

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]

Ords. Nos.
2 of 1930
46 of 1940
39 of 1952
35 of 1961
G.Ns. Nos.
388 of 1960
478 of 1962
[R.L. Cap. 31]

PART I
PRELIMINARY PROVISIONS (ss 1-2)

1. Short title

This Act may be cited as the Public Trustee (Powers and Functions) Act.

2. Interpretation

In this Act, unless the context requires otherwise—

"**agent**" means an agent of the Public Trustee duly appointed in accordance with section 3 of this Act;

"**court**" means the High Court;

"**Minister**" means the Minister for the time being responsible for legal affairs.

PART II
PUBLIC TRUSTEE (ss 3-16)

3. Appointment of Public Trustee 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 so appointed shall, subject to the control of the Public Trustee, be competent to discharge any of the duties and exercise any of the powers of the Public Trustee, and when discharging such duties, or exercising such powers, shall have the same privileges and be subject to the same liabilities as the Public Trustee.

4. Corporation sole

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

5. Duties of Public Trustee (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;

(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 such 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 with the provisions of the Probate and Administration of Estates Act ^{i*}:

Provided that in any case where the Public Trustee so acts as executor or administrator he shall, without prejudice to the application of the Probate and Administration of Estate 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 in all respects shall be subject to the provisions of the Administrator-General (Powers and Functions) Act ^{ii*}.

(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.

6. Appointment of Public Trustee as trustee by person creating trust

(1) Any 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 such trust:

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

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

7. Appointment of Public Trustee as trustee by court

If any 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 such property.

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

If any 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 such gift is made, or the executor or administrator by whom such 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 such instrument shall be duly executed by the Public Trustee.

9. Security not required

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.

10. Government liability for acts of Public Trustee

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.

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

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

13. Court orders

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

14. Power to incur expenditure

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

15. Power of advancement

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 so 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.

16. Power to make rules 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 (ss 17-21)

17. Establishment of Public Trustee Investment Board (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 such 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 so appointed by another member.

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

18. Formation of common fund (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 such 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 such 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 from time to time make such 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.

19. Investments to be sanctioned by the Board No investments of moneys in the common fund shall be made, and no such investments made prior to the commencement of this Act shall be sold, transferred, converted or otherwise disposed of, without the sanction of the Board:

Provided that no person dealing with the Public Trustee in the matter of the sale or purchase of any such investment shall be under any obligation to inquire whether such sale or purchase has received the sanction of the Board.

20. Authorised investments 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 the property; or
- (c) by way of fixed deposit with a bank approved by the Minister.

21. Creation and utilisation of reserve fundⁱⁱⁱ 1 (1) In the months of April and October in each year, the Board shall give such 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 such 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 such 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 all or any of the following purposes—

- (a) to make good any lawful claims on the common fund which cannot be met from the reserve fund, whether such claims relate to capital moneys or to income;
- (b) to meet any liability which the Government may have incurred under section 10 of this Act;
- (c) to meet all such 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
- (d) to meet such other costs, charges, expenses or liabilities arising out of the administration of the common fund as the Board may at any time decide.

ⁱCap. 352

ⁱⁱCap. 27

ⁱⁱⁱNote: The income of the Reserve Fund established under the authority of section 21 was declared exempt from income tax; *vide* G.Ns. Nos. 186 of 1954 and 290 of

1961 (L.N. No. 51).