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THE PUBLIC TRUSTEE (AMENDMENT) BILL, 2017

A Bill for

AN ACT of Parliament to amend the Public Trustee Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Public Trustee (Amendment) Act, 2017.

Short title.

2. The Public Trustee Act, in this Act referred to as “the principal Act”, is amended in section 2 by—

Amendment of section 2 of Cap 168.

(a) deleting the definition of the word “court” and substituting therefor the following new definition—

“court” means the High Court;

(b) inserting the following new definitions in their proper alphabetical sequence—

“Board” means an Investment Board established under section 5D;

“Certificate of Summary Administration” means a certificate issued under section 8;

“compensation” means compensation as provided for under the Work Injury Benefits Act or any compensation for death arising out of an accident;

Act No. 13 of 2007.

“Principal Secretary” means the Principal Secretary for the time being in charge of the co-ordination of the National Government; and

“Public Trustee” means the Public Trustee appointed under section 5 of the Act and includes an officer appointed in an acting capacity for that position.

3. The principal Act is amended by inserting the following new section immediately after section 2—

Amendment of section 2 of Cap 168.
Objects of the Act.

Objects of the Act.

2A. The objects of the Act are to provide for—

(a) a manager, administrator, executor or trustee;

- (b) trustee and executor services to the public; and
- (c) the establishment of the Public Trustee Investment Board for purposes of investment.

4. The principal Act is amended by repealing section 3.

Repeal of section 3.

5. Section 5 of the principal Act is amended by deleting the word “Minister” and substituting therefor the word “Attorney General”.

Amendment of section 5 of Cap 168.

6. The principal Act is amended by inserting the following new sections immediately after section 5—

Insertion of new sections 5A, 5B, 5C, 5D, 5E, 5F and 5G.

Qualification for appointment as a public trustee.

5A. A person qualifies for appointment as the Public Trustee if the person has—

- (a) at least fifteen years’ experience as a legal practitioner or a distinguished academic in the legal field; or
- (b) qualifies to be appointed as a judge.

Public Trustee to be a body corporate.

5B. The Public Trustee shall be a body corporate and shall by that name be capable of exercising all the functions of an incorporated body, have perpetual succession and a common seal, may by that name sue and be sued and may acquire, hold and dispose of real and personal property.

Missing persons.

5C. (1) Where a person is missing, the Public Trustee may make an application to the court and the court may by order—

- (a) declare the person to be a missing person; and
- (b) appoint the Public Trustee as trustee of—
 - (i) part of the property of the missing person; or
 - (ii) the missing person’s property generally.

(2) On being appointed trustee under subsection (1), the Public Trustee may—

Act No. 25 of 2012

- (a) administer and may with the consent of the court sell, dispose of or otherwise deal with the property or any portion of it; and
- (b) pay out of the capital or income of the property—
 - (i) money that the missing person might otherwise have been liable to pay; and
 - (ii) money for the benefit of any or more of the following—
 - (a) a spouse or dependant of the missing person;
 - (b) a minor child of the missing person; and
 - (c) an adult child of the missing person who by reason of a physical or mental disability, is unable to earn a livelihood.

(4) The Land Registrar—

- (a) on production of the order or a certified copy of the order referred to in subsection (1); and
- (b) on production of an instrument effecting a disposition of immovable property under subsection (2),

shall deal with the instrument in the same manner as if the instrument were executed by the missing person.

(5) The Public Trustee shall, by a further order of the court, with respect to the property of a missing person—

- (a) where the missing person is located, return the property to the person; or
- (b) where it is determined that the missing person is deceased, administer the estate or transfer the property to the personal representative of the person's estate.

(6) The provisions of this section shall not apply to members of the Kenya Defence Forces in accordance with section 245 of the Kenya Defence Forces Act, 2012.

Payment of money for adults incapable of taking decisions by virtue of age infirmity or other reasons to be determined by court.

5D. (1) On application, the court may appoint the Public Trustee to act as a guardian for adults who are incapable of taking decisions by virtue of age, infirmity or any other reason that may be considered by the court.

(2) Where any amount of money becomes payable to any person described under sub section (1), the amount may be paid to the Public Trustee.

(3) The Public Trustee shall charge fees under this section in accordance with any Rules made under the Act.

Public Trustee Investment Board.

5E. (1) There is established an Investment Board to be known as the Public Trustee Investment Board.

(2) The Investment Board shall comprise of—

- (a) the Solicitor General as Chairperson;
- (b) a nominee from the National Treasury with knowledge and expertise in investment matters;
- (c) two persons nominated by the Attorney General with knowledge and experience in matters relating to the law of succession; and
- (d) the Public Trustee.

(3) The Investment Board shall meet as often as may be necessary for the dispatch of its business but there shall be at least four meetings of the Board in any financial year.

Functions of the Investment Board.

5F. (1) The functions of the Board shall be to—

- (a) control investment of money which is from time to time available for investment;

- (b) formulate and review the Public Trustee Investment Policy;
 - (c) provide relevant advice and direction to the accountant for the time being in charge of the accounts of the Public Trustee; and
 - (d) make prudent investment decisions under this Act.
- (2) The Board shall submit quarterly reports to the Attorney General.
- (3) A Board member appointed under this Act with the exception of the Public Trustee shall hold office for a term of three years and shall be eligible for re-appointment for one further term.
- (4) Appointment of the members of the Board under this section shall be done in a staggered manner separated by two months so that the respective expiry dates of their terms shall fall at different times.
- (5) A Board member appointed under this Act may—
- (a) at any time resign from office by notice in writing to the Attorney General or otherwise cease to represent the interests of the nominating body; or
 - (b) be removed from office by the Attorney General if the person—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson and is unable or has neglected to furnish any plausible reason for absence; or
 - (ii) is disqualified under any provision of the Constitution or any other written law from holding a public office.
- (6) Members of the Board shall be paid such allowances as the Attorney General shall determine from time to time.

(7) The Board, by instrument in writing, may from time to time delegate to the Public Trustee its powers in respect of the investment of money as it deems fit.

(8) The Board may from time to time make by-laws for the control of its business and proceedings.

Receipt of payment by
Public Trustee.
No. 13 of 2007
Cap. 189

5G. The Public Trustee may receive payments of compensation under the Work Injury Benefits Act, Pensions Act, Civil Servants Group Accident Insurance Scheme and any other payment arising from compensation as a result of an accident and administer the funds as prescribed.

7. The principal Act is amended by inserting the following new section immediately after section 6—

Insertion of new
section 6A into Cap
168.

Report of death.

6A. Where the consent of a person is required before the appointment of the Public Trustee as an administrator or trustee and the person—

- (a) is absent from the territory;
- (b) has not attained the age of eighteen years;
- (c) is not of full mental capacity;
- (d) is under any other disability; or
- (e) is missing,
- (f) the appointment of the Public Trustee may be made the absence of such consent notwithstanding.

8. Section 8 of the principal Act is amended—

Amendment of
section 8 of Cap
168.

- (a) in subsection (1) by deleting the words “five hundred thousand” appearing immediately after the word “exceeding” and substituting therefor the words “three million”;
- (b) by inserting the following new subsection immediately after subsection (1)—

(1A) Where the Public Trustee takes possession of an estate under subsection (1), the Public Trustee shall draw a Certificate of

Summary Administration entitling him or her to administer and distribute the estate.

- (c) by inserting the following new subsection immediately after subsection (2)—

(2A) The proposed grantee of the Certificate of Summary Administration shall submit to the Public Trustee a statutory declaration verifying that the gross value of the deceased's estate does not exceed one hundred thousand shillings.

9. Section 11 of the principal Act is amended by deleting the words "five hundred" appearing in paragraph (ii) of the proviso and substituting therefor the words "three million".

Amendment of
section 11 of Cap
168.

10. Section 12 of the principal Act is amended—

Amendment of
section 12 of Cap
168.

- (a) in subsection (2) by—

- (i) deleting the word "and" appearing immediately after the word "*Gazette*" and substituting therefor the word "or";
- (ii) inserting the words "section 8(1) of" appearing immediately after the word "administers under"; and
- (iii) deleting the words "two months" and substituting therefor the words "thirty days";

- (b) by deleting subsection (5) and substituting therefor the following subsection—

(5) Where—

- (a) upon the conclusion of the administration of the estate of a testate or intestate person, there remain in the possession of the Public Trustee funds of which he is unable to dispose by distribution in accordance with the law by reason of the untraceability of the person entitled to give a discharge, or for any other cause; or
- (b) the Public Trustee is unable to conclude the administration of any trust as there is remaining funds of which he is unable to dispose by distribution in accordance with the law by reason of the untraceability of the beneficiaries under the trust or for any other cause,

the Public Trustee shall credit those funds to an account to be called the Unclaimed Estates Account and those funds shall be kept in the account for seven years, and if they remain unclaimed at the expiration of that period the funds together with any interest earned thereon shall be paid into the Consolidated Fund.

(c) by inserting a new subsection immediately after subsection (5)—

(6) If any claim is made to any part of the funds so transferred to the Consolidated Fund and if the claim is established to the satisfaction of the Public Trustee, the amount certified by the Public Trustee to be due to the claimant shall be paid, without interest, from the Consolidated Fund:

Provided that the Attorney General may dispose of and distribute the estate or any part thereof among any kindred of the deceased or other persons having a legal claim thereto.

11. Section 16 of the Principal Act is amended—

Amendment of
section 16 of Cap
168.

- (a) in subsection (1) by deleting the word “one” appearing in the proviso and substituting therefor the word “three”;
- (b) in subsection (2) by deleting the words “twenty thousand” and substituting therefor the words “two hundred thousand”.

12. The heading of Part III of the principal Act is amended by deleting the word “Trusts” and substituting therefor the words “Powers and Duties of the Public Trustee”.

Amendment of the
heading to Part III of
Cap 168.

13. Section 17 of the Principal Act is amended by—

Amendment of
section 17 of Cap
168.

- (a) deleting subsection (1) and substituting therefor the following subsection—
 - (1) The Public Trustee may—
 - (a) act as personal representative of a deceased person;
 - (b) act as an ordinary trustee of any trust not prohibited under this Act or any other law;

- (c) act as a custodian trustee;
- (d) act as a custodian of property of missing persons;
- (e) act as a custodian of enemy property;
- (f) act as an administrator of the Estate Duty Act; Cap 483.
- (g) be appointed as a Public Guardian or Conservator;
- (h) be appointed trustee by a court of law;
- (i) act as a Registrar of wills.

(b) deleting subsection (2)

14. Section 21 of the Principal Act is amended—

Amendment of
section 21 of Cap
168.

- (a) by deleting the marginal note and substituting therefor the following new marginal note—

“Transfer of legacy, etc of minor or person living with mental disability”.

- (b) by deleting the words “unsound mind” and “lunatic” and substituting therefor for both words “person living with mental disability”.

15. Section 25 of the principal Act is amended—

Amendment of
section 25 of Cap
168.

- (a) by deleting subsection (1);
- (b) in paragraph (2)(c) by deleting the word “Minister” and substituting therefor the word “Attorney General”;
- (c) by deleting subsection (7);
- (d) by deleting subsection (8) and substituting therefore the following subsection—

(8) The Public Trustee may whenever necessary for the purposes of this Act, summon and examine witnesses on oath and compel production of documents.

- (e) by inserting the following new subsection immediately after subsection (8)—

(9) The annual accounts of the Public Trustee shall be prepared, audited and reported in accordance with the Public Audit Act, 2015.

16. Section 27 of the principal Act is amended by deleting the word “Minister” and substituting therefor the word “Attorney-General”.

Amendment of
section 27 of Cap
168.

17. The principal Act is amended by inserting the following new sections immediately after section 27—

Insertion of new
sections 28 and 29 to
Cap 168.

Unclaimed
Financial Assets.
Act, No. 40 of
2011 not to apply.

28. The Unclaimed Financial Assets Act shall not apply to the Public Trustee.

Alternative dispute
resolution.

29. The Public Trustee may apply alternative forms of dispute resolution mechanisms to resolve disputes relating to the administration of estates and trusts.

MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to amend the Public Trustee Act to align it with the Constitution of Kenya, enhance good governance, expand the scope of the functions of the Public Trustee and reduce the time taken to administer estates of deceased persons.

CLAUSE 1 of the Bill sets out the title of the proposed Act.

CLAUSE 2 proposes to amend the definitions section of the principal Act.

CLAUSE 3 proposes to amend the principal Act by inserting a new section 2A immediately to introduce the objects of the Act.

CLAUSE 4 repeals section 3 of the principal Act.

CLAUSE 5 of the Bill proposes to amend section 5 of the principal Act by substituting the word Minister with the words Attorney General.

CLAUSE 6 proposes to amend the Principal Act by inserting the following new sections;

Section 5A to provide for appointment of the Public Trustee;

Section 5B describing the Office of the Public Trustee;

Section 5C to provide for appointment of the Public Trustee as trustee for property of missing persons;

Section 5D to provide for appointment of Public Trustee as a public guardian;

Section 5E to provide for the establishment of the Investment Board;

Section 5F to provide for functions of the Board; and

Section 5G to provide for administration of payments of compensation under the Work Injury Benefits Act, Pensions Act, Civil Servants Group Accident Insurance Scheme and any other payment arising from compensation as a result of an accident.

CLAUSE 7 proposes to amend the principal Act by inserting a new section to provide for the procedure of making a report of death to the Public Trustee.

CLAUSE 8 proposes to amend the principal Act to insert a new section which dispenses with requirement for consents for various categories of persons.

CLAUSE 9 proposes to amend section 8 of the principal Act to enhance the jurisdiction of the Public Trustee for Summary Administration from Kenya shillings five hundred thousand to Kenya shillings three million and outlining procedures for summary administration.

CLAUSE 10 proposes to amend section 11 of the principal Act to enhance the capacity of the Public Trustee to decide disputes in relation to summary administration matters.

CLAUSE 11 of the Bill proposes to amend section 12 to reduce the time taken for advertisement for claims from two to one month and dispensing with the requirement for advertisement of matters proceeding to court. It also provides for keeping of funds in Unclaimed Assets Account where the Public trustee is unable to distribute the funds or to conclude the administration of any trust. It also provides for reduction of the time taken before forwarding unclaimed funds to the Consolidated Fund under the doctrine of escheat from twelve years to seven years.

CLAUSE 12 seeks to amend section 16 of the principal Act to enhance fees charged on value of assets of the deceased estate situated abroad and increases the amount the Public Trustee can hold in a minor's trust estate from Kenya shillings twenty thousand to Kenya shillings two hundred thousand.

CLAUSE 14 of the Bill proposes to amend section 17 of the principal Act by extending the scope of the functions and duties of the Public Trustee in subsection (1) and to preclude the Public Trustee from acting as a joint trustee by deleting subsection (2).

CLAUSE 15 of the Bill proposes to amend section 21 of the principal Act to redefine the description of persons of unsound minds and lunatics.

CLAUSE 16 of the Bill proposes to amend section 25 of the principal Act to empower the Public Trustee to compel production of documents.

CLAUSE 17 of the Bill proposes to amend the principal Act by inserting two new sections immediately after section 27 as follows—

Section 28 precludes the application of the Unclaimed Financial Assets Act from applying to the Public Trustee; and

Section 29 empowers the Public Trustee to apply alternative dispute resolution mechanisms.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms.

The Bill does not delegate legislative powers and neither does it limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill does not concern County Governments.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution.

The Bill is a money Bill within the meaning of Article 114 of the Constitution.

Dated the 11th September, 2017.

ADEN DUALE,
Leader of the Majority Party.

Definitions in section 2 of Cap 168 which it is proposed to amend—

“court” means any court having jurisdiction in the matter in question under the Law of Succession Act (Cap. 160);

Section 3 of Cap 168 which it is proposed to repeal —

3. Nothing in this Act shall confer on the Public Trustee or his agents any powers in respect of the estate of an African, living among the members of any African tribe or community in accordance with their customary mode of life, who has no property purporting to belong to him as an individual.

Application of Act

Section 5 of Cap 168 which it is proposed to repeal—

The Minister may appoint a fit and proper person to be Public Trustee (hereinafter referred to as the Public Trustee), and may also appoint one or more Deputy Public Trustees and one or more Assistant Public Trustees to assist the Public Trustee; and any Deputy or Assistant so appointed shall, subject to any general or special orders of the Public Trustee, be competent to discharge any of the duties and to exercise any of the powers of the Public Trustee, and when discharging those duties or exercising those powers shall have the same privileges and be subject to the same liabilities as the Public Trustee.

Appointment of
Public Trustee

Section 8 of Cap 168 which it is proposed to amend—

8. (1) Where the estate of a deceased person consists of property of an estimated gross value not exceeding five hundred thousand shillings and the deceased has died intestate or left a will in such circumstances that the Public Trustee may apply for a grant of probate or letters of administration pursuant to section 6, the Public Trustee may take possession of, and administer the estate of, the deceased person without making an application under the Law of Succession Act (Cap. 160), to the court for probate or letters of administration, as the case may be, and no court fees shall be chargeable in respect of any such estate.

Administration of
deceased's estate
without grant

(2) Where the estate of a deceased person consists of property of an estimated gross value not exceeding twenty

thousand shillings, the Public Trustee, on the application of any person to whom probate or letters of administration, as the case may be, might be granted under the Law of Succession Act (Cap. 160) may at any time after the expiration of fourteen days after the death of the deceased, grant to that person a certificate entitling him to administer the estate of the deceased person and to pay out of the estate any debts or charges, and to pay, remit or deliver any surplus to the person or persons entitled thereto according to law, or as he may be directed by the Public Trustee.

Section 11 of Cap 168 which it is proposed to amend—

11. Where probate of the will or letters of administration has been granted to the Public Trustee under this Act or where the Public Trustee, in accordance with the provisions of section 8(1), is administering the estate of a deceased person without having made application for any such grant, then, except as hereinafter provided, the court, on the petition of the Public Trustee or any person interested in the estate, shall decide all disputes, matters, claims and demands in respect thereof and shall make such orders as it thinks fit concerning the collection, sale, investment, disposal or administration of the estate:

Disputes to be
decided on petition
by the court

Provided that—

- (i) in any case in which it appears to be not desirable that the matter in question should be so decided, the court may direct such proceedings to be instituted as appear proper for the due decision thereof;
- (ii) in the case of an estate consisting solely of property which does not exceed in gross value five hundred thousand shillings, no petition referred to in this section shall be presented to the court, but the Public Trustee shall decide all disputes, matters, claims and demands arising out of or in respect of or in connexion with the estate, and shall make such orders as he thinks fit concerning the collection, sale, investment, disposal or administration of the estate, and the decision and order of the Public Trustee in respect of any of those matters shall be final and without appeal

Section 12 of Cap 168 which it is proposed to amend—

12. (1) The Public Trustee may convert into money all movable property of an estate which he administers under this Act, and may with the consent of the court convert into money all or any part of the immovable property of the estate:

Movable property to
be realised

Provided that if all parties interested in the immovable the property consent in writing to its conversion into money by the Public Trustee, or if the value of that property does not exceed five hundred thousand shillings and the Public Trustee is satisfied that the conversion of that property into money would be to the advantage of the estate, the consent of the court shall not be necessary.

(2) The Public Trustee shall cause advertisements to be published in the Gazette and in such other manner as he deems expedient calling upon the creditors of the person whose estate he is administering under this Act to come in and prove their debts before him within the space of two months from the date of publication:

Provided that where the value of an estate is within the jurisdiction of a resident magistrate or a district magistrate under the Law of Succession Act (Cap. 160), it shall not be necessary for publication to be made in the Gazette but the Public Trustee shall cause the advertisements to be published in accordance with rules made under section 97 of that Act or, if the magistrate directs otherwise, in accordance with that direction.

(3) The Public Trustee shall, after the expiration of the period referred to in subsection (2), pay the debts proved, and if the whole thereof cannot be paid he shall pay a dividend thereon; and if he collects any further assets after making those payments, he shall, in case any part of the debts proved remains unpaid, pay that part and any debts subsequently proved before him, or a dividend thereon; but such debts as are subsequently proved shall first be paid a dividend in proportion to their amount equal to the dividend paid to creditors having previously proved their debts.

(4) After payment of all debts, fees and expenses incident to the collection, management and administration of the estate, the Public Trustee shall pay over the residue

to the persons beneficially entitled thereto; and where those persons are resident outside Kenya payment may be made to an agent or representative duly authorized to receive it; and remittances made by registered letter shall be deemed equivalent to payment:

Provided that —

(5) (i) in the event of the Public Trustee being unable to trace the parties beneficially entitled to the residue of the estate or any of them, he shall transfer the residue or proportionate part thereof as the case may be to the unclaimed property account;

(ii) where the Public Trustee has been granted letters of administration to the estate in Kenya of a person who at the time of his death was not domiciled, or who appears to the Public Trustee to have then not been domiciled, in Kenya, and a grant of probate of the deceased person's will or letters of administration to his estate has been made in the country of the deceased person's domicile, the Public Trustee may pay over or transfer to the person holding the grant the residue of the estate in Kenya without seeing to the application thereof and without incurring any liability in regard to that payment or transfer

(iii) where the deceased person was domiciled in a foreign State, the payment or transfer may be made to a consular officer of that State, whose receipt shall be a full and complete discharge to the Public Trustee in respect thereof.

(6) Estates shall be distributable by the Public Trustee according to the ordinary rules of law within a period not exceeding twelve years computed from the date of the final completion of the account; and on the expiry of that period all estates or portions thereof in respect of which no claim has been lodged with the Public Trustee shall lapse or be escheat to the Government:

Provided that the Minister may dispose of and distribute the estate or any part thereof to or among any kindred of the deceased or other person having a legal claim thereto or to or among any kindred of the deceased or other person who, although not having any legal claim

thereto, can show a reasonable claim in equity thereto, in such shares or manner as he thinks fit.

Section 16 of Cap 168 which it is proposed to amend—

16. (1) Where the administration of an estate has been committed to the Public Trustee and he receives assets which at the time of the death of the deceased were situated outside Kenya, those assets shall for all purposes be treated in the same manner as assets within Kenya at the time of death:

Treatment of assets
received from
outside Kenya

Provided that the fees chargeable by the Public Trustee on any assets or moneys received from outside Kenya only for the purpose of distribution among the heirs or beneficiaries shall be restricted to one per centum of the gross value of those assets or the net amount of money received.

(2) Where any person entitled to a share under the will, or otherwise in the distribution of the estate, of a deceased person whose estate is being administered by the Public Trustee is a minor, the court may, upon the application of the Public Trustee, appoint the father or mother of the minor or some other suitable person to receive the share of the minor on his behalf, and when the appointment is made the Public Trustee may pay the share of the minor to that person on behalf of the minor, and the receipt of that person shall be a full and complete discharge to the Public Trustee so far as regards that share:

Provided that, where the share of the minor does not exceed twenty thousand shillings in value, the Public Trustee may pay or transfer it to the father or mother of the minor or some other suitable person on behalf of the minor, and the receipt of the father or mother or other person referred to herein shall be a full and complete discharge to the Public Trustee in respect of that share.

Heading of Part III which it is proposed to amend—

PART III—TRUSTS

Section 17 of Cap 168 which it is proposed to amend—

17. (1) Subject to and in accordance with the provisions of this Act, and the rules made thereunder, the Public Trustee may—

Duties of Public
Trustee

- (a) act as an ordinary trustee;
- (b) be appointed trustee by a court of competent jurisdiction;
- (c) act as a custodian trustee;
- (d) be appointed sole trustee in all cases where any written law provides that there shall be two trustees.

(2) Subject to the provisions of this Act and to any rules made thereunder, the Public Trustee may act either alone or jointly with any person or body of persons in any capacity to which he may be appointed in pursuance of this Act, and shall have all the same powers, duties and liabilities, and be entitled to the same rights and immunities, and be subject to the control and orders of the court, as a private trustee acting in the same capacity.

(3) The Public Trustee may decline either absolutely, or except on such conditions as he may impose, to accept any trust.

(4) The Public Trustee shall not accept any trust under any composition or scheme of arrangement for the benefit of creditors.

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

The marginal note of section 21 of Cap 168 which it is proposed to amend—

21. If any person of unsound mind, within the definition of that term contained in section 2 of the Mental Treatment Act (Cap. 248) of whose estate the Public Trustee has been appointed manager under section 38 of that Act, or any minor is entitled to any gift legacy or share of the assets of a deceased person, 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, may transfer it by an instrument in writing to the Public Trustee by that name or any other sufficient description with his consent:

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

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

Section 25 of Cap 168 which it is proposed to amend—

25. (1) The Public Trustee shall be a corporation sole by the name of the Public Trustee, and shall have perpetual succession and an official seal.

Other provisions
regarding Public
Trustee

(2) The Public Trustee shall appoint such person or persons as he shall think fit to act as his agents in the managing, collecting and getting in of property belonging to deceased persons whose estates are in course of administration by him or of any estate of which he is the trustee; and the agents shall—

- (a) in all respects act in the management, collection and getting in of property under the direction of the Public Trustee, who shall not be answerable for any act or omission of an agent not in conformity with his direction or which has not happened by the Public Trustee's own fault or neglect;
- (b) find security to the satisfaction of the Public Trustee for the performance of his duty;
- (c) be remunerated either by salary or by such fees or portion thereof chargeable under this Act as the Minister shall fix.

(3) In all proceedings under this Act and in all proceedings at law, the Public Trustee shall sue and be sued by the name of the Public Trustee, and it shall be necessary to state and prove his authority and title in the specific estate to which the proceedings may relate, but not his general authority or appointment.

(4) The Public Trustee shall be at liberty without the previous leave of the court to instruct and employ an advocate in any case he thinks fit and the advocate shall be remunerated out of the funds of the particular estate involved.

(5) Whenever the office of Public Trustee becomes vacant by the death or removal or absence from Kenya of the Public Trustee for the time being, and another officer is appointed to that office during the pendency of any petition, action, suit or other proceeding that petition, action, suit or other proceeding shall not abate or become defective, but shall be continued by or against the officer newly appointed.

(6) Neither the Public Trustee nor any agent shall be personally liable to any person in respect of goods or chattels in the possession at the time of his death of any person whose estate is administered by the Public Trustee, which shall be sold by the Public Trustee or agent, unless the Public Trustee or agent knew or had actual notice before the sale that the goods or chattels were not in fact the property of the person whose estate is being administered by him; and generally neither the Public Trustee nor an agent shall be liable for any act done by him *bona fide* in the supposed and intended performance of their duties, unless it is shown that the act was done not only illegally, but willfully or with gross negligence:

Provided that, in case of a sale by the Public Trustee or agent of goods or chattels belonging in fact to any third person, the amount realized by the sale thereof shall be paid over to the owner upon proof by him of ownership, unless it has already been applied in payment of the debts of the deceased or has been distributed according to a will of the deceased in the ordinary course of administration whilst the Public Trustee or agent was in ignorance and without actual notice of the claim of that person to the goods or chattels sold.

(7) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, the Crown Agents for Oversea Governments and Administrations may act as nominees of the Public Trustee and as such may hold in their name, as nominees, the scrip, certificates and other documents relating to any authorized investment made by the Public Trustee in pursuance of this or any other Act.

(8) The Public Trustee may, whenever he deems it expedient so to do, for the purposes of this Act, in order to satisfy himself regarding any question of fact, examine upon oath, which he is hereby authorized to administer, any person who is willing to be so examined by him regarding any such question of fact.

Section 27 of Cap 168 which it is proposed to amend—

27. The Minister may make rules for—

(a) defining the duties of the Public Trustee;

Rules

- (b) defining the powers and liabilities of agents, appointing such persons as may be thought advisable to be ex officio agents, fixing the amount of security to be given by agents and generally regulating their duties;
- (c) prescribing forms and scales of fees;
- (d) the safe custody, deposit and investment of funds which come into the hands of the Public Trustee; and
- (e) generally making provision for the better carrying out of the purposes of this Act.