

# JUDICIAL LAWS AMENDMENT (EASE OF SETTLING COMMERCIAL AND OTHER DISPUTES) BILL, 2016

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## EXPLANATORY MEMORANDUM

The purpose of this Bill is to amend the the High Court Act [*Chapter 7:06*], the Magistrates Courts Act [*Chapter7:10*] and the Small Claims Courts Act [*Chapter 7:12*]; with a view to speeding up and otherwise facilitating the settlement of certain suits or actions, especially suits or actions of a commercial nature.

### *Clause 1*

This clause sets out the Bill's short title and interprets references to the three Acts to be amended by this Bill.

### *Clause 2*

Section 171 (3) of the Constitution provides that an Act of Parliament may provide for the creation of specialised divisions of the High Court, which division must be able to exercise the general jurisdiction of the High Court in any matter that is before it. The new section 46A will provide for the creation of the said specialised divisions of the High Court.

### *Clause 3*

This clause seeks to amend section 47 of the High Court Act to enable provision to be made by rules of court for "virtual sittings" of the Court, at which all or any of the parties to a civil suit may (by mutual agreement) participate in sittings of the Court by electronic means.

### *Clause 4*

This clause seeks to amend the rule making power bestowed by section 56 of the High Court Act to enable rules to be made for such matters as the electronic service of process, the electronic authentication of court documents, and electronic access to records filed with the Registrar of the High Court.

### *Clause 5*

This clause will confirm that certain statutory or non-statutory courts, tribunals and divisions consisting exclusively of High Court judges are divisions of the High Court.

### *Clause 6*

This clause will amend section 2 of the Magistrates Court Act [*Chapter7:10*] by adding definitions of "business" and "commercial dispute".

### *Clause 7*

By means of this amendment to the jurisdiction section of the Magistrates Court Act, magistrates courts are in certain circumstances given original jurisdiction over commercial disputes even if the value of such disputes would otherwise exceed their monetary jurisdiction. The amendment provides that parties to a suit involving a commercial dispute must, in the first instance, have their suit determined by a magistrates court in that province, if both of the parties reside, conduct business or are employed in the same province, unless the parties opt to have the dispute determined by the High

Court. (At present the opposite is true, that is, parties must mutually agree to have their suit determined by a magistrates court if the value of their suit exceeds the monetary jurisdiction of the magistrates court)

*Clause 8*

Presently, the magistrates courts have no jurisdiction to award specific performance without the option of damages or to grant provisional sentence in claims for liquidated debts. This clause seeks to give such jurisdiction to magistrates courts in claims of a business character.

*Clause 9*

This clause seeks to insert a new section in the Magistrates Courts Act to enable provision to be made by rules of court for “virtual sittings” of the court, at which all or any of the parties to a civil suit may (by mutual agreement) participate in sittings of the court by electronic means.

*Clause 10*

This clause seeks to amend the rule making power bestowed by section 73 of the Magistrates Courts Act to enable rules to be made for such matters as the electronic service of process, the electronic authentication of court documents, and electronic access to records filed with a clerk of court.

*Clause 11*

The Small Claims Court Act was enacted in 1992 to expedite the adjudication of small civil claims at minimal cost to the parties involved. The effect of this clause amending the Small Claims Court Act is that all magistrates courts will become small claims courts within their area of jurisdiction.

*Clause 12*

Originally legal practitioners were not permitted to represent parties before a small claims court, but because section 69(4) of the Constitution gives a right to every “at their own expense, to choose and be represented by a legal practitioner before any court, tribunal or forum”, this section of the Act must be amended accordingly (however, party and party costs cannot be awarded).

*Clause 13*

This clause will shorten the period within which small claims court proceedings may be initiated.

# BILL

To amend the High Court Act [*Chapter 7:06*], the Magistrates Court Act [*Chapter 7:10*]; and the Small Claims Court Act [*Chapter 7:12*]; and to provide for matters connected therewith or incidental thereto

ENACTED by the President and the Parliament of Zimbabwe.

## PART I

### PRELIMINARY

#### 1 Short title and interpretation

(1) This Act may be cited as the Judicial Laws Amendment (Ease of Settling Commercial and Other Disputes) Bill, 2016.

(2) Any reference to the “principal Act” in—

- (a) Part II of this Act is a reference to the High Court Act [*Chapter 7:06*];
- (b) Part III of this Act is a reference to the Magistrates Court Act [*Chapter 7:10*];
- (c) Part IV of this Act is a reference to the Small Claims Courts Act [*Chapter 7:12*];

## PART II

### AMENDMENTS TO HIGH COURT ACT [CHAPTER 7:06]

#### 2 New section inserted in Cap. 7:06

The principal Act is amended by the insertion in Part IX (“General”) after section 46 of the following section—

##### “46A Specialised divisions of High Court

(1) Whenever, after consultation with the Judge President, it appears to the Chief Justice that, in the interests of expediting justice delivery or promoting the ease of access to justice or for any other reason, it is appropriate to create a specialised division of the High Court in accordance with section 171 (3) of the Constitution, then the Chief Justice shall, by notice in the *Gazette* —

- (a) specify the name of the division of the High Court concerned; and
- (b) define or give a statement of the scope or nature of the division’s subject-matter jurisdiction; and
- (c) if necessary or expedient, specify the places and times at which judges of the division shall sit.

(2) The specialised divisions of the High Court may be created to specialise in the adjudication of cases in the field of commercial law, family law, mining law, electoral law, revenue law, the law of deceased and insolvent estates or any other specialised field of law.

(3) The Judge President shall assign at least two judges of the High Court (on a rotational basis with other judges of the High Court or on such other basis as the Judge President may arrange with the judges in question) to be judges of a specialised division of the High Court for such period as the Judge President shall specify.

(4) Whenever the Registrar of the High Court issues out summons in any matter falling within the jurisdiction of a specialised division of a High Court, the Registrar shall set down the matter for determination by a judge in the division concerned.

(5) Rules of court may make different or special provision for any specialised division of a High Court, but until such provision is made the rules of court applicable to the High Court generally shall apply to all such divisions.”

### **3 Amendment of section 47 of Cap 7:06**

Section 47 (“Sittings of High Court”) of the principal Act is amended by the insertion of the following subsection, and the existing section becoming subsection (1)—

“(2) Subject to subsection (3), rules of court may provide for the sittings of the High Court and of the judges of the High Court, whether sitting in court or in chambers, to be conducted by the use of any electronic or other means of communication by which all the parties to the proceedings at the sitting can hear and be heard at the same time without being physically present together (hereinafter referred to as an “virtual sittings”):

Provided that the parties concerned must consent to their proceedings being conducted by way of a virtual sitting.

(3) Rules of court for virtual sittings apply only to civil proceedings and not to criminal proceedings, except in such circumstances and subject to such conditions as may be specified by or under the Criminal Procedure and Evidence Act [*Chapter 9:07*].

(4) A party who participates in a virtual sitting for which provision is made under the rules is taken for all purposes to have been present at the sitting.”.

### **4 Amendment of section 56 of Cap 7:06**

Section 56 (“Rules of Court”) of the principal Act is amended—

(a) in subsection (1) by the insertion after “High Court” of the words “, or of any specialised division of the High Court,”;

(b) in subsection (2) by the repeal of paragraph (cc) and the substitution of the following paragraphs—

“(cc) the service of process by electronic means;

(dd) the authentication of documents by electronic means, whether executed inside or outside Zimbabwe;

(ee) the digitisation of the records filed or lodged with the Registrar and the conditions of access thereto or for the copying thereof for the purpose of any judicial proceedings;

(ff) generally, any matter in respect of which, in the opinion of the Chief Justice and the Judge President, it is necessary or desirable to make provision in order to ensure or

facilitate the proper dispatch and conduct of the business of the High Court and, in relation to criminal cases, for carrying the criminal law practice and procedure into effect.”.

## 5 Savings

For the avoidance of doubt it is declared that the following are specialised divisions of the High Court for the purpose of section 171(3) of the Constitution —

- (a) the Electoral Court constituted in terms of Part XXII of the Electoral Act [*Chapter 2:13*]; and
- (b) the Fiscal Appeal Court constituted in terms of Part II of the Fiscal Court Act [*Chapter 23:05*]; and
- (c) the Intellectual Property Tribunal constituted in terms of the Intellectual Property Tribunal Act [*Chapter 26:08*]; and
- (d) the criminal, civil and family law divisions of the High Court established before the commencement of this Act.

## PART III

### AMENDMENTS TO MAGISTRATES COURT ACT [*CHAPTER 7:10*]

## 6 Amendment of section 2 of Cap. 7:10

Section 2 (“Interpretation”) of the principal Act is amended by the insertion of the following definitions—

““business” includes a trade, profession, vocation, occupation and venture, and an isolated transaction of a business character, but does not include employment;

““commercial dispute” means a dispute of a civil nature arising out of a transaction in the course of business, including but not limited to—

- (a) the formation, management, transfer or dissolution of a business entity;
- (b) the contractual relationship of a business entity with another such entity or with another person or persons undertaken in the course of business;
- (c) the contractual or delictual liability of a business or of a person engaged in a business that arises in the course of business activities;
- (d) disputes primarily involving banking and financial services;
- (e) the restructuring or payment of business debts;
- (f) the enforcement of an arbitral award of a business character;”.

## 7 Amendment of section 11 of Cap. 7:10

Section 11 (“Jurisdiction in civil cases”) The principal Act is amended—

- (a) in subsection (1) by the deletion of “Every court shall” and the substitution of “Subject to subsections (2a) and (2b), every court shall”;
- (b) by the insertion of the following subsections after subsection (2)—

“(2a) Every court has jurisdiction in the first instance to adjudicate a commercial dispute, even if the amount at stake in such dispute exceeds any monetary limit prescribed under subsection (2)(b), if—

- (a) the commercial dispute arose wholly within the province; or
- (b) both parties to the commercial dispute reside, carry on business or are employed within the same province; or
- (c) both parties to the commercial dispute are entities that conduct any business in the same province, whether the entities in question are companies, co-operatives, partnerships, syndicates, trusts or any other kind of entities; or
- (d) the commercial dispute is between an individual and a company, co-operative, partnership, syndicate, trust or other entity, and both parties reside, carry on business, are employed or conduct business (as the case may be) in the same province.

Provided that both parties to a commercial dispute involving an amount exceeding any monetary limit prescribed under subsection (2)(b) may agree by a memorandum signed by them or their respective legal practitioners that the High Court shall adjudicate their dispute instead of the court in the province that would otherwise have had jurisdiction to adjudicate the dispute by virtue of this subsection.”.

## **8 Amendment of section 14 of Cap. 7:10**

Section 14 (“When court has no jurisdiction”) of the principal Act is amended by the insertion after subsection (3) of the following subsection—

“(4) Despite subsection (1) (d) and (f), a court has jurisdiction in any action or suit wherein the following remedies are sought, if the action or suit involves parties to a commercial dispute in respect of which the court has jurisdiction by virtue of subsection (2a),—

- (a) specific performance of an act of a business character is sought with or without an alternative of payment of damages;
- (b) provisional sentence on a liquid document of a business character, for which purpose the court may (until special rules are made) apply and adapt the rules and forms bearing on provisional sentence prescribed in the rules of the High Court:

Provided that a plaintiff shall have the option to cause a summons to be issued from the High Court claiming provisional sentence on the said document.”.

## **9 New section inserted in Cap. 7:06**

The principal Act is amended by the insertion in Part II (“Civil”) after section 44 of the following section—

### **“44A Electronic sittings of court**

(1) Rules may provide for the sittings of a court and of a magistrate, whether sitting in court or in chambers, to be conducted by the use of any electronic or other means of communication by which all the parties to the proceedings at the sitting can hear and be heard at the same time without being physically present together (hereinafter referred to as an “virtual sittings”):

Provided that the parties concerned must consent to their proceedings being conducted by way of a virtual sitting.

(2) A party who participates in a virtual sitting for which provision is made under the rules is taken for all purposes to have been present at the sitting.”.

#### **10 Amendment of section 73 of Cap 7:06**

Section 73 (“Rules of court”) of the principal Act is amended by the repeal of paragraph (w) and the substitution of the following paragraphs—

- “(w) the service of process by electronic means;
- (x) the authentication of documents by electronic means, whether executed inside or outside Zimbabwe;
- (y) the digitisation of the records filed or lodged with a clerk of any court (whether on a centralised basis for all courts or on a decentralised basis by province or region) and the conditions of access thereto or for the copying thereof for the purpose of any judicial proceedings;
- (z) anything which, in terms of this Act or any other enactment, is required or permitted to be prescribed in such rules.”.

### **PART III**

#### **AMENDMENTS TO SMALL CLAIMS COURTS ACT [CHAPTER 7:12]**

#### **11 New section substituted for section 3 of Cap. 7:12**

Section 3 of the principal Act is repealed and the following is substituted—

##### **“3 Establishment and designation of small claims courts**

- (1) For the purpose of this Act—
- (a) every magistrates court shall, within its area of jurisdiction, be a small claims court; and
- (b) the Minister may, by statutory instrument, establish a small claims court for any province;

(2) Where the Minister has established a small claims court in terms of subsection (1)(b), he or she shall, by statutory instrument, specify places within the province concerned where the small claims court may sit.”.

#### **12 New section substituted for section 6 of Cap 7:12**

Section 3 of the principal Act is repealed and the following is substituted—

##### **“6 Parties who may appear**

- (1) Any natural or juristic person may institute proceedings in a small claims court.
- (2) A party to any proceedings in a small claims court may appear in person or be represented or assisted by—
- (a) a legal practitioner:
- Provided that the legal practitioner shall not recover any costs as between legal practitioner and client exceeding the amount of the costs—
- (i) which the legal practitioner would have recovered had he or she instituted the proceedings in a magistrates court; or

- (ii) prescribed by any tariff made in rules under section 31;  
whichever is the lower tariff;
- (b) in the case of a minor or other person under a legal disability, his or her guardian or legal representative; or
- (c) in the case of a corporate body or association of persons, a director, member or employee of that body or association.

**13 Amendment of section 22 of Cap 7:12**

Section 22 (“Institution of actions”) of the principal Act is amended—

- (a) in subsection (1) by the deletion of “fourteen” and the substitution of “seven days”;
- (b) in subsection (2) by the deletion of “fourteen” and the substitution of “seven days”;
- (c) in subsection (3) by the deletion of “fourteen” and the substitution of “seven days”.