

1931

Kenya

No. 17299

SUBJECT

C0533/414

Mazui Lands Trust Ordinance, 1931.

Previous

See 1595/29 (Muster Order)

Subsequent

LEGAL REPORT

THE CORPORATIONS (PROBATE AND
ADMINISTRATION) BILL, 1931.

This Bill was introduced at the request of the Association of Chambers of Commerce of Eastern Africa, and has the approval of the Law Society of Kenya.

It is modelled on the provisions of the English legislation of 1925, the definition of Trust Corporation being taken from the Public Trustee Rules of 1912, Rule 30, with the modification for local purposes that such a corporation must, except with the leave of the Court in each case, have a subscribed capital of not less than £25000.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,

22nd June, 1931.



ATTORNEY GENERAL.

No. XIV

Corporations (Probate and Administration) 1931

Power to grant representation to a trust corporation.

3. (1) The Supreme Court may—
- (a) where a trust corporation is named in a will as executor, whether alone or jointly with another person, grant probate to the corporation either solely or jointly with another person, as the case may require; and
 - (b) grant administration to a trust corporation, either solely or jointly with another person,

and the corporation may act accordingly as executor or administrator, as the case may be.

But not to a syndic or nominee.

- (2) Probate or administration shall not be granted to a syndic or nominee on behalf of a trust corporation.

Affidavits.

4. Any officer authorised for the purpose by a trust corporation or the directors or governing body thereof may, on behalf of the corporation, swear affidavits, give security and do any other act or thing which the court may require with a view to the grant to the corporation of probate or administration, and the acts of an officer so authorised shall be binding on the corporation.

Vesting in the corporation.

5. Where, at the commencement of this Ordinance, any interest in any estate is vested in a syndic on behalf of a trust corporation acting as the personal representative of a deceased person, the said interest shall, by virtue of this Ordinance, vest in the corporation, and the syndic shall be kept indemnified by the corporation in respect of the said interest.

This section shall not apply to securities registered or inscribed in the name of a syndic or to land or a charge registered under the Registration of Titles Ordinance in the name of a syndic, but any such securities, land or charge shall be transferred by the syndic to the corporation, or as the corporation may direct.

Effect.

6. This Ordinance shall have effect whether the intestate died before or after the commencement of this Ordinance, and no such vesting or transfer shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

1931 Corporations (Probate and Administration)

No. XIV

Passed in the Legislative Council the fourth day of June, in the year of Our Lord one thousand nine hundred and thirty-one.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council, and is presented for authentication and assent as a true and correct copy of the said Bill.

G. BERESFORD STOOKE.

Acting Clerk of the Legislative Council.

Cap. 148.

No. XIV of 1931.

An Ordinance to Enable Bodies Corporate to Act as Executors or Administrators.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as "the Corporations (Probate and Administration) Ordinance, 1931."

Short title.

2. In this Ordinance—

Interpretation.

"trust corporation" means any incorporated banking or insurance or guarantee or trust company or any body corporate which has a subscribed capital of not less than twenty-five thousand pounds and which is for the time being empowered by the Act of Parliament, Ordinance, charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers) to undertake trusts, but for so long a time only as such body corporate shall not, by any prospectus, circular, advertisement or other document issued by it or on its behalf, state or hold out that any liability attaches to the Public Trustee or to the general revenue of the Colony in respect of any act or omission of such body corporate when so acting: Provided that a body corporate which would be a trust corporation but for the fact that its subscribed capital is less than twenty-five thousand pounds may act as executor or administrator in any case with the leave of the Supreme Court and on giving such security as the Supreme Court may determine and thereupon for the purpose of so acting as executor or administrator such corporation shall have all the rights and privileges conferred on a trust corporation by this Ordinance.

No. XIV.

1931.



Colony and Protectorate of Kenya

IN THE TWENTY-SECOND YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE V.
JOSEPH ALOYSIUS BYRNE, K.C.M.G., K.B.E., C.B.

Approved by His Majesty

1931.

J. BYRNE

Comptroller

AN ORDINANCE TO ENABLE BODIES COR-
PORATE TO ACT AS EXECUTORS OR
ADMINISTRATORS

KENYA

NO. 408



GOVERNMENT HOUSE,

NAIROBI,

KENYA.

18th July, 1931.

RECEIVED
12 AUG 1931
COL. OFFICE

My Lord,

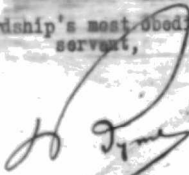
I have the honour to transmit herewith two authenticated and twelve printed copies of an Ordinance intituled "the Corporations (Probate and Administration) Ordinance, 1931," which duly passed its third reading in the Legislative Council on the 8th June, 1931, and to which I assented in His Majesty's name on the 10th July, 1931.

A copy of the Legal Report by the Attorney General is also enclosed.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,


Brigadier-General,
GOVERNOR.

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1

Received 6/22 - 2 SEP 1931

KENYA.

NO. 408



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
12 AUG 1931
COL. OFFICE

18th July, 1931.

My Lord,

I have the honour to transmit herewith two authenticated and twelve printed copies of an Ordinance intituled "the Corporations (Probate and Administration) Ordinance, 1931," which duly passed its third reading in the Legislative Council on the 8th June, 1931, and to which I assented in His Majesty's name on the 10th July, 1931.

A copy of the Legal Report by the Attorney General is also enclosed.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,

H. Jones
Brigadier-General,
GOVERNOR.

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1

Hand 673-28 SEP 1931

a definition. The rule provides that certain companies etc. shall be entitled "to act as custodians trustees" but these words are omitted from the definition but the words "when so acting" (immediately before the proviso) which refer to them are retained, "when so acting" should read "when acting as an executor or administrator".

The A.G.'s report might with advantage have given reference to the ^{Caps &} sections of the Imperial Legislation

H. H. Frost
579

25

To Roberts Way.

Will you look at this:

I gather from A.G.'s report that it is the intention of the Ordinance to impose the capital qualification of £25,000 upon all trust corporations. I doubt however if the definition in sec 2 does so. It seems to me uncertain from the first part of the definition if the qualification applies to all the institutions mentioned but the proviso which speaks only of "a body corporate" seems to me to ~~exclude~~ ^{prevent an} ~~it~~ ^{argument} clear that the qualification only applies to corporate bodies ~~which are~~ ^(or companies or partnerships or trusts) incorporated banking & companies.

I might also point out that a ^{verbal} ~~grammatical~~ mistake seems in the definition owing to adaptation of the Public Trustee Act 1912 - No. 30. as

4

companies etc., shall be entitled
"to act as custodians ~~and~~ trustees"
but whilst these words are omitted
from the Kenya definition, the words
"when so acting" are included. It is
suggested that to make the sense clear, ^{for}
the words "when so acting" ^{then} should be
~~deleted and~~ be substituted ~~by~~ the
phrase "when acting as ^{an} executor or
administrator".

4. Whilst it is ^{not} necessary to
~~postpone~~ ~~the~~ ~~disallowment~~ of the
Ordinance on account of these points,
^{You will, we doubt, take a comment}
I shall be glad if the amendments which I have
^{appended to effect}
indicated could be carried out at an
early date.

I am, &c

(SIGNED) J. H. THOMAS.

£25,000 on all "Trust Corporations"
covered by its provisions, but the
definition in Section 2 does not make
this point clear. As the section
now stands, the clause "which ^{has} a
subscribed capital ~~not~~ not less than

Twenty five thousand pounds
£25,000

would ordinarily be
construed to refer only to the immediate
preceding words "any body corporate" and
not to all the institutions mentioned in
the first two lines of the section.

interpretation
This would seem to be ^{suggested} ~~imposed~~ by the
fact that the proviso to the section
refers only to incorporated banking or
insurance, or guarantee or trust companies.

*"a body corporate" and
not to*

3. The second point is in respect
of the words "when so acting" which are
contained in lines 14 and 15 of Section 2
of the Ordinance. No. 30 of the Public
Trustee Rules 1912, from ^{definition} which the declara-

^{apparently}
tion was taken, provides that certain

companies

C. O.

17295/1931 Kenya

3

Downing Street.

28 September 1931

- Mr. Chamberlain 1074
- Mr. ~~Freeston~~ Robert - Wray 24.9.
- Mr. ~~Amston~~ W.P.
- Mr. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Sir G. Grindle.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.



Sir.

DRAFT. Wray.

KENYA

No. 672.

Gov.

Handwritten:
 AW 2
 1802/32

I have the honour to ack.
 the receipt of your despatch No. 408
 of the 8th July, and to inform you
 that His Majesty will not be advised
 to exercise his power of disallowance
 in the case of the Ordinance of the
 Kenya Legislature entitled "The
 Corporations (Probate and Administra-
 tion) Ordinance 1931" (No. ^{XIV} of 1931).

2. There are, however, two
 points to which my attention has been
 drawn by my Legal Advisers. It
 would appear from the Attorney-
 General's report that it is the
 intention of the Ordinance to
 impose the capital qualification
 of

18 July

Gov. Byrne 408

How to
situation

To authenticated and printed copies of
Corporations (Probate and Administration)
Ordinance, No. 146 of 1931, with legal report by
attorney - General.

This seems unobjectionable. ? subject
to legal adv. sanction 9.3.

Bothwell 2/18

Please see note by Mr. Tomes (No 2) with
which I agree

J. O. Bothwell
57

The report is a bit, but all on the
legal point, and say that an early opportunity
should be taken to effect the necessary amendments.

Yr. comon

Bothwell

9/19

2. No. Gov. 672 - 1. known. - 28 SEP 1931

Bothwell
1931

Bothwell