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TRUSTEES (PERPETUAL SUCCESSION) ACT

CHAPTER 164

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CHAPTER 164

TRUSTEES (PERPETUAL SUCCESSION) ACT

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CHAPTER 164
TRUSTEES (PERPETUAL SUCCESSION) ACT

[Date of commencement: 31st May, 1923.]

An Act of Parliament to provide for the incorporation of certain trustees for the purpose of perpetual succession to property and for purposes connected therewith

[Cap. 164 (1948), G.N. 1603 of 1955, G.N. 1605 of 1955, Act No. 25 of 1959, L.N. 172/1960, L.N. 173/1960, L.N. 2/1964, Act No. 19 of 1964, Act No. 2 of 1980, Act No. 19 of 1985, Act No. 22 of 1987.]

1. Short title

This Act may be cited as the Trustees (Perpetual Succession) Act.

[Act No. 2 of 1980, s. 3.]

2. Interpretation

In this Act, unless the context otherwise requires—

“**constitution**” means the rules, regulations, terms and documents relating to the objects of a trust and regulating the affairs thereof and the appointment of trustees and other officers thereof;

“**pension fund**” means a fund established under trusts subject to the law of Kenya, in connection with an undertaking or combination of undertakings carried on wholly or partly in Kenya, being a fund which the main purpose is—

- (a) the provision of superannuation allowances on retirement to persons employed in the undertaking or combination of undertakings in connection with which the fund is established; or
- (b) the provision of pensions during widowhood to the widows of persons who are or who have been so employed and of periodical allowances to or in respect of children of those persons; or
- (c) the assurance of capital sums on the death of persons who have been so employed,

whether or not the fund has been approved and registered pursuant to and for the purposes of the Income Tax Act (Cap. 470);

“**provident fund**” means a fund whether or not approved and registered pursuant to and for the purposes of the Income Tax Act (Cap. 470), which is established under an irrevocable trust and which is established by or on behalf of an employer with the principle object of providing for the payment of lump sums to his employees in respect of their service with him upon their leaving that service after a specified period thereof, or to any of the dependants, or to the estate, of any of those employees on their death while in that service;

“**trustees**” includes a sole trustee.

[Act No. 2 of 1980, ss. 3 and 4, Act No. 19 of 1985, Sch., Act No. 22 of 1987, Sch.]

3. Incorporation of trustees

(1) Trustees who have been appointed by any body or association of persons established for any religious, educational, literary, scientific, social, athletic or charitable purpose, or who have constituted themselves for any such purpose, or the trustees of a pension fund or provident fund may apply to the Minister in the manner provided in this Act for a certificate of incorporation of the trustees as a corporate body.

(2) If the Minister, having regard to the extent, nature and objects and other circumstances of the trust concerned considers incorporation expedient, he may grant a certificate accordingly, subject to such conditions or directions generally as he thinks fit to insert in the certificate, and particularly relating to the qualifications and number of the trustees, their tenure and avoidance of office, the mode of appointing new trustees, the custody and use of the common seal, the amount of movable or immovable property which the trustees may hold, and the purposes for which that property may be applied.

(3) The trustees shall thereupon become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, and power to sue and be sued in their corporate name and, subject to the conditions and directions contained in the certificate, to hold and acquire, and by instruments under the common seal to convey, transfer, assign, charge and demise any movable or immovable property or any interest therein now or hereafter belonging to, or held for the benefit of, the trust concerned in the same manner and subject to such restrictions and provisions as trustees might so do without incorporation.

[G.N. 1605 of 1955, Sch., L.N. 173/1960, Sch., Act No. 2 of 1980, s. 5, Act No. 19 of 1985, Sch., Act No. 22 of 1987, Sch.]

4. Property to vest in body corporate

The certificate of incorporation shall vest in the body corporate all movable and immovable property and any interest therein belonging to or held by any person or persons for the benefit of the trust concerned.

[Act No. 2 of 1980, s. 6.]

5. Application for incorporation

(1) An application to the Minister for a certificate under this Act shall be in writing, signed by the person or persons making it, and shall contain the several particulars specified in the Schedule, or such of them as shall be applicable to the case.

(2) The Minister may require such declaration or other evidence in verification of the statements and particulars in the application, and such other particulars, information and evidence, if any, as he may think necessary or proper.

[G.N. 1605 of 1955, Sch., L.N. 173/1960, Sch.]

6. Appointment of trustees

(1) Before a certificate of incorporation is granted the trustees shall have been effectually appointed or constituted to the satisfaction of the Minister, and where a certificate of incorporation has been granted vacancies in the number of trustees shall from time to time be filled so far as is required by the constitution of the trust

concerned, or by any conditions or directions inserted by the Minister under subsection (2) of section 3, by such legal means as would have been available for the appointment of new trustees if no such certificate had been granted, or otherwise as shall be required by those conditions or directions.

(2) The appointment of every new trustee shall be certified by, or by the direction of, the trustees to the Minister upon the completion of the appointment.

(3) Within one month after the expiration of each period of one year after the grant of a certificate of incorporation a return shall be made to the Minister by the trustees of the names and addresses of the trustees at the end of each such period.

[G.N. 1603 of 1955, Sch., G.N. 1605 of 1955, Sch., L.N. 172/1960, Sch., L.N. 173/1960, Sch., Act No. 2 of 1980, s. 7.]

7. Certificate to be evidence of compliance with requirements

A certificate of incorporation so granted shall be conclusive evidence that all the preliminary requirements of this Act in respect of the incorporation have been complied with, and the date of incorporation mentioned in the certificate shall be deemed to be the date at which incorporation has taken place.

8. Variation of conditions in certificates

(1) The trustees in respect of whom a certificate of incorporation has been granted under this Act may apply to the Minister to vary any of the conditions or directions contained in the certificate, and the Minister, after calling for such evidence and information as he may require, may, if he is satisfied that it is proper so to do, by order vary the conditions or directions to such extent as he shall think fit, or may refuse to vary them.

(2) Where any conditions or directions are varied by order made under subsection (1), the variation shall take effect as from the date of the order.

[Act No. 25 of 1959, s. 2, Act No. 2 of 1980, s. 8.]

9. Recording of documents, and provision of copies

(1) The Principal Registrar of Documents, appointed under the Registration of Documents Act (Cap. 285), shall keep and record in a register kept for that purpose the applications, orders and other documents lodged or given under the provisions of this Act, together with a duplicate of every certificate of incorporation issued under this Act.

(2) Any person, on completion of the prescribed form and on payment of the prescribed fee, may require to be given a copy of any such document, certified under the hand of a Registrar appointed under the Registration of Documents Act (Cap. 285).

[Act No. 25 of 1959, s. 3.]

10. Enforcement of conditions of certificate

All conditions and directions inserted in any certificate of incorporation shall be binding upon and performed or observed by the trustees as terms of the trust concerned.

[Act No. 2 of 1980, s. 9.]

11. Fees

Every application for a certificate of incorporation under this Act and every such certificate shall be charged with the prescribed fee.

[Act No. 25 of 1959, s. 4.]

12. Gifts to vest in corporate body

After the incorporation of any trustees pursuant to this Act, every donation, gift and disposition of movable or immovable property, or any interest therein, theretofore lawfully made (but not having actually taken effect) or hereafter lawfully made by deed, will or otherwise to or in favour of the trust concerned, or the trustees thereof, or otherwise for the purposes thereof, shall take effect as if it had been made to, or in favour of, the corporate body or otherwise for the same purposes.

[Act No. 2 of 1980, s. 10.]

13. Common seal

(1) The common seal of the corporate body shall have such device as may be approved by the Minister, and until a common seal is provided the seal of some person may be authorized by the Minister for use as the common seal of the corporate body.

(2) Any instrument to which the common seal of the corporate body has been affixed, in apparent compliance with the regulations for the use of the common seal referred to in section 3, shall be binding on the corporate body, notwithstanding any defect or circumstance affecting the execution of the instrument.

[G.N. 1603/1955, Sch., L.N. 172/1960, Sch.]

14. Petition to decide question whether person is a member of a corporate body

(1) When any question arises as to whether a person is a member of a body incorporated under this Act, any person interested in that question may apply by petition to the High Court for its opinion thereon.

(2) Notice of the hearing shall be given to such persons and in such manner as the court shall think fit, and any opinion given by the court on an application under this section shall be deemed to have the force of a declaratory decree.

15. Searches

Any person desiring information may apply in person at the Principal Registry of Documents and, on completion of the prescribed form and on payment of the prescribed fee, may inspect the register relating to the document mentioned in the form.

[Act No. 25 of 1959, s. 5.]

16. Change of name and dissolution

(1) The Minister may, if he is satisfied that the circumstances of the case so justify, order that the name of a corporate body be changed.

(2) The Minister may, if he is satisfied that a corporate body in respect of which a certificate of incorporation has been granted under this Act, has ceased to exist

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or that the objects for which it was established have become incapable of fulfilment, order that it be dissolved, whereupon any land vested in it shall escheat—

- (a) if the land is Trust land, to the county council in whose area of jurisdiction the land is situated;
- (b) if the land is not Trust land, to the Government:

Provided that this subsection shall not apply where such corporate body is wound up under the provisions of section 33 of the Societies Act (Cap. 108).

[Act No. 19 of 1964, Sch., Act No. 2 of 1980, s. 11.]

17. Regulations

The Minister may make regulations for the purpose of regulating any matter or thing to be done under this Act, including the specifying of fees and the prescribing of forms, and generally for the better carrying out of the provisions of this Act.

[Act No. 25 of 1959, s. 5.]

SCHEDULE

[Act No. 2 of 1980, ss. 12 & 4.]

The objects and constitution of the trust concerned, together with the date of, and parties to, every deed, will or other instrument, if any, creating, constituting or regulating it.

A statement and short description of the property or interest therein which at the date of application is held or intended to be held by the trustees.

A statement as to whether the trust concerned is a society registered or exempted from registration under the Societies Act (Cap. 108), or is incorporated under the Companies Act (Cap. 486), together with the relevant certificate of registration, exemption or incorporation.

The names and addresses of the Trustees.

The proposed title of the corporate body, of which title the words “trustee” and “registered” shall form part.

The proposed device of the common seal.

The regulations for the custody and use of the common seal.
