

CHAPTER 31

THE PUBLIC TRUSTEE (POWERS AND FUNCTIONS) ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 31

THE PUBLIC TRUSTEE (POWERS AND FUNCTIONS) ACT

An Act to provide for the appointment of a Public Trustee and to define the powers and duties of such officer and to provide for the appropriation of capital moneys in the hands of the Public Trustee to a common fund and to provide for related matters.

[Parts I and II, 15th July, 1930]

[Part III, 1st October, 1940]

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| Ords. Nos. | GN. Nos. |
| 2 of 1930 | 388 of 1960 |
| 46 of 1940 | 478 of 1962 |
| 39 of 1952 | |
| 35 of 1961 | |

PART I

PRELIMINARY PROVISIONS

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| Short title | 1. This Act may be cited as the Public Trustee (Powers and Functions) Act. |
| Interpretation | 2. In this Act, unless the context otherwise requires- “agent” means an agent of the Public Trustee duly appointed in accordance with section 3 of this Act; “court” means the High Court; and “Minister” means the Minister responsible for legal affairs. |

PART II

PUBLIC TRUSTEE

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| Appointment of Public Trustee Ord. No. 2 of 1930 GN. No. 478 of 1962 | 3. The Minister may appoint any fit and proper person to be the Public Trustee for Mainland Tanzania, and may appoint one or more assistants or agents to the Public Trustee, and any assistant or agent appointed shall, subject to the control of the Public Trustee, be competent to discharge any of the duties |
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and exercise any of the powers of the Public Trustee, and when discharging such duties, or exercising the powers, shall have the same privileges and be subject to the same liabilities as the Public Trustee.

Corporation sole

4. The Public Trustee shall be a corporation sole by the name of the Public Trustee and as the Public Trustee, shall have perpetual succession, an official seal and may sue and be sued in his corporate name.

Duties of Public Trustee
Ords. Nos.
39 of 1952 s. 2;
35 of 1961 s.140
and
Second Sch.

5.-(1) Subject to and in accordance with the provisions of this Part and the rules made under this Act, the Public Trustee may, if he thinks fit-

- (a) act as an ordinary trustee; and
- (b) be appointed trustee by a court of competent jurisdiction.

(2) Except as expressly provided in this Act, the Public Trustee shall have the same powers, duties and liabilities and be entitled to the same rights and privileges and be subject to the same control and orders of the court as any other trustee acting in the same capacity.

(3) The Public Trustee may decline to accept any trust or may accept the same subject to conditions as he may impose.

(4) The Public Trustee shall not accept any trust under any composition or scheme of arrangement for the benefit of creditors or any trust of any estate known or believed by him to be insolvent.

(5) The Public Trustee shall not, except as provided by any rules made under this Part, accept any trust which involves the management or carrying on of any business.

(6) The Public Trustee shall always be sole trustee and it shall not be lawful to appoint the Public Trustee to be trustee with any other person.

(7) In addition to his duties as trustee under this Part, it shall be lawful for the Public Trustee to act as executor or administrator either solely or jointly with another person in his capacity as a trust corporation under and in accordance

Cap. 352 with the provisions of the Probate and Administration of Estates Act:

Cap. 352 Provided that, in any case where the Public Trustee acts as executor or administrator he shall, without prejudice to the application of the Probate and Administration of Estates Act, have the same powers, duties and liabilities, be entitled to the same rights and privileges, and be subject to the same control and orders of the court as if he were acting in the capacity of Administrator-General, and shall be subject to the provisions of the Administrator-General (Powers and Functions) Act.

Cap. 27

(8) Nothing in subsections (1) to (6) and this subsection or in the subsequent provisions of this Act shall have application to the Public Trustee acting in the capacity of executor or administrator.

Appointment of Public Trustee as trustee by person creating trust

6.-(1) A person intending to create a trust, other than a trust which the Public Trustee is prohibited from accepting under the provisions of this Part, may by instrument creating the trust, and with the consent of the Public Trustee, appoint the Public Trustee by that name or by any other sufficient description to be the trustee of the property subject to the trust:

Provided that, the consent of the Public Trustee shall be recited in the said instrument, and that instrument shall be duly executed by the Public Trustee.

(2) Upon the appointment, the property subject to the trust shall vest in the Public Trustee and shall be held by him upon the trusts declared in the instrument.

Appointment of Public Trustee as trustee by court

7. Where a property is subject to a trust, other than a trust which the Public Trustee is prohibited from accepting under the provisions of this Part, and there is no trustee within the limits of Mainland Tanzania willing to act or capable of acting in the trust, the court with the consent of the Public Trustee may make an order for the appointment of the Public Trustee by that name, to be the trustee of the property.

Transfer of legacy, etc., of infant or lunatic to Public Trustee

8. Where an infant or lunatic is entitled to any gift, legacy or share of the assets of a deceased person, it shall be lawful for the person by whom the gift is made, or the executor or administrator by whom the legacy or share is payable or transferable, or any trustee of any gift, legacy or share, with the consent of the Public Trustee to transfer the same by an instrument in writing to the Public Trustee by that name or by any other sufficient description:

Provided that, the consent of the Public Trustee shall be recited in the said instrument and that the instrument shall be duly executed by the Public Trustee.

Security not required

9. The Public Trustee shall not be required by any court to enter into any bond or security on his appointment in any capacity under this Part.

Government liability for acts of Public Trustee

10. The Government shall be liable to make good out of the public revenue all sums required to discharge any liability which the Public Trustee, if he were a private trustee, would be personally liable to discharge, except when the liability is one to which neither the Public Trustee nor any of his officers has in any way contributed, and which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in that case neither the Public Trustee nor the Government shall be subject to any liability.

Fees chargeable
GN. No.
478 of 1962

11. There shall be charged in respect of the duties of the Public Trustee the fees, whether by way of percentage or otherwise, as the Minister may prescribe.

Accounts to be Audited
GN. No.
478 of 1962

12. The accounts of the Public Trustee shall be audited at least once annually, and at such other time as the Minister may direct by prescribed person and in the prescribed manner.

Court orders

13. The court may make orders as it thinks fit respecting any trust property vested in the Public Trustee or the interest or produce of the trust property.

Power to incur
expenditure

14. The Public Trustee may, in addition to any other powers of expenditure lawfully exercisable by him, incur expenditure on acts as may be necessary for the proper care and management of any property belonging to any trust administered by him.

Power of
advancement

15. The Public Trustee may in his discretion out of the property in his care make payments for the advancement, education, marriage or other benefit of any person entitled to the capital of the said property or any share of the property:

Provided that, the money paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one half of the presumptive or vested share or interest of that person in the said property.

Power to make
rules
GN. No.
478 of 1962

16. The Minister may make rules for the safe custody, deposit and investment of funds which come into the hands of the Public Trustee and for the better carrying out of or rendering effective the provisions of this Part.

PART III

PUBLIC TRUSTEE INVESTMENT BOARD

Establishment of
Public Trustee
Investment Board
Ord. No.
46 of 1940 s. 2
GN. No.
478 of 1962

17.—(1) For the purposes of this Part, there shall be established a board to be known as the Public Trustee Investment Board, in this Part referred to as “the Board”.

(2) The Board shall consist of members as the Minister may, by notice in the *Gazette*, appoint.

(3) The Minister shall appoint from amongst the members of the Board, the Chairman and the Secretary of the Board.

(4) The Minister may, in the same manner replace any member appointed by another member.

(5) Three members of the Board, which shall include the Chairman and the Secretary, shall form a *quorum*.

Formation of
common fund
Ord. No.
46 of 1940 s. 3
GN. No.
478 of 1962

18.—(1) All capital moneys, however arising, which shall come into the hands of the Public Trustee whether before or after the coming into operation of this Act, and whether directed to be invested or not, shall, unless expressly forbidden to be invested in the instrument creating the trust, be one common fund, and may be invested as provided by section 20, and any investments made from the common fund shall not be made on account of or belong to, any particular estate.

(2) The interest payable to the respective estates, the moneys of which form the common fund, shall be at a rate to be determined by the Board from time to time and the rate of interest shall be credited to the respective estates half-yearly, namely, on the first day of April and on the first day of October in each year.

(3) The Minister may make regulations as he thinks proper as to the payment or non-payment of interest on moneys belonging to any estate, and as to the period from which interest, if allowed, is to be computed.

Investments to be
sanctioned
Ord. No.
46 of 1940 s. 4

19. An investments of moneys in the common fund shall not be made, and an investments made prior to the commencement of this Act shall not be sold, transferred, converted or otherwise disposed of, without the sanction of the Board:

Provided that, a person dealing with the Public Trustee in the matter of the sale or purchase of any investment shall not be under any obligation to inquire whether the sale or purchase has received the sanction of the Board.

Authorised
investments
Ord. No.
46 of 1940 s. 5
GN. No.
478 of 1962

20. Moneys in the common fund may be invested-

- (a) in any manner authorised by law for the investment of trust funds;
- (b) by way of first mortgage on immovable property in Mainland Tanzania up to an amount not exceeding three-fifths of the value of the property; or
- (c) by way of fixed deposit with a bank approved by the Minister.

Creation and
utilisation of
reserve fund
Ord. No.
46 of 1940 s. 6;
GN. No.
478 of 1962

21.-¹(1) In the months of April and October in each year, the Board shall give directions to the Public Trustee, as may be necessary with regard to the disposal of any balance standing to the credit of the income account of the common fund at the end of the preceding year, after interest payable to the respective estates and other lawful charges have been duly debited to the said income account and any part of the balance as the Board may direct, shall be carried to the credit of a reserve fund, and the remainder, if any, shall be carried to the credit of the income account for the current year.

(2) The Minister may make rules governing the investment or use of moneys in the reserve fund, and, subject to anything contained in the rules, the reserve fund shall be under the control of the Board, and the moneys in the reserve fund may be invested as provided by section 20 in the case of moneys belonging to the common fund, or may be used for any of the following purposes to:

- (a) make good any lawful claims on the common fund which cannot be met from the reserve fund, whether the claims relate to capital moneys or to income;
- (b) meet any liability which the Government may have incurred under section 10 of this Act;
- (c) meet costs, charges, expenses and moneys as may be awarded against the Public Trustee or incurred by the Public Trustee or in obtaining legal opinions or in any legal proceedings of general interest to which the Public Trustee is, or is made, a party, or is in any way interested or affected, and which costs, by reason of the general interest and importance of the matter in dispute, cannot be fairly charged against any particular estate under administration by the Public Trustee; and

¹ Note: The income of the Reserve Fund established under the authority of section 21 was declared exempt from income tax: *vide* GNs. Nos. 186 of 1954 and 290 of 1961 (L.N. No. 51).

- (d) meet other costs, charges, expenses or liabilities arising out of the administration of the common fund as the Board may at any time decide.
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