



THE REPUBLIC OF KENYA

LAWS OF KENYA

TRANSFER OF BUSINESSES ACT

CHAPTER 500

Revised Edition 2012 [1979]

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

CHAPTER 500

TRANSFER OF BUSINESSES ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title.
 2. Interpretation.
 3. Transferee of business to be liable for liabilities of transferor unless notice given.
 4. Provisions regarding notices.
 5. Evidence.
 6. Manner of prescribing newspapers.
 7. Saving.
 8. Limitation of actions.
-

CHAPTER 500
TRANSFER OF BUSINESSES ACT

[Date of commencement: 24th December, 1930.]

An Act of Parliament to prevent certain fraudulent transfers of businesses

[Act No. 55 of 1930, Cap. 286 of 1948, L.N. 2/1964, Act No. 15 of 1970, Act No. 9 of 1978.]

1. Short title

This Act may be cited as the Transfer of Businesses Act.

2. Interpretation

In this Act—

“**business**” means any trade or occupation, other than a profession, carried on with a view to profit;

“**transferor**” and “**transferee**” respectively include a sub-transferor and sub-transferee, and, where the notice referred to in section 3 is given before the date of the transfer, an intended transferor and an intended transferee.

3. Transferee of business to be liable for liabilities of transferor unless notice given

(1) Whenever any business or any portion of any business is transferred, with or without the goodwill or any portion thereof, the transferee shall, notwithstanding any agreement to the contrary, become liable for all the liabilities incurred in the business by the transferor, unless due notice in accordance with this Act has been given and has become complete.

(2) The liability of the transferee under subsection (1) shall cease immediately notice given in accordance with this section has become complete:

Provided that should proceedings be instituted against the transferee before such liability has ceased the said notice shall (for the purposes of such proceedings but for such purposes only) be deemed incomplete pending the final determination of such proceedings, including all possible appeals, and pending the expiration of all periods during which such appeals may be brought.

(3) Nothing in this section shall have the effect of relieving the transferor from any liability to which he would otherwise be subject.

[Act No. 9 of 1978, s. 2.]

4. Provisions regarding notices

(1) The notice required by section 3 to be given shall contain the particulars specified in subsection (2) of this section, and shall be given by publication, either before or after the date of the transfer, in the *Gazette* and in such newspaper or newspapers circulating in Kenya as may from time to time be prescribed by the Registrar-General, and shall, subject to the proviso to subsection (2) of section 3, be deemed to be complete upon the expiration of two months from the publication of the notice in the manner aforesaid.

(2) The particulars to be contained in a notice are as follows—

- (a) the name and address of the transferor;

- (b) the nature of the business, and the name or style under which, and the address at which, the transferor has carried on the business;
- (c) the name and address of the transferee;
- (d) the address where the transferee intends to carry on the business; and
- (e) a statement as to whether the transferee is assuming or is intended to assume all the liabilities incurred in the business by the transferor.

5. Evidence

The production of the *Gazette* containing the notice shall be *prima facie* evidence as against both the transferor and the transferee of the statements contained in the notice.

6. Manner of prescribing newspapers

The Registrar-General may, by notice in the *Gazette*, prescribe the newspaper or newspapers in which notice of transfer shall be given under section 3, either in respect of the whole of Kenya or in respect of businesses carried on in any part of Kenya.

7. Saving

Nothing in this Act, shall apply to the transfer of any business or portion thereof

-
- (a) consequent upon the reconstruction or winding up of a company in accordance with the Companies Act (Cap. 486); or
 - (b) by way of *bona fide* creation of a security; or
 - (c) by way of *bona fide* realisation of a security:

Provided that, before completion of any transfer under this paragraph otherwise than pursuant to a sale by public auction, an accountant registered under the Accountants Act (Cap. 531) shall certify in writing to the Registrar-General both the amount to be realised thereby and his opinion that it represents the best price obtainable for the security so realised without undue delay.

[Act No. 9 of 1978, s. 3.]

8. Limitation of actions

Notwithstanding the provisions of this Act or of any other written law, no proceedings shall be brought against a transferee in respect of any liability imposed by this Act after the expiration of six months after the date of the transfer concerned.

[Act No. 15 of 1970, s. 2.]
