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GOVERNMENT NOTICE No 731

The Governor in Council has approved of the following Bill
being introduced into the Legislative Council

T V N FORTESCUE,
Acting Clerk to the Legislative Council

**A BILL ENTITLED
AN ORDINANCE TO AMEND THE STAMP
ORDINANCE**

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

1. This Ordinance ay be cited as the Stamp (Amend-
ment) Ordinance, 1951, and shall be read and construed as
one with the Stamp Ordinance, hereinafter referred to as the
principal Ordinance

Short title

Cap 259

2. Section 4 of the principal Ordinance is amended by
numbering the section as sub-section (1) thereof and by adding
the following new sub-section—

Amendment of
section 4 of
the principal
Ordinance

(2) For the purposes of the first proviso to sub-
section (1) of this section the expression "Government"
shall be deemed to include His Majesty's Forces stationed
in the Colony and any service of the High Commission
which is not a self-contained service within the meaning
of section 1 of the East Africa (High Commission) Order
in Council, 1947

3. The principal Ordinance is amended by inserting
immediately after section 30 thereof the following new
sections—

Insertion of
new sections
30A and 30B
in the principal
Ordinance

30A. (1) If in connexion with a scheme for the
reconstruction of any company or companies or the
amalgamation of any companies it is shown to the satis-
faction of the Commissioners that there exist the follow-
ing conditions, that is to say—

Reconstruction
or amalgamation
of companies

(a) that a company with a limited liability is to be
registered, or that since the date of the com-
mencement of the Stamp (Amendment) Ordin-
ance, 1951, a company has been incorporated
by Letters Patent, Act of Parliament, or an
Ordinance of the Colony, or the nominal share
capital of a company has been increased,

(b) that the company (in this section referred to as
"the transferee company") is to be registered or
has been incorporated or has increased its
capital with a view to the acquisition either of
the undertaking of or of not less than ninety
per centum of the issued share capital of, any
particular existing company,

(c) that the consideration for the acquisition (except
such part thereof as consists in the transfer to
or discharge by the transferee company of
liabilities of the existing company) consists as
to not less than ninety per centum thereof—

(i) where an undertaking is to be acquired in
the issue of shares in the transferee com-

of shares in the existing company, or

- (ii) where shares are to be acquired, in the issue of shares in the transferee company to the holders of shares in the existing company in exchange for the shares held by them in the existing company,

then, subject to the provisions of this section—

- (A) The nominal share capital of the transferee company, or the amount by which the capital of the transferee company has been increased, as the case may be, shall, for the purpose of computing the stamp duty chargeable in respect of that capital, be treated as being reduced by either—

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- (i) an amount equal to the amount of the share capital of the existing company, or, in the case of the acquisition of a part of an undertaking, equal to such proportion of the said share capital as to the value of that part of the undertaking bears to the whole value of the undertaking, or
 - (ii) the amount to be credited as paid up on the shares to be issued as such consideration as aforesaid and on the shares, if any, to be issued to creditors of the existing company in consideration of the release of debts (whether secured or unsecured) due or accruing due to them from the existing company or of the assignment of such debts to the transferee company,

whichever amount is the less, and

- (B) Stamp duty under the headings of “Conveyance” and “Transfer” in the Schedule to this Ordinance shall not be chargeable on any instrument made for the purposes of or in connexion with the transfer of the undertaking or shares or on any instrument made for the purposes of or in connexion with the assignment to the transferee company of any debts, secured or unsecured, of the existing company, nor shall any such duty be chargeable on any instrument vesting, or relating to the vesting of, the undertaking or shares in the transferee company

Provided that—

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- (a) no such instrument shall be deemed to be duly stamped unless either it is stamped with the duty to which it would but for this section be liable or it has in accordance with the provisions of section 36 of this Ordinance been certified by endorsement either that it is not chargeable with any duty or that it is duly stamped, and
 - (b) in the case of an instrument made for the purposes of or in connexion with a transfer to a company within the meaning of the Companies Ordinance the provisions of paragraph (B) of this sub-section shall not apply unless the instrument is either—
 - (i) executed within a period of twelve months from the date of the registration of the transferee company or the date of the resolution for the increase of the nominal share capital of the transferee company, as the case may be, or

(h) made for the purpose of effecting a reconstruction or amalgamation or transfer in pursuance of an agreement which has been filed or particulars of which have been filed, with the Registrar of Companies within the said period of twelve months, and

(c) the foregoing provision with respect to the release and assignment of debts of the existing company shall not, except in the case of debts due to banks or to trade creditors, apply to debts which were incurred less than two years before the proper time for making a claim or exemption under this section

(2) For the purposes of a claim for exemption under paragraph (B) of sub-section (1) of this section, a company which has, in connexion with a scheme of reconstruction or amalgamation, issued any unissued share capital shall be treated as if it had increased its nominal share capital

(3) A company shall not be deemed to be a particular existing company within the meaning of this section unless it is provided by the memorandum of association of, or the Letters Patent, Act of Parliament or Ordinance incorporating, the transferee company that one of the objects for which the company is established is the acquisition of the undertaking of, or shares in, the existing company, or unless it appears from the resolution, Act of Parliament, Ordinance or other authority for the increase of the capital of the transferee company that the increase is authorized for the purpose of acquiring the undertaking of, or shares in the existing company

(4) In a case where the undertakings of or shares in two or more companies are to be acquired, the amount of the reduction to be allowed under this section in respect of the stamp duty chargeable in respect of the nominal share capital or the increase of the capital of a company shall be computed separately in relation to each of those companies

(5) Where a claim is made for exemption under this section, the Commissioners may require the delivery to them of a statutory declaration in such form as they may direct, made by an Advocate of the Supreme Court, and of such further evidence, if any, as the Commissioners may reasonably require

(6) If—

(a) where any claim for exemption from duty under this section has been allowed, it is subsequently found that any declaration or other evidence furnished in support of the claim was untrue in any material particular, or that the conditions specified in sub-section (1) of this section are not fulfilled in the reconstruction or amalgamation as actually carried out, or

(b) where shares in the transferee company have been issued to the existing company in consideration of the acquisition, the existing company within a period of two years from the date, as the case may be, of the registration or incorporation or of the authority for the increase of the capital of the transferee company ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the shares so issued to it, or

connexion with the acquisition by the transferee company of shares in another company, the transferee company within a period of two years from the date of its registration or incorporation 5 or of the authority for the increase of its capital, as the case may be, ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the shares so acquired, 10

the exemption shall be deemed not to have been allowed and an amount equal to the duty remitted shall become payable forthwith, and shall be recoverable from the transferee company as a debt due to the Crown, together with interest thereon at the rate of five per centum per annum in the case of duty remitted under paragraph (A) of sub-section (1) of this section from the date of the registration of incorporation of the transferee company or the increase of its capital, as the case may be, and in the case of duty remitted under paragraph (B) of the said sub- 15 section from the date on which it would have become chargeable if the Stamp (Amendment) Ordinance, 1951, had not been passed 20

No — of 1951

(7) If in the case of any scheme of reconstruction or amalgamation the Commissioners are satisfied that at the 25 proper time for making a claim for exemption from duty under sub-section (1) of this section there were in existence all the necessary conditions for such exemption other than the condition that not less than ninety per centum of the issued share capital of the existing company would be 30 acquired by the transferee company, the Commissioners may, if it is proved to their satisfaction that not less than ninety per centum of the issued capital of the existing company has under the scheme been acquired within a period of six months from the earlier of the two follow- 35 ing dates, that is to say—

(a) the last day of the period of thirty days after the first allotment of shares made for the purposes of the acquisition, or

(b) the date on which an invitation was issued to the 40 shareholders of the existing company to accept shares in the transferee company,

and on production of the instruments on which duty paid has been impressed, direct repayment to be made of such an amount of duty as would have been remitted if the 45 said condition had been originally fulfilled

(8) In this section, unless the context otherwise requires—

(a) references to the undertaking of an existing company include references to a part of the under- 50 taking of an existing company,

(b) the expression “shares” includes “stock”

30B (1) Stamp duty under the headings “Conveyance” and “Transfer” in the Schedule to this Ordinance shall not be chargeable on an instrument to which this section applies 55

Provided that no such instrument shall be deemed to be duly stamped unless either it is stamped with the duty to which it would, but for this section be liable, or it has in accordance with the provisions of section 36 of this Ordinance been certified by endorsement either that 60 it is not chargeable with any duty or that it is duly stamped

(2) This section applies to any instrument in respect of which it is shown to the satisfaction of the Commissioners—

5 (a) that the effect thereof is to convey or transfer a beneficial interest in property from one company with limited liability (hereinafter called “the transferor”) to another such company (hereinafter called “the transferee”), and

(b) that either—

10 (i) one of such companies is beneficial owner of not less than ninety per centum of the issued share capital of the other company, or

15 (ii) not less than ninety per centum of the issued share capital of each of the companies is in the beneficial ownership of a third company with limited liability, and

20 (c) that the instrument was not executed in pursuance of or in connexion with an arrangement whereunder—

25 (i) the consideration for the conveyance or transfer was to be provided directly or indirectly by a person other than a company which at the time of the execution of the instrument was associated with either the transferor or the transferee, or

(ii) the beneficial interest in the property was previously conveyed or transferred directly or indirectly by such a person as aforesaid

30 4. The Schedule to the principal Ordinance is amended in the followings respects —

Amendment of
Schedule to the
principal
Ordinance

(a) by substituting for item 36 the following—

<i>Description of Instrument</i>	<i>Proper Stamp Duty</i>
36 Letter of Allotment of Shares and Letter of Renunciation of Shares in any company or proposed company, or in respect of any loan to be raised by any company or proposed company A separate duty shall be chargeable in respect of Letters of Allotment and Letters of Renunciation, although they may be contained in the same document.	Twenty cents

(b) by substituting for the words “Letter of Guarantee” where they occur in item 37 the words “Letter of Guarantee or Letter of Indemnity”

(c) by substituting for item 46 the following—

<i>Description of Instrument</i>	<i>Proper Stamp Duty</i>	
46 Policy of Insurance A Sea Insurance (see section 8) (1) For or upon any voyage— (i) where the premium or consideration does not exceed the rate of one-eighth per centum of the amount insured by the policy,	If drawn singly	If drawn in duplicate for each part.
	Twenty cents	Ten cents

<i>Particulars of instrument</i>	<i>Proper Stamp Duty</i>	
(ii) in any other case, in respect of every £150 or part thereof insured by the policy	Twenty cents	Ten cents
(2) For time In respect of every £100 or part thereof insured by the policy—		
(i) where the insurance is made for any time not exceeding six months,	Twenty cents	Ten cents
(ii) where the insurance is made for any time exceeding six months and not exceeding twelve months	Fifty cents	Twenty-five cents
B Policy of insurance against accident and policy of insurance for any payment agreed to be made during the sickness of any person or his incapacity from personal injury—		
(a) against railway or air accident	Twenty cents	
(b) in any other case for the maximum amount which may become payable in the case of any single accident or sickness, every renewal thereof	Two shillings Two shillings	
C Policy of insurance against liability incurred by employers in consequence of claims made upon them in respect of the death or illness of or injury to employees or any third party insurance other than insurance (of a vehicle) under sub-item E, every renewal thereof	Two shillings Two shillings	
D Policy of insurance by way of indemnity against loss of or damage to property and any other insurance ordinarily included in such a policy, every renewal thereof	Two shillings Two shillings	
E Policy of insurance in respect of any motor vehicle, including incidental insurance against accident to persons, damage done to or suffered by such vehicle, or injuries suffered by third parties and any other risk ordinarily covered by such insurance policies— In respect of each vehicle the subject of such a policy, every renewal thereof	Two shillings Two shillings	
F Life Insurance For every sum insured not exceeding £100, For every £100 or part thereof insured in excess of £100	Fifty cents Fifty cents	

<i>Description of Instrument</i>	<i>Proper Stamp Duty</i>
G Re-insurance by an Insurance Company which has granted a policy of sea-insurance or a policy of fire-insurance with another Company by way of indemnity or guarantee against the payment on the original insurance of a certain part of the sum insured thereby, every renewal thereof	Two shillings Two shillings
H A policy of insurance not specifically provided for, every renewal thereof	Two shillings Two shillings

(d) by substituting for paragraph (c) of the Exemptions to item 52 the following—

(c) Given by any person for or on account of any salary, pay or wages, or for or on account of any other like payment made to or for the account or benefit of any person, being the holder of an office or an employee in respect of his office or employment, or for or on account of money paid in respect of any pension, superannuation allowance, compassionate allowance, or other like allowance

(e) by inserting the following new paragraph as paragraph (f) of item 62—

<i>Description of Instrument</i>	<i>Proper Stamp Duty</i>
Transfer of immovable property by a liquidator of a company in liquidation to a shareholder in that company in satisfaction of his holding — (a) Where the value of the property transferred does not exceed the value of the holding (b) In any other case	Sh 10 The same duty as a Conveyance (No 23) for a consideration equal to the amount by which the value of the property transferred exceeds the value of the holding, in addition to the duty chargeable under (a) hereof

MEMORANDUM OF OBJECTS AND REASONS

This Bill will amend the Stamp Ordinance (Chapter 259) (herein referred to as the principal Ordinance) to give effect to the recommendations of the Select Committee on Stamp Duties whose Report was adopted by the Legislative Council on the 17th August, 1949

The opportunity has also been taken to exempt from the operation of the Ordinance—

(a) documents executed by or in favour of the East Africa High Commission in so far as such documents relate to any service of the High Commission which is not a self-contained service, and

(b) documents executed by or in favour of His Majesty's Forces

In connexion with these proposed exemptions it is pointed out that section 4 of the Stamp Ordinance already provides for the exemption of documents executed by or in favour of the Government, where the Government would otherwise be liable for the duty. It is considered that "the Government" in this context means the Government of the Colony and that accordingly in respect of those Governmental functions which the High Commission performs through the non-self-contained services in the Colony, the exemption should apply. The Governments of the other territories have agreed

enjoyed exemption, it is thought advisable to make express provision for exemption (*Clause 2*)

Clause 3 of the Bill will insert new provisions similar to those in the United Kingdom to give effect to the Select Committee's recommendations that—

- (a) exemption from *ad valorem* nominal capital duty (and incidentally conveyance or transfer duty) should be granted in respect of the amalgamation or reconstruction of companies,
- (b) exemption from *ad valorem* conveyance or transfer duty should also be granted in the case of transfers between associated companies in those cases in which substantially no beneficial interest passes

Clause 4 of the Bill will amend certain items in the First Schedule to the principal Ordinance to give effect to the following recommendations of the Select Committee that—

- (a) the provisions of item 46 which relates to the duties payable upon policies of insurance (excepting life policies in respect of which the Committee recommended that no change should be made) should be recast with a view to simplification (*Clause 4 (c)*),
- (b) receipts for salaries, wages, pensions, etc., should be exempt from duty (*Clause 4 (d)*)
- (c) a transfer of immovable property by a liquidator of a company to a shareholder in so far as the transfer is in satisfaction of his holding in the company should be exempt from the *ad valorem* conveyance or transfer duty (*Clause 4 (e)*) ♦

The opportunity has also been taken to make certain minor amendments to the principal Ordinance which appear to be desirable. These are effected by *Clauses 4 (a)* and *(b)*, namely—

- (a) the placing of a "Letter of Renunciation" of shares which at present attracts *ad valorem* duty to a maximum of Sh 20 upon the same basis as a "Letter of Allotment" of shares which latter attracts a fixed duty of 20 cents,
- (b) the placing of a "Letter of Indemnity" which at present attracts a maximum of Sh 10, upon the same basis as a "Letter of Guarantee" which carries a fixed duty of Sh 1, apart from the difficulty of distinguishing whether the transaction is one of guarantee or indemnity in any particular case, such documents in the majority of cases concern payments of pensions

It is not expected that any additional expenditure of public moneys will result if the provisions of this Bill become law but some very slight loss in revenue may result

Nairobi,
15th May, 1951

J BASIL HOBSON,
Acting Attorney General