

TRANSACTIONS WITH NATIVES ORDINANCE, 1893-1935. ⁽¹⁾

An Ordinance for regulating certain Transactions which affect Natives.

BE it enacted by the Administrator of British New Guinea with the advice and consent of the Legislative Council thereof as follows:—

1. For the purposes of this Ordinance the following terms in inverted commas shall unless the context otherwise indicates bear the meanings set against them respectively:—

“Inspector”—an inspector under this Ordinance;

“Contract”—any contract or agreement to which a native is one of the contracting parties.

2. Nothing in this Ordinance contained is to affect lawful contracts or agreements coming within the scope of or regulated by the *Native Labour Ordinance, 1911-1933*⁽²⁾ or by the *Pearl, Pearl-Shell and Bêche-de-mer Ordinance, 1911-1934*.

Ordinance not to affect contracts under Native Labour and Beche-mer Fishery Ordinances.

Amended by No. 10 of 1935, s. 2.

(1) The *Transactions with Natives Ordinance, 1893-1935*, comprises *The Transactions with Natives Ordinance of 1893*, as amended by the other Ordinance referred to in the following Table:—

TABLE.

PART I.—ORDINANCE OF THE LEGISLATIVE COUNCIL OF BRITISH NEW GUINEA.

Short title, number and year.	Date of assent by Administrator.	Date on which published in British N.G. Govt. Gaz.	Date on which took effect.
<i>The Transactions with Natives Ordinance of 1893</i> (No. 2 of 1893) ^(a)	16.12.1893	16.12.1893	(British N.G. Govt. Gaz. of 16.12.1893)

(a) Continued in force in the Territory of Papua by Section 6(1) of the *Papua Act 1905*.

PART II.—ORDINANCE OF THE LEGISLATIVE COUNCIL FOR THE TERRITORY OF PAPUA

Short title, number and year.	Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
<i>Transactions with Natives Ordinance, 1935</i> (No. 10 of 1935)	23.7.1935	(b)	23.7.1935 (<i>Ordinances etc. of Papua, 1935, p. 29</i>)

(b) No notice of non-disallowance has been published in *Papua Govt. Gaz.*

(2) Repealed and replaced by the *Native Labour Ordinance, 1941*.

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Inspectors may be appointed.
Amended by No. 10 of 1935, s. 3.

3. The Lieutenant-Governor⁽³⁾ may from time to time appoint⁽⁴⁾ persons to be inspectors under this Ordinance.

Contracts which involve breach of native regulations to be unlawful.
Amended by No. 10 of 1935, s. 4.

4. Any contract the making or carrying out of which would necessarily involve the breach by a native of any regulation made under the provisions of the *Native Regulation Ordinance, 1908-1930* shall be an unlawful contract. If any person not a native knowingly makes such an unlawful contract he shall on conviction be liable to a penalty not exceeding Five pounds and in default of payment be liable to be imprisoned with or without hard labour for a period not exceeding one month.

Certain contracts to be void as against natives unless certain requirements fulfilled.

5. Every species of contract that is specified in this clause shall be unlawful and void as against a native unless such contract is in writing and unless such written contract contains the names and residences of every party thereto and what is to be done under such contract by each of such parties and unless such contract is approved by an inspector—

- (1) contracts for the sale or purchase of vessels or boats except native canoes;
- (2) job contracts for the performance of a piece of work by a native—
 - (a) where the work is to be performed at a place distant more than twenty-five miles in a straight line from the usual place of residence of such native; or
 - (b) where the performance of the contract must necessarily extend to a period of twelve months or over; or
 - (c) where the consideration or remuneration to be paid under the contract to any individual native is of the value of over Five pounds;

Paragraph (d) omitted by No. 10 of 1935, s. 5.

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Sub-section (3) added by No. 10 of 1935, s. 6.

(3) Any contract for the purchase of pearls from natives whereby delivery of the pearls is to be or may be made after the making of the contract.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940*.
 (4) By notice dated 17.4.1894 and published in British N.G. *Govt. Gaz.* of 7.7.1894 the Administrator "temporarily and provisionally" appointed "every Officer who now is or at any future time shall be a Resident Magistrate or a 'Qualified Officer' under 'The Native Labour Ordinance of 1892' to be whilst he is a Resident Magistrate or a 'Qualified Officer' aforesaid an Inspector under *The Transactions with Natives Ordinance of 1893*." As to Qualified Officers, see now Section 7 of the *Native Labour Ordinance, 1941*. By notice dated 31.8.1900 and published in British N.G. *Govt. Gaz.* the Administrator "temporarily and provisionally" appointed "every Officer who now, or at any future time, shall fill the office of Government Agent for the Rigo District or the Mekeo District, to be while he is so filling such office aforesaid, an Inspector under *The Transactions with Natives Ordinance of 1893*". From time to time, by notices published in British N.G. *Govt. Gaz.* and Papua *Govt. Gaz.*, Inspectors have also been appointed individually by name.

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| (4) Any contract for the sale of any description of property to a native on credit or partly on credit. | Sub-section (4) added by No. 10 of 1935, s. 6. |
| (5) Contracts for the loan of money to a native. | Sub-section (5) added by No. 10 of 1935, s. 6. |
| (6) Contracts whereby a native undertakes the sale of any goods on commission or for reward when such goods or any of them are in the possession or control of such native. | Sub-section (6) added by No. 10 of 1935, s. 6. |
| (7) Contracts for the hire charter or repair of any vessel or boat not being a native canoe. | Sub-section (7) added by No. 10 of 1935, s. 6. |
| (8) Contracts for the future delivery of any goods in any form by a native either directly or indirectly. | Sub-section (8) added by No. 10 of 1935, s. 6. |
| (9) Contracts for the purchase in advance of crops of coconuts or crops of any agricultural product from a native either directly or indirectly. | Sub-section (9) added by No. 10 of 1935, s. 6. |
| (10) Contracts which the Lieutenant-Governor in Council ⁽³⁾ may from time to time by Proclamation ⁽⁵⁾ in the <i>Gazette</i> declare unlawful unless the provisions of Section Five of this Ordinance are complied with. | Sub-section (10) added by No. 10 of 1935, s. 6. |

6. If upon any contract which is unlawful or void as against a native any action is brought under such contract by a native who is a party to such contract against any person not a native who is a party to such contract the court which tries such action may whether the contract has been completely executed by all the parties thereto or not ignore the terms of such contract and give such a verdict as the court considers equitable and required by the merits of the case.

If action brought by native on such contract court may decide case on merits.

7. If a person wishes to have a written contract approved by an inspector such person shall prepare three copies of the contract and deliver them to the inspector. If an inspector approves a contract he shall have each of the copies signed in his presence by those of the parties to the contract who are not natives or by their agents and then he shall on each copy write the word "Approved" and beneath such word the date and his signature.

Written contracts have to be lawfully made.

If an inspector disapproves a contract he shall on each copy write the word "Disapproved" and beneath such word the date and his signature.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(5) No proclamation made pursuant to Section 5(10) has been published in Papua Govt. Gaz.

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Whether an inspector approves or disapproves of a contract he shall return one copy thereof to the person who presented the copies to him he shall send one copy to the Government Secretary and he shall keep one copy as an office record.

Inspector if required to witness signing of contract by native.

8. If a native party to a contract is brought before an inspector for the purpose of signing a contract before such inspector such inspector shall witness the signature of such native to such contract but it shall not be incumbent upon an inspector to see that any native does sign any contract.

Discretion of inspector to approve or disapprove of contract.

9. It shall be entirely in the discretion of an inspector to approve or to disapprove a contract unless he has been directed by the Lieutenant-Governor⁽³⁾ to approve or disapprove it.

Amended by No. 10 of 1935, s. 7.

Lieutenant-Governor may prohibit certain articles being acquired from natives.

10. The Lieutenant-Governor in Council⁽³⁾ may from time to time by Proclamation⁽⁶⁾ to be published in the *Gazette* forbid the acquisition from any native of any article to be specified in such Proclamation except in the manner (if any) provided in such Proclamation.

Amended by No. 10 of 1935, s. 8.

After the publication in the *Gazette* of such a Proclamation it shall be unlawful for any person not a native to acquire from a native any such article except in such a manner as may be provided in such Proclamation.

If any person not a native shall commit a breach of this clause such person shall on conviction be liable to a penalty not exceeding Fifty pounds and in default of payment be liable to be imprisoned with or without hard labour for a period not exceeding three months.

Exemption of certain natives. Inserted by No. 10 of 1935, s. 9.

10A. Upon the application of a native the Commissioner for Native Affairs may exempt him from the operation of any or all of the provisions of this Ordinance upon such terms and conditions as he may think fit.

Any person having dealings with any native exempted as aforesaid shall be deemed to have notice of the said terms and conditions.

Real and leasehold property shall not be available to satisfy any claim against a native.

No native shall be imprisoned pursuant to any Ordinance relating to judgment creditors.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(6) No proclamation made pursuant to Section 10 has been published in British N.G. *Govt. Gaz.* or Papua *Govt. Gaz.*

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10b. Whenever it shall appear to any person authorized⁽⁷⁾ by the Lieutenant-Governor⁽³⁾ to make application pursuant to this section that any native is entitled or is about to or has before the commencement of this Ordinance become entitled to money or property of the value of Fifty pounds and upwards and that such money or property will not be utilized to the best advantages of the native entitled unless vested in a trustee such person may apply to the Central Court⁽³⁾ upon motion supported by affidavit for the appointment of a trustee.

Native beneficiaries.
Inserted by
No. 10 of 1935,
s. 9.

Upon the hearing of any such motion the allegation that the person entitled is a native shall be prima facie evidence.

The Central Court⁽³⁾ may at the hearing require such further evidence as it thinks fit and may order the money or property to vest in a trustee named in the said order to be applied for the benefit of the native entitled in such manner as it shall direct.

Every native in respect of whose money or property an order is made pursuant to this section shall have liberty at any time to apply to the Central Court⁽³⁾ for the variation or cancellation of any such order.

11. This Ordinance may be cited as the *Transactions with Natives Ordinance, 1893-1935.*⁽¹⁾

Short title.
Amended by
No. 2 of 1930,
s. 2.

(1) See footnote (1) printed on p. 3543.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(7) By notice dated 5.2.1936 and published in *Papua Govt. Gaz.* of 4.3.1936, the Lieutenant-Governor authorized the Commissioner for Native Affairs to make application pursuant to Section 10b.

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