

CHAPTER 165

THE TRUSTEES INCORPORATION ACT.

Commencement: 31 May, 1939.

An Act to provide for the incorporation of the trustees of certain bodies and associations of persons.

1. Grant of certificate as a corporate body.

(1) Trustees or a trustee may be appointed by any body or association of persons established for any religious, educational, literary, scientific, social or charitable purpose, and such trustees or trustee may apply, in the manner hereafter mentioned, to the Minister for a certificate of registration of the trustees or trustee of such body or association of persons as a corporate body.

(2) If the Minister, having regard to the extent, nature and objects and other circumstances of such body or association of persons, considers that incorporation expedient, he or she may grant such certificate accordingly, subject to such conditions or directions generally as he or she shall think fit to insert in the certificate, and particularly relating to-

- (a) the qualifications and number of the trustees;
- (b) their tenure and avoidance of office;
- (c) the mode of appointing new trustees;
- (d) the custody and use of the common seal;
- (e) the amount of the land which the trustees may hold; and
- (f) the purposes for which that land may be applied.

(3) The trustees or trustee 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 the 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, assign and demise any land or any interest in land now or hereafter belonging to, or held for the benefit of, such body or association of persons, in such and the like manner, and subject to such restrictions and provisions, as such trustees or trustee might, without such incorporation, hold or acquire, convey or

assign, or demise the same for the purposes of such body or association of persons.

2. Estate to vest in body corporate.

The certificate of incorporation shall, subject to compliance with any law for the time being in force relating to the registration of title to land, vest in the body corporate all real and personal estate, of what nature or tenure soever, belonging to or held by any person or persons in trust for that body or association of persons, and thereupon any person or persons in whose name or names any stocks, funds or securities shall be standing in trust for the body or association of persons, shall transfer those stocks, funds or securities into the name of that body corporate, and all covenants and conditions relating to any such real estate enforceable by or against the trustees of that real estate before their incorporation shall be enforceable to the same extent and by the same means by or against them after their incorporation.

3. Particulars respecting application.

(1) Every 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 to this Act or as may be prescribed, 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 or evidence as he or she may think necessary or proper.

4. Nomination of trustees and filling of vacancies.

(1) Before a certificate of incorporation is granted, the trustees or trustee shall have been effectually and lawfully appointed to the satisfaction of the Minister, and, where a certificate of incorporation has been granted, vacancies in the number of the trustees shall from time to time be filled so far as shall be required by the constitution, settlement or rules of the body or association of persons, or by any such conditions or directions as aforesaid by such legal means as would have been available for the appointment of new trustees of the body or association if no certificate of incorporation had been granted, or otherwise as shall be required by such conditions or

directions as aforesaid, and the appointment of every new trustee shall be certified to the Minister by, or by the direction of, the trustees upon the completion of the appointment.

(2) Within one month after the expiration of each period of five years after the grant of a certificate of incorporation, or whenever required by the Minister, a return shall be made to the Minister by the then trustees or trustee of the names of the trustees at the expiration of each such period, with their residences and additions.

5. Liability of trustees and others.

After a certificate of incorporation has been granted under this Act, all trustees of the body or association of persons, notwithstanding their incorporation, shall be chargeable for such property as shall come into their hands, and shall be answerable and accountable for their own acts, receipts, neglects and defaults, and for the due administration of the body or association of persons and its property, in the same manner and to the same extent as if no such incorporation had been effected.

6. Certificate to be evidence of compliance with requisitions.

A certificate of incorporation granted under this Act shall be conclusive evidence that all the preliminary requisitions herein contained and required 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.

7. Record of applications and documents to be kept and copies supplied.

The Minister shall, in such manner as he or she shall think fit, direct a record to be kept of all such applications for and certificates of incorporation, and shall in like manner direct all documents sent to him or her under this Act to be preserved, and any person may require a copy or extract of any such document to be certified under the hand of such person as shall be appointed for that purpose by the Minister, and there shall be paid for such certified copy or extract such fee as may be prescribed.

8. 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 trusts of the body or association of persons.

9. Fees for applications and certificates.

On every application for a certificate of incorporation under this Act, and on the issue of every such certificate, the prescribed fee shall be paid.

10. Gift to vest in corporate body.

After the incorporation of the trustees or trustee of any association or body of persons pursuant to this Act, every donation, gift and disposition of land, or any interest therein, theretofore lawfully made but not having actually taken effect, or thereafter lawfully made by deed, will or otherwise to or in favour of that body or association of persons, 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 like purposes.

11. Common seal.

(1) The common seal of the corporate body shall have such device as may be approved by the Minister, and until the common seal is provided the seal of some person may be authorised 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 conditions or directions for the use of the common seal referred to in section 1, shall be binding on the corporate body, notwithstanding any defect or circumstance affecting the execution of the instrument.

12. Contracts not under seal to be binding in certain cases.

Every contract made or entered into by the trustees of a body or association of persons which would be valid and binding according to the constitution, settlement or rules of the body or association of persons if no such incorporation had taken place as aforesaid shall be valid and binding

although it has not been made or entered into under the common seal of the trustees.

13. Payments on transfers in reliance on corporate seal protected.

Any person who makes or permits to be made any transfer or payment bona fide, in reliance on any instruments to which the common seal of any body corporate created under this Act is affixed, shall be indemnified and protected in respect of that transfer or payment, notwithstanding any defect or circumstance affecting the execution of the instrument.

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

(1) When any question arises whether any person is a member of such corporate body as aforesaid, any person interested in the question may apply to the High Court in accordance with any rules of court made in that behalf for its opinion on such question.

(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. Powers of Minister.

(1) The Minister shall have power, upon the application of any interested party made subject to any rules in that behalf, to make such orders regarding the constitution and conduct of any corporate body created under this Act or in regard to its trustees as may seem to him or her proper, and those orders shall, subject to appeal, be conclusive and binding for all purposes; in particular and without prejudice to the generality of the foregoing, the Minister may authorise-

- (a) any variation in the composition or constitution of such corporate body or in the rules or other instrument regulating it without prejudice to its due incorporation and perpetual succession;
- (b) the amalgamation of two or more corporate bodies created under this Act and the vesting of the property of those bodies in a new

corporate body having such constitution as the Minister may approve;

- (c) a change of name of any corporate body created under this Act;
- (d) the termination of incorporation of any corporate body created under this Act subject to such directions as to its liquidation and the disposal of its assets as may be prescribed or as the Minister sees fit to order.

(2) Any person who deems himself or herself aggrieved by any order made by the Minister under subsection (1) may within thirty days of the making of the order appeal to the High Court in accordance with any rules of court made in that behalf.

16. Rules.

The Minister may make rules for the purposes of this Act, including the fixing of fees, the prescribing of forms and the regulating of applications for certificates of registration.

17. Saving.

Without prejudice to the due incorporation of any body, the Minister may withdraw any certificate of registration issued under the Land (Perpetual Succession) Ordinance and amend or reissue it for the purpose of making the certificate conform to a certificate issued under this Act.

Schedule.

Particulars to be inserted in applications for incorporation.

1. The objects of the body or association of persons, and the rules and regulations of the body or association of persons, together with the date of, and parties to every deed, will or other instrument, if any, creating, constituting or regulating the body or association of persons.
2. A statement and short description of the land, or interest in land, which at the date of application is possessed by, or belonging to, or held on behalf of the body or association of persons.

- 3 The names, residences and additions of the trustees of the body or association of persons and the manner and date of their appointment, their number, qualification, tenure and avoidance of office; and the mode of appointing new trustees.
4. The proposed title of the corporate body, of which title the words "registered trustees" shall form part.
5. The proposed device of the common seal.
6. The regulations for the custody and use of the common seal.

History: Cap. 147.

Cross Reference

Land (Perpetual Succession) Ordinance, 1935 Revision, Cap. 94.