract that such money shall not be called in during any period not exceeding five years from the time when the loan was made, provided interest be paid within a specified time not exceeding ten days after every monthly or other day on which it becomes due, and provided there be no breach of any covenant by the chargor contained in the instrument of charge for the maintenance and protection of the property.

(2) On a sale by trustees of land the trustees may, where the proceeds are liable to be invested, contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by charge of the land sold, with or without the security of any other property, but the charge, if any buildings are comprised therein, shall contain a covenant by the chargor to keep the buildings insured against loss or damage by fire to the full value thereof.

(3) The trustees shall not be bound to obtain any report as to the value of the land or other property to be comprised in such charge, or any advice as to the making of the loan, and shall not be liable for any loss which may be incurred by reason only of the security being in sufficient at the date of the charge.

(4) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement—

(a) for the reconstruction of the company;

(b) for the sale of all or any part of the property and undertaking of the company to another company;

- (c) for the acquisition of the securities of the company, or of control, by another company;
- (d) for the amalgamation of the company with another company;
- (e) for the release, modification, or variation of any rights, privileges or liabilities attached to the securities or any of them,

in like manner as if they were entitled to the securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities; and the trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities.

(5) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in the company, they may as to all or any of those securities, either exercise such right and apply capital money subject to the trust in payment of the consideration, or renounce such right, or assign for the best consideration that can be reasonably obtained the benefit of such right or the title thereto to any person, including any beneficiary under the trust, without being responsible for any loss occasioned by any act or thing so done by them in good faith:

Provided that the consideration for any such assignment shall be held as capital money of the trust.

(6) The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.

(7) Where the loan referred to in subsection (1), or the sale referred to in subsection (2), is made under the order of the Court, the

powers conferred by those subsections respectively shall apply if and as far as the Court may by order direct.

Power to deposit at bank and to pay calls

15. (1) Trustees may, pending the negotiation and preparation of any charge, or during any other time while an investment is being sought for, pay any trust money into a bank to a deposit or other account and all interest, if any, payable in respect thereof shall be applied as income.

(2) Trustees may apply capital money subject to a trust in payment of the calls on any shares subject to the same trust.

PART III

GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES

General Powers

Power of trustees for sale to sell by auction, etc.

16. (1) Where a trust for sale or a power for sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, or to rescind any contract for sale and to resell, without being answerable for any loss.

(2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof, whether the division is horizontal, vertical, or made in any other way.

Power to sell subject to depreciatory conditions

17. (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was rendered inadequate.

(2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.

(4) This section applies to sales made before or after the commencement of this Act.

Power of trustees to give receipts

18. (1) The receipt in writing of a trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for the proceeds of sale or other capital money arising under a trust for sale of land.

(3) Notwithstanding anything to the contrary in a disposition on trust for sale of land or in the settlement of the net proceeds, the proceeds of sale or other capital money arising under the disposition

shall not be paid to or applied by the direction of fewer than two persons as trustees of the disposition, except where the trustee is a trust corporation, but this subsection does not affect the right of a sole personal representative as such to give valid receipts for or direct the application of the proceeds of sale or other capital money aforesaid; nor, except where capital money arises on a transaction, render it necessary to have more than one trustee.

(4) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

Power to compound liabilities

19. A personal representative, or two or more trustees acting together, or a sole acting trustee where by the instrument, if any, creating the trust, or by written law, a sole trustee is authorized to execute the trust and powers reposed in him, may, if and as he or they think fit—

- (a) accept any property, before the time at which it is made transferable or payable;
- (b) sever and apportion any blended trust funds or property;
- (c) pay or allow any debt or claim on any evidence that he or they think sufficient;
- (d) accept any composition or any security for any debt, or for any property, claimed;
- (e) allow any time for payment of any debt; or
- (f) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate or to the trust,

and for any of those purposes may enter into, give, execute and do such agreements, instruments of composition or arrangement,

releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

Power of trustees of renewable leaseholds to renew and raise money for the purpose

20. (1) A trustee of any leaseholds which are renewable from time to time either under any covenant or contract or by custom or usual practice may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same property on the accustomed and reasonable terms and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting and do all such other acts as are requisite:

Provided that, where by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

(2) If money is required to pay for the renewal, the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose he may raise the money required by charge of the property to be comprised in the renewed lease or of any other property for the time being subject to the trusts to which that property is subject; and no person advancing money upon a charge purporting to be under this power shall be bound to see that the money is wanted or that no more is raised than is wanted for the purpose or otherwise as to the application thereof.

Power to raise money by sale, charge, etc.

21. (1) Where trustees are authorized by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or charge of all or any part of the trust property for the time being in possession.

(2) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for charitable purposes.

Protection to purchasers and chargees dealing with trustees

22. No purchaser or chargee, paying or advancing money on a sale or charge purporting to be made under any trust or power vested in trustees, shall be concerned to see that the money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

Devolution of powers or trust

23. (1) Where a power of trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.

(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.

(3) In this section “personal representative” does not include an executor who has renounced or has not proved.

Power to insure

24. (1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot, up to the full value of the building or property, and pay the premiums for the insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to the income.

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

Application of insurance money where policy kept up under any trust, power or obligation

25. (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf or under any power, statutory or otherwise, or in performance of any covenant or of any obligation, statutory or otherwise, or by tenant for life impeachable for waste, be capital money for the purpose of the trust.

(2) If any such money is receivable by any person, other than the trustees of the trust, that person shall use his best endeavor to recover and receive the money, and shall pay the net residue thereof after discharging any costs of recovering and receiving it, to the trustees of the trust, or if there are no trustees capable of giving a discharge, into the Court.

(3) Any such money—

- (a) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under the trust; and

- (b) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Such money, or any part thereof, may also be applied by the trustees, or, if in the Court, under the direction of the Court, in rebuilding, reinstating, replacing, or repairing the property loss or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.

(5) Nothing contained in this section prejudices or affects the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the right of any chargee, lessor, or lessee, whether under any written law, or otherwise.

(6) This section applies to policies effected either before or after the commencement of this Act, but only to money received after the commencement.

Deposit of documents for safe custody

26. Trustees may deposit any documents held by them, relating to the trust, or the trust property, with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

Reversionary interests, valuations and audit

27. (1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may—

- (a) agree or ascertain the amount or value or any part in such manner as they may think fit;
- (b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorized investments;
- (c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;
- (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release,

without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.

(2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission—

- (a) to apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as aforesaid is derived, payable or charged; or
- (b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom the securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested,

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken:

Provided that nothing in this subsection shall relieve the trustees of the obligation to get in and obtain payment or transfer of the share or interest or other thing in action on the same falling into possession.

(3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any written law, from time to time (by duly qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith shall be binding upon all persons interested under the trust.

(4) Trustees may, in their absolute discretion, from time to time, but not more than once in every year unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such voucher and give such information to him as he may require, and the costs of the examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

Power to employ agents

28. (1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether a solicitor, banker, stockbroker, or other person, to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.

(2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting assurances of, or managing or cultivating, or otherwise administering any property, movable or immovable, subject to the trust or forming part of the testator's or intestate's estate, in any place outside Malaysia or

executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising thereby.

(3) (a) Without prejudice to such general power of appointing agents as aforesaid—

- (i) a trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustees under the trust, by permitting the solicitor to have the custody of, and to produce, an instrument having in the body thereof or endorsed a receipt for such money or valuable consideration or property, the instrument being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration;
- (ii) a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the production of any such instrument by the solicitor shall have the same statutory validity and effect as if the person appointing the solicitor had not been a trustee; and
- (iii) a trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance, by permitting the banker or solicitor to have the custody of and to produce the policy of insurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment:

Provided that nothing in this subsection shall exempt a trustee from any liability which he would have incurred if this Act and any written law replaced by this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor, as the case may be, to pay or transfer the same to the trustee.

(b) This subsection applies whether the money or valuable consideration or property was or is received before or after the commencement of this Act.

Power to concur with others

29. Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

Power to delegate trusts during absence abroad

30. (1) A trustee intending to remain out of Malaysia for a period exceeding fourteen days may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person (including a trust corporation) the execution or exercise during his absence from Malaysia of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person or persons:

Provided that a person being the only other co-trustee and not being a trust corporation shall not be appointed to be an attorney under this subsection.

(2) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.

(3) The power of attorney shall not come into operation unless and until the donor is out of Malaysia and shall be revoked by his return or entry into Malaysia.

(4) The power of attorney shall be verified by attestation in the manner required by the Powers of Attorney Act 1949 [*Act 424*], and a true copy or office copy thereof shall be deposited in a registry of the High Court as required by such Act, with a statutory declaration by the donor that he intends to remain out of Malaysia for a period exceeding fourteen days from the date of the declaration, or from a date therein mentioned.

(5) The statutory declaration aforesaid and a statutory declaration by the donee of the power of attorney that the power has come into operation and has not been revoked by the return or entry into Malaysia of the donor shall be conclusive evidence of the facts stated in favour of any person dealing with the donee.

(6) In favour of any person dealing with the donee, any act done or instrument executed by the donee shall, notwithstanding that the power has never come into operation or has become revoked by the act of the donor or by his death or otherwise, be as valid and effectual as if the donor were alive and of full capacity, and had himself done the act or executed the instrument, unless the person had actual notice that the power had never come into operation or of the revocation of the power before such act was done or instrument executed.

(7) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by law or by the instrument creating the trust, including power, for the purpose of the transfer of any

inscribed stock, himself to delegate to an attorney power to transfer but not including the power of delegation conferred by this section.

(8) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.

(9) No power of attorney shall be operative for the purposes of this section for a longer period than three years after the date of execution.

Indemnities

Protection against liability in respect of rents and covenants

31. (1) Where a personal representative or trustee liable as such for—

- (a) any rent, covenant or agreement reserved by or contained in any lease;
- (b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rent charge; or
- (c) any indemnity given in respect of any rent, covenant or agreement referred to in either of the foregoing paragraphs,

satisfies all liabilities under the lease or grant which may have accrued, and been claimed, up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised

or granted to a purchaser, legatee, devisee or other person entitled to call for a conveyance thereof and thereafter—

- (A) he may distribute the residuary estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the said lease or grant; and
- (B) notwithstanding any such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.

(2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

(3) In this section—

“grant” applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant;

“lease” includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liability under the lease;

“lessee” and “grantee” include persons respectively deriving title under them.

Protection by means of advertisement

32. (1) With a view to the conveyance to or distribution among the persons entitled to any movable or immovable property, the trustees or personal representatives may give notice by advertisement in the *Gazette*, and such other like notices, including notices elsewhere than in Malaysia, as would, in any special case, have been directed by a court in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

(2) At the expiration of the time fixed by the notice the trustees or personal representatives may convey or distribute the property or any part to which the notice relates, to or among the persons entitled, having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this section—

- (a) prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person, other than a purchaser, who may have received it; or
- (b) frees the trustees or personal representatives from any obligation to make searches similar to those which an intending purchaser would be advised to make or obtain.

(3) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

Protection in regard to notice

33. A trustee or personal representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate.

Exoneration of trustees in respect of certain powers of attorney

34. A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability or bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying:

Provided that—

- (a) the money so paid or applied for the advancement or benefit of any person shall not, subject to any contrary intention in the instrument of trust, exceed the sum of ten thousand ringgit or in the aggregate an amount equivalent to one half of the presumptive or vested share or interest of that person in the trust property, whichever is the greater; and
- (b) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Implied indemnity of trustees

35. (1) A trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only

for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, or of any banker, broker, or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default.

(2) A trustee may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers.

Maintenance, Advancement and Protective Trusts

Power to apply income for maintenance and to accumulate surplus income during a minority

36. (1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property—

- (a) during the minority of any such person, if his interests so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is—
 - (i) any other fund applicable to the same purpose; or
 - (ii) any person bound by law to provide for his maintenance or education; and
- (b) if such person on attaining the age of twenty-one years has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) to him, until he either attains a vested interest therein or dies, or until failure of his interest:

Provided that, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the minor and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the Court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(2) During the minority of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income from time to time in authorized investments, and shall hold those accumulations as follows:

(a) if any such person—

- (i) attains the age of twenty-one years, or marries under that age, and his interest in such income during his minority or until his marriage is a vested interest; or
- (ii) on attaining the age of twenty-one years or on marriage under that age becomes entitled to the property from which the income arose;

the trustees shall hold the accumulations in trust for the person absolutely, and so that the receipt of such person after marriage, and though still a minor, shall be a good discharge; and

- (b) in any other case the trustees shall, notwithstanding that the person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes,

but the trustees may, at any time during the minority of such person if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

(3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing in *loco parentis* to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court to the contrary) be five ringgit *per centum* per annum.

(4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the minority of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.

Power of advancement

37. Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and such payment or application may be made notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs:

Provided that—

- (a) the money so paid or applied for the advancement or benefit of any person shall not, subject to any contrary intention in the instrument of trust, exceed the sum of ten thousand ringgit or in the aggregate an amount equivalent to one half of the presumptive or vested share or interest

of that person in the trust property, whichever is the greater;

- (b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of the share; and
- (c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless the person is in existence and of full age and consents in writing to such payment or application.

Protective trusts

38. (1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called “the principal beneficiary”) for the period of his life or for any less period, then, during the period (in this section called the “trust period”) the said income shall, without prejudice to any prior interest, be held on the following trusts:

- (a) upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;
- (b) if the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for

the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons:

- (i) the principal beneficiary and his wife or her husband, if any, and his or her children or more remote issue, if any; or
- (ii) if there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be,

as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

(2) This section does not apply to trusts coming into operation before the material date, and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.

(3) Nothing in this section operates to validate any trust which would, if contained in the instrument creating the trust, be liable to be set aside.

PART IV

APPOINTMENT AND DISCHARGE OF TRUSTEES

Limitation of the number of trustees

39. (1) In the case of settlements and dispositions on trust of property, whether movable or immovable, made or coming into operation on or after the material date—

- (a) the number of trustees shall not in any case exceed four, and where more than four persons are named as such trustees, the four first named (who are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy; and
- (b) the number of the trustees shall not be increased beyond four.

(2) The restrictions hereby imposed on the number of trustees do not apply in the case of property vested in trustees for charitable, religious, or public purposes.

Power of appointing new or additional trustees

40. (1) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of Malaysia for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or is a minor, then, subject to the restrictions imposed by this Act on the number of trustees—

- (a) the person or person nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
- (b) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee,

may, by writing, appoint one or more other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased, remaining out of Malaysia, desiring to be discharged, refusing, or being unfit or being incapable, or being a minor, as aforesaid.

(2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and this section shall apply accordingly, but subject to the restrictions imposed by this Act on the number of trustees.

(3) Where a corporation being a trustee is or has been dissolved, either before or after the commencement of this Act, then, for the purposes of this section and of any written law replaced thereby, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.

(4) The power of appointment given by subsection (1) or any similar previous written law to the personal representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of the surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.

(5) But a sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had power, at any time, before renouncing probate, to exercise the power of appointment given by this section, or by any similar previous enactment, if willing to act for that purpose and without accepting the office of executor.

(6) Where a sole trustee, other than a trust corporation is or has been originally appointed to act in a trust, or where, in the case of any trust, there are not more than three trustees (none of them being a trust corporation) either original or substituted and whether appointed by the Court or otherwise, then and in any such case—

- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or

- (b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being,

may, by writing, appoint another person or other persons to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee, unless the instrument, if any, creating the trust, or any written law provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.

(7) Every new trustee appointed under this section, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(8) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(9) Where a person who is mentally disordered or of unsound mind, being a trustee, is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by the continuing trustees or trustee, under this section, unless leave has been given by the Court to make the appointment.

Supplemental provisions as to appointment of trustees

41. (1) On the appointment of a trustee for the whole or any part of trust property—

- (a) the number of trustees may, subject to the restrictions imposed by this Act on the number of trustees, be increased;

- (b) a separate set of trustees, not exceeding four, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one or such separate set of trustees, or if only one trustee was originally appointed, then, save as hereinafter provided, one separate trustee may be appointed;
- (c) it shall not be obligatory, save as hereinafter provided, to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but, except where only one trustee was originally appointed, and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee shall not be discharged from his trust unless there will be either a trust corporation or at least two individuals to act as trustees to perform the trust; and
- (d) any assurance or thing requisite for vesting the trust property, on any part, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.

(2) Nothing in this Act shall authorize the appointment of a sole trustee, not being a trust corporation, where the trustee, when appointed, would not be able to give valid receipts for all capital money arising under the trust.

Evidence as to a vacancy in a trust

42. (1) A statement contained in any instrument coming into operation after the commencement of this Act by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of Malaysia for more than twelve months or refuses or is unfit to act, or is incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession,

shall, in favour of a purchaser of a legal estate, be conclusive evidence of the matter stated.

(2) In favour of the purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid.

Retirement of trustee without a new appointment

43. (1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, then, if such trustee as aforesaid declares in writing that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, consent in writing to the discharge of the trustee, and to the vesting and shall, by the instrument, be discharged under this Act, without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

Vesting of trust property in new or continuing trustees

44. (1) Where by an instrument a new trustee is appointed to perform any trust, then—

- (a) if the instrument contains a declaration by the appointor to the effect that any interest in any movable property in the States of Johore, Kedah, Kelantan, Negeri Sembilan, Pahang, Perak, Perlis, Selangor and Terengganu, or in any land or chattel in the States of Malacca, Penang, Sabah and Sarawak, subject to the trust, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the instrument become or are the trustee for performing the trust, that declaration shall operate, without any conveyance or assignment, to vest in those persons as

joint owners and for the purposes of the trust the interest or right to which the declaration relates; and

- (b) if the instrument is made on or after the material date and does not contain such a declaration, the instrument shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the interests and rights with respect to which a declaration could have been made.

(2) Where by an instrument a retiring trustee is discharged under the statutory power without a new trustee being appointed, then—

- (a) if the instrument contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint owners, and for the purposes of the trust, the interest or right to which the declaration relates; and
- (b) if the instrument is made after 1 September 1929, in the States of Malacca and Penang, or after 9 September 1932, in the States of Johore, Kedah, Kelantan, Negeri Sembilan, Pahang, Perak, Perlis, Selangor and Terengganu, and does not contain such a declaration, the instrument shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the interests and rights with respect to which a declaration could have been made.

(3) An express vesting declaration, whether made before or after the commencement of this Act, shall, notwithstanding that the interest or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the instrument of appointment or discharge) to vest in the persons

respectively referred to in subsections (1) and (2), as the case may require, such interests and rights as are capable of being and ought to be vested in those persons.

(4) (a) This section does not extend—

- (i) to land conveyed by way of charge for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;
- (ii) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any written law or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture;
- (iii) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under any written law.

(b) In this subsection “lease” includes an underlease and an agreement for a lease or underlease.

(5) This section applies to instruments executed after 1 August 1886, in the States of Malacca and Penang and after 12 November 1920, in the States of Johore, Kedah, Kelantan, Negeri Sembilan, Pahang, Perak, Perlis, Selangor and Terengganu.

PART V

POWERS OF THE COURT

Power of Court to appoint new trustees

45. (1) (a) The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient,

difficult or impracticable so to do without the assistance of the Court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

(b) In particular and without prejudice to the generality of the foregoing provision, the Court may make an order appointing a new trustee in substitution for a trustee who is sentenced to a term of imprisonment or is mentally disordered or is a person of unsound mind or is a bankrupt or is a corporation which is in liquidation or has been dissolved.

(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(3) Nothing in this section gives power to appoint an executor or administrator.

Power to authorize remuneration

46. The Court may allow any trustee, other than Public Trustee*, such remuneration for his services as trustee as the Court may think fit.

Powers of new trustee appointed by the Court

47. Every trustee appointed by the Court shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and

*NOTE—The words “Public Trustee” shall be referred to as “corporation” which means the corporation under the name of Amanah Raya Berhad incorporated under the Companies Act 1965 [Act 125] pursuant to section 3—see section 2 and subsection 43(3) of the Public Trust Corporation Act 1995 [Act 532].

discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Vesting Orders

Vesting orders of land

48. In any of the following cases, namely—

- (a) where the Court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;
- (b) where a trustee entitled to or possessed of any land or interest therein, whether by way of charge or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person—
 - (i) is under disability;
 - (ii) is out of the jurisdiction of the Court; or
 - (iii) cannot be found, or being a corporation, has been dissolved;
- (c) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land;
- (d) where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead;
- (e) where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;

- (f) where there is no personal representative of a deceased chargee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased chargee who was entitled to or possessed of any interest in land, or where it is uncertain whether any chargee entitled to or possessed of any interest in land is living or dead, or where any chargee entitled to or possessed of any interest in land is out of the jurisdiction of the Court or cannot be found or, being a corporation, has been dissolved;
- (g) where a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for twenty-eight days after the date of the requirement; or
- (h) where land or any interest therein is vested in a trustee whether by way of charge or otherwise, and it appears to the Court to be expedient,

the Court may make an order (in his Act called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such interest as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct:

Provided that—

- (A) where the order is consequential on the appointment of a trustee the land or interest therein shall be vested for such interest as the Court may direct in the persons who on the appointment are the trustees; and
- (B) where the order relates to a trustee entitled or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the Court or

cannot be found, or being a corporation has been dissolved, the land, interest or right shall be vested in such other person who remains entitled, either alone or with any other person the Court may appoint.

Orders as to contingent rights of unborn persons

49. Where any interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of that interest on any trust, the Court may make an order releasing the land or interest therein from the contingent right, or may make an order vesting in any person the interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

Vesting order in place of conveyance by minor

50. Where any person entitled to or possessed of any interest in land, or entitled to a contingent right in land, by way of security of money, is a minor, the Court may make an order vesting or releasing or disposing of the interest in the land or the right in like manner as in the case of a trustee under disability.

Vesting order consequential on order for sale of land

51. Where any court gives a judgment or makes an order directing the sale or charge of any land, every person who is entitled to or possessed of any interest in the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Act, and the court may, if it thinks expedient, make an order vesting the land or any part thereof, for such estate or interest as the court thinks fit in the purchaser or chargee or in any other person.

Vesting order consequential on judgment for specific performance, etc.

52. Where a judgment is given for the specific performance of a contract concerning any interest in land, or for sale or exchange of any interest in land, or generally where any judgment is given for the conveyance of any interest in land either in cases arising out of the doctrine of election or otherwise, the Court may declare—

- (a) that any of the parties to the action are trustees of any interest in the land or any part thereof within the meaning of this Act; or
- (b) that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his lifetime a party to the contract or transaction concerning which the judgment is given, are the interests of persons, who, on coming into existence, would be trustees within the meaning of this Act,

and thereupon the Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

Effect of vesting order

53. Subject to due compliance with the requirements of the laws relating to the registration of interests in land a vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a trustee, have the same effect—

- (a) as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such interest as the Court directs; or
- (b) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such interest as the Court directs,

and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

Power to appoint person to convey

54. In all cases where a vesting order can be made under any of the foregoing provisions, the Court may, if it is more convenient, appoint a person to convey the land or any interest therein or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

Vesting orders as to stock and thing in action

55. (1) In any of the following cases, namely—

- (a) where the Court appoints or has appointed a trustee, or where a trustee has been appointed out of Court under any statutory or express power;
- (b) where a trustee entitled alone or jointly with another person to stock or to a thing in action—
 - (i) is under disability;
 - (ii) is out of the jurisdiction of the Court;
 - (iii) cannot be found, or being a corporation has been dissolved;
 - (iv) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in

writing has been made to him by the person so entitled; or

- (v) neglects or refuses to transfer stock or receive the dividends or income thereto, or to sue for or recover a thing in action for twenty-eight days next after an order of the Court for that purpose has been served on him;
- (c) where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead;
- (d) where stock is standing in the name of a deceased person whose personal representative is under disability; or
- (e) where stock or a thing in action is vested in a trustee, whether by way of charge or otherwise, and it appears to the Court to be expedient;

the Court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover the thing in action, in any such person as the Court may appoint:

Provided that—

- (A) where the order is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and
 - (B) where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the Court may appoint.
- (2) In all cases where a vesting order can be made under this section, the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer:

Provided that the person appointed to make or join in making a transfer of stock shall be some proper officer of the company whose stock is to be transferred.

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act, may transfer the stock to himself or any other person, according to the order, and all companies shall obey every order under this section according to its tenor.

(4) After notice in writing of an order under this section it shall not be lawful for any company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(5) The Court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under this Act is to be exercised.

(6) The provisions of this Act as to vesting orders shall apply to shares in ships registered under any written law relating to merchant shipping as if they were stock.

Vesting orders of charity or society property

56. The powers conferred by this Act as to vesting orders may be exercised for vesting any interest in land, stock or thing in action in any trustee of a charity or society over which the Court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the Court under its general or statutory jurisdiction.

Vesting orders in relation to minor's beneficial interest

57. Where a minor is beneficially entitled to any property, the Court may, with a view to the application of the capital or income for the maintenance, education or benefit of the minor, make an order—

- (a) appointing a person to convey such property; or
- (b) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the Court may think fit.

Orders made upon certain allegations to be conclusive evidence

58. Where a vesting order is made as to any land under this Act founded on an allegation of any of the following matters, namely—

- (a) the personal incapacity of a trustee or chargee;
- (b) that a trustee or chargee or the personal representative of or other person deriving title under a trustee or charge is out of the jurisdiction of the Court or cannot be found, or being a corporation has been dissolved;
- (c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a charge, was the survivor;
- (d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or chargee, or the last surviving person interested in a charge, is living or dead; or
- (e) that any trustee or chargee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested,

the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any Court upon any question as to the validity of the order; but this section does not prevent the Court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

*Jurisdiction to make other Order***Power of Court to authorize dealings with trust property**

59. (1) Where in the management or administration of any property vested in trustees, any sale, lease, charge, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the Court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the Court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the Court may think fit and may direct in what manner any money authorized to be expended, and the cost of any transaction, are to be paid or borne as between capital and income.

(2) In amplification and not in derogation of the generality of the foregoing powers the Court may by order under subsection (1)—

- (a) authorize the trustees to make any investments in or upon titles to immovable property which are not authorized by paragraph 4(1)(c);
- (b) authorize any trustees who are chargees of land to buy in any such land at any auction of such land held under an order of Court or in exercise of a power of sale vested in the trustees;
- (c) authorize the trustees to raise any funds for the improvement of lands or houses which are vested in or belong to the trust; or
- (d) authorize the doing by the trustees of any act which appears to the Court to be beneficial to the trust estate or to the beneficiaries.

(3) The Court may, from time to time, rescind or vary any order under this section, or may make any new or further order.

(4) An application to the Court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

Persons entitled to apply for orders

60. (1) An order under this Act for the appointment of a new trustee or concerning any interest in land, stock, or thing in action subject to a trust may be made on the application of any person beneficially interested in the land, stock, or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2) An order under this Act concerning any interest in land, stock, or thing in action subject to a charge may be made on the application of any person beneficially interested in the property charged, whether under disability or not, or of any person interested in the money secured by the charge.

Power to give judgment in absence of a trustee

61. Where in any action the Court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the Court, and that he cannot be found, the Court may hear and determine the action and give judgment therein against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in action in any other character.

Power to charge costs on trust estate

62. The Court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be raised and paid out of the property

in respect whereof the same is made, or out of the income, or to be borne and paid in such manner and by such persons as to the Court may seem just.

Power to relieve trustee from personal liability

63. If it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve him either wholly or partly from personal liability for the same.

Power to make beneficiary indemnify for breach of trust

64. (1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman restrained from anticipation, make such order as to the Court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him.

(2) This section applies to breaches of trust committed as well as before as after the commencement of this Act.

Payment Into Court

Payment into Court by trustees

65. (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into Court; and the same shall, subject to the law relating to civil procedure and to rules of Court, be dealt with according to the orders of the Court.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into Court.

(3) Where money or securities is or are vested in any persons as trustees, and the majority are desirous of paying the same into Court, but the concurrence of the other or others cannot be obtained, the Court may order the payment into Court to be made by the majority without the concurrence of the other or others.

(4) Where any such money or securities are deposited with any banker, broker, or other depositary, the Court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into Court.

(5) Every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid, or delivered.

PART VI

GENERAL PROVISIONS

Indemnity

66. This Act and every order purporting to be made under this Act, shall be a complete indemnity to all persons for any act done pursuant thereto, and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the Court by which the order was made had jurisdiction to make it.

Effect of order of Court

67. (1) A trustee, executor or administrator acting under any order or direction made or given by the Court under Order 55, rule 3(1) of

the *Rules of the Supreme Court 1957 [*L.N. 321/1957*] shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor or administrator in the subject matter of the said application unless he has been guilty of fraud or wilful concealment or misrepresentation in connecting with the obtaining of the order or direction.

(2) This section applies to trust, executorships or administratorships created or constituted before or after the commencement of this Act.

Validation of certain powers of trustees

68. The repeal, by the Parliament of the United Kingdom, of certain provisions of the Trustee Act 1925 of the United Kingdom [*U.K. 1925 c. 19.*] shall be deemed not to have affected the powers of trustees under paragraph 4(i) (as that paragraph stood before the amendment of the said section 4 by the Trustees Investment Act 1965 [*Act 36 of 1965*], and under which paragraph a trustee was, before the commencement of that Act, authorized to invest in any investment authorized for the investment of trust funds by the said Act of 1925.)

Repeal

69. The Ordinance and Enactments specified in the Schedule are hereby repealed:

Provided that—

- (a) nothing in this repeal shall affect any vesting order or appointment made or other thing done under the Ordinance or Enactments so repealed, and any other or appointment so

* NOTE—Rules of the Supreme Court 1957 [*L.N. 321/57*] has since been repealed by Rules of the High Court 1980 [*P.U. (A) 50/1980*]*—see* Order 93 of P.U. (A) 50/1980. Now Rules of the High Court 1980 [*P.U. (A) 50/1980*] was repealed by Rules of Courts 2012 *see* Order 94 rules 1 of P.U. (A) 205/2012.

made may be revoked or varied in like manner as if it had been made under this Act;

- (b) references in any document to the Ordinance or any Enactment so repealed or to any provision thereof shall be construed as references to this Act or to the corresponding provision of this Act, as the case may be.

SCHEDULE

[Section 69]

REPEAL

No.	Title
F.M.S. Cap. 61	Trustee Enactment
Johore Enactment No. 83	Trustee Enactment
S.S. Cap. 59	Trustees Ordinance

LAWS OF MALAYSIA**Act 208****TRUSTEE ACT 1949****LIST OF AMENDMENTS**

Amending law	Short title	In force from
L.N. 332/1958	Federal Constitution (Modification of Laws) (Ordinances and Proclamations) Order 1958	13-11-1958
Act 36/1965	Trustee Investment Act 1965	30-06-1965
Act A42	Trustee (Amendment) Act 1971	30-04-1971
Act A263	Trustee (Amendment) Act 1974	16-08-1974
Act A284	Trustee (Amendment) Act 1975	26-06-1974
P.U. (A) 46/2003	Revision of Laws (Rectification of Trustee Act 1949) Order 2003	04-02-2003

LAWS OF MALAYSIA

Act 208

TRUSTEE ACT 1949

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
3	Act A42	30-04-1971
	Act A263	16-08-1974
4	Act A42	30-04-1971
	Act A284	26-06-1974
34	Act A263	16-08-1974
41	L.N. 332/1958	13-11-1958
65	L.N. 332/1958	13-11-1958
