

1961/81

THE TRUSTEES' COMMISSION RULES 1961

COBHAM, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 12th day of July 1961

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Judicature Act 1908 and the Trustee Act 1956, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and six of the other members of the Rules Committee constituted under the Judicature Amendment Act 1930 (three of those other members being Judges of the Supreme Court), hereby makes the following rules.

RULES

1. (1) These rules may be cited as the Trustees' Commission Rules 1961.

(2) These rules shall come into force on the seventh day after the date of their notification in the *Gazette*.

2. Every application to the Supreme Court under section 72 of the Trustee Act 1956, as substituted by section 10 of the Trustee Amendment Act 1960, for the allowance to any person who is or has been a trustee of the property subject to any trust or to his personal representative of a commission or percentage out of that property shall be made by motion in accordance with the Rules of Court for the time being in force.

3. Every such motion shall be supported by an affidavit or affidavits showing:

- (a) How and when the trust was constituted, the names of all present and previous trustees thereof, and the period during which each held office:
- (b) Such information as may be necessary pursuant to rules 554A and 554B of the Code of Civil Procedure to enable an order giving directions as to service to be made pursuant to rule 554c of the Code of Civil Procedure:

- (c) Particulars of any commission or percentage out of the trust property previously allowed by the Supreme Court to, or taken in accordance with the instrument (if any) creating the trust or with the consent of the beneficiaries or otherwise by, each person who is or has been a trustee or the personal representative of a trustee:
- (d) Whether any profit, benefit, or advantage has been derived directly or indirectly by any trustee of the trust property, or by any partner, relative, servant, or personal representative of any trustee, from or in connection with the administration thereof; and, if so, particulars of every such profit, benefit, and advantage:
- (e) The amount of the allowance sought by each applicant, and the basis or principle by which the same is arrived at; and, if an order is sought under subsection (3) of the said section 72 apportioning the total amount allowed, the basis on which the proposed apportionment is sought:
- (f) If the trustees who or whose personal representatives are making the application have not been the only trustees since the inception of the trust, information as to the extent to which, up to the date to which a commission or percentage is applied for, the trust property has been realised and income got in and the administration of the trust carried on and its responsibilities discharged by each person who is or has been a trustee:
- (g) If the application is not made at or about the time of the final distribution of the trust property, sufficient information to enable the Supreme Court to determine what commission or percentage (if any) should be ordered forthwith having regard to the extent to which the duties of the trusteeship have already been discharged, and the period likely to elapse before that final distribution, and the changes in trusteeship which may occur during that period, and other relevant facts.

4. Subject to rules 5, 6, and 12 of these rules, the following documents, duly verified by an affidavit or affidavits of a solicitor or public accountant, shall be filed in respect of every such motion:

- (a) A copy of the will or other instrument (if any) creating the trust:
- (b) Capital and income accounts of the trust or summarised statements thereof showing—
 - (i) The trust property and liabilities at the inception of the trust and at the date to which a commission or percentage is sought:
 - (ii) The gross capital realisations and other capital receipts, and the capital liabilities discharged and investments of capital made, and distributions of capital to beneficiaries and other capital payments made, during the period from the inception of the trust to the date to which a commission or percentage is sought, distinguishing those received and made by the trustees who or whose personal representatives are making the application from those received and made by other trustees (if any):

(iii) The gross income received and liabilities and outgoings discharged from income, and the distributions of income to beneficiaries, and other disbursements from income, during the last-mentioned period, distinguishing those received and made by the trustees who or whose personal representatives are making the application from those received and made by other trustees (if any):

(iv) The sums retained by or paid to solicitors, accountants, auctioneers, land agents, commission agents, brokers, and other agents during the said period in respect of capital and income respectively.

5. Unless the Supreme Court or a Judge thereof otherwise orders, the accounts of the trustees or summarised statements thereof previously kept or made for the purposes of the trust may be adopted for the purposes of the said motion:

Provided that any information required by rules 3 and 4 of these rules and not contained in those accounts or summarised statements (including any information required in respect of administration by other trustees) shall be supplied by supplementary accounts or summarised statements verified in each case by an affidavit of a public accountant or solicitor.

6. In so far as any information and accounts or summarised statements required in support of any such motion have been supplied in support of any previous application to the Supreme Court for a commission or percentage, the provisions of these rules shall be deemed to that extent to have been complied with in connection with that motion.

7. The Supreme Court may at any time, if it thinks fit, refer the motion or any matter being part thereof or connected therewith to the Registrar for inquiry and report.

8. Unless the Supreme Court or a Judge thereof otherwise orders, reasonable notice to the satisfaction of the Registrar of any appointment made by the Registrar to proceed with his inquiry shall be given to every person who was entitled to be served with the motion, unless he has given notice in writing to the Registrar that he does not intend to appear or be represented at the inquiry.

9. The evidence of every witness called on the inquiry before the Registrar shall be taken down in writing and signed by the witness, and shall accompany the Registrar's report to the Supreme Court.

10. (1) The Supreme Court may, in its discretion, award costs to any applicant or other person affected by the application, whether any commission or percentage is allowed or not.

(2) If costs are allowed, all usual and proper disbursements, including agency charges, shall, unless the Supreme Court or a Judge thereof otherwise orders, also be deemed to be allowed though not expressly mentioned.

11. The Supreme Court may direct that any costs be paid out of the trust property or any part thereof.

12. The Supreme Court or a Judge thereof, upon motion made before or after the filing of a motion for a commission or percentage, and upon sufficient grounds, may by order dispense with the observance of all or

any of the foregoing rules. A motion under this rule may in the first instance be made *ex parte*, but the Court or Judge may require notice thereof to be given to such person or persons and in such manner as the Court or Judge may direct.

13. The following rules are hereby revoked :

- (a) The Executors' Commission Rules 1935 (*Gazette*, 1935, Vol. III, p. 3988) :
- (b) The Executors' Commission Rules 1935, Amendment No. 1 (S.R. 1953/92).

T. J. SHERRARD,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the rules, but is intended to indicate their general effect.

These rules govern applications to the Supreme Court under section 72 of the Trustee Act 1956 for trustees' commission. They take the place of the Executors' Commission Rules 1935.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 13 July 1961.
These regulations are administered in the Department of Justice.