

DEEDS REGISTRIES AMENDMENT BILL, 2016

MEMORANDUM

This Bill will amend the Deeds Registries Act [*Chapter 20:05*] (“the principal Act”) in the manner specified in the clause-by-clause analysis below:

Clause 1

This clause sets out the Bill’s short title.

Clause 2

This clause seeks to amend section 78 of the principal Act so as to restrict the execution of powers of attorney only to those witnessed and signed by a legal practitioner, notary public or justice of the peace and the signature of such legal practitioner, notary public or justice of the peace. Attestations of such powers by “competent witnesses” or commissioners of oaths will no longer be competent for deeds registry purposes.

Clauses 3 and 4

The amendments sought by these clauses will permit the digitisation of the deeds registry and the eventual establishment of an electronic deeds registry which will supplement the paper-based one, thereby greatly expediting and facilitating deeds registry administration. Access to the electronic registry for the purpose of information-gathering and conveyancing work or notarial practice will be subject to certain safeguards against fraud, violations of privacy and other abuses.

BILL

To amend the Deeds Registries Act [*Chapter 20:05*].

ENACTED by the President and Parliament of Zimbabwe.

1 Short title

This Act may be cited as the Deeds Registries Amendment Act, 2016.

2 Amendment of section 78 of Cap. 20:05

Section 78 (“Attestation of powers of attorney”) of the Deeds Registries Act [*Chapter 20:05*] (hereinafter called “the principal Act”) is amended by the repeal of paragraph (a) and the substitution of—

“(a) if executed within Zimbabwe, be accepted if witnessed by a legal practitioner, notary public or justice of the peace and the signature of such legal practitioner, notary public or justice of the peace, as the case may be, has been affixed thereto in the presence of the person executing it;”.

3 New Part inserted in Cap. 20:05

The principal Act is amended by the insertion after Part VII of the following Part—

“PART VIII

ELECTRONIC REGISTRY

“89 Interpretation in Part VIII

In this Part—

“access”, means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of the electronic registry;

“affixing a digital signature”, in relation to an electronic record or communication, means authenticating the electronic record or communication by means of a digital signature;

“computer” means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic and memory

functions by manipulation of electronic, magnetic or optical impulses and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or a computer network;

“computer network” means the interconnection of one or more computers through—

- (a) the use of satellite, microwave, terrestrial line or other communication media; and
- (b) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

“computer system”, means a device or collection of devices, including input and output devices and capable of being used with external files which contain computer programmes, electronic instructions, input and output data that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

“conveyancing work or notarial practice” means the preparation by a legal practitioner of any document for registration in a Deeds Registry or for attestation or execution by a Registrar;

“digital signature” means an electronic signature created by computer that is intended by the registered user using it and by the Registrar accepting it to have the same effect as a manual signature, and which complies with the requirements for acceptance as a digital signature specified in section 94(1);

“electronic data” means any information, knowledge, fact, concept or instruction stored internally in the memory of the computer or represented in any form (including computer printouts, magnetic optical storage media, punched cards or punched tapes) that is being or has been prepared in a formalised manner and is intended to be or is being or has been processed in a computer system or network;

“electronic registry” means the computer system or computer network that constitutes the electronic version of the deeds registry;

“electronic record or communication” means electronic data that is recorded, received or sent in an electronic form or in microfilm or computer-generated microfiche;

“intermediary”, with respect to any particular electronic communication, means any person who on behalf of another person receives, stores or transmits that communication or provides any service with respect to that communication;

“Internet” has the meaning given to that word by the Postal and Telecommunications Act [*Chapter 12:03*];

“notarial practice” means the work of a notary public;

“originator”, means a person who sends, generates, stores or transmits any electronic communication to be sent, generated, stored or transmitted to any other person, but does not include an intermediary;

“registered user” or “user” means a person registered in terms of section 93;

“user agreement”, means the agreement between the registered user and the Commissioner referred to in section 92.

90 Establishment of electronic registry

(1) The Registrar may establish an electronic registry, for which purpose, notwithstanding anything to the contrary in this Act, the Registrar may—

- (a) digitise every register, deed, document or other record under his or her charge; and
- (b) establish and maintain a computer system for the purpose of applying information technology to any process or procedure under this Act, including the despatch and receipt and processing of any deed, return, record, assessment, declaration, form, notice, statement or other document for the purposes of this Act.

(2) The electronic registry shall become operational from such date as the Registrar, in consultation with the Minister, shall specify by notice in a statutory instrument:

Provided that before such date the Registrar may in terms of sections 92 and 93 register users of the electronic registry to allow them access the electronic registry for research and information gathering purposes only.

(3) The use of the electronic registry shall be restricted to registered users, but—

- (a) such use shall not interrupt or prejudice the continued use of the paper-based deeds registry by users who are not so registered; and
- (b) registered users may be required to use concurrently the paper-based deeds registry to such extent and under such conditions or in such circumstances as may be prescribed by regulations under section 88;

91 Use of electronic data generally as evidence

(1) In the event of any discrepancy between an electronic copy of a document lodged with the electronic registry and the material version of the same document that is lodged with the paper-based deeds registry, the latter shall be deemed to be the authentic record of the document

(2) Notwithstanding anything to the contrary contained in any other law, the admissibility in evidence of any electronic data for any purpose under this Act shall not be denied—

- (a) on the sole ground that it is electronic data; or
- (b) if it is the best evidence that the person adducing it can reasonably be expected to obtain, on the grounds that it is not in original form.

(3) Information in the form of a electronic data shall be given due evidential weight.

(4) In assessing the evidential weight of electronic data a court shall have regard to such of the following considerations as may be applicable in the circumstances of the case—

- (a) the reliability of the manner in which the data was generated, stored and communicated; and
- (b) the reliability of the manner in which the integrity of the data was maintained; and
- (c) the manner in which its originator was identified.

92 User agreements

The Registrar shall, for the purpose of regulating the use of the electronic registry by registered users, enter into a user agreement with each registered user substantially in the form set out in the Second Schedule.

93 Registration of registered users and suspension or cancellation of registration

(1) No person shall communicate with the Registrar through the electronic registry unless such person is a registered user.

(2) An application for registration as a registered user shall be made in the prescribed form, and be accompanied by the user agreement completed by the applicant and the prescribed fee, if any, and such other information as the Registrar may reasonably require the applicant to furnish in support of the application.

(3) If, after considering an application in terms of subsection (2) and making such enquiries as he or she may deem necessary, the Registrar is satisfied that the applicant—

- (a) is a person who will make regular use of the electronic registry;
- (b) will introduce adequate measures to—
 - (i) prevent disclosure of the digital signature allocated to him or her by the Registrar to any person not authorised to affix such signature;
 - (ii) safeguard the integrity of information communicated through the electronic registry, apart from any change which may occur in the normal course of such communication or during storage and display of such information;
- (c) will maintain the standard of reliability of his or her own computer system required in accordance with the requirements of the user agreement;

the Registrar may approve the application, subject to such reasonable conditions as he or she may impose either generally or in relation to the applicant.

(4) If, at any time after granting an application in terms of subsection (2), the Registrar is satisfied that a registered user—

- (a) has not complied with the requirements of his or her user agreement with any condition or obligation imposed by the Registrar in respect of such registration;

- (b) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration;
- (c) fails to make regular use of the Registrar;
- (d) has contravened or failed to comply with any provision of this Act;
- (e) has been convicted of an offence under this Act;
- (f) has been convicted of an offence involving dishonesty;
- (g) is sequestrated or liquidated;
- (h) no longer carries on the business for which the registration was issued;
- (i) has failed, in contravention of subsection (6) or (7), to inform the Registrar that he or she or any agent or employee of his or hers has ceased to engage in work, practice or undertaking for which the user was registered, whether or not the user has been charged with or convicted for a contravention of that provision;

the Registrar may cancel or suspend for a specified period the registration of the registered user.

(5) Before cancelling or suspending the registration of a registered user in terms of subsection (4) the Registrar shall—

- (a) give notice to the registered user of the proposed cancellation or suspension; and
- (b) provide the reasons for the proposed cancellation or suspension; and
- (c) afford the registered user a reasonable opportunity to respond and make representations as to why the registration should not be cancelled or suspended.

(6) If a user who is registered to use the electronic registry for—

- (a) conveyancing work or notarial practice, ceases to engage in conveyancing work or notarial practice by reason of any disciplinary action taken in terms of the Legal Practitioners Act [*Chapter 27:07*]; or
- (b) research or information gathering purposes, ceases to undertake research or information gathering by reason of being disciplined, penalised, suspended, prosecuted, convicted, investigated or subjected to proceedings by or at the instance of any governmental agency, regulatory authority or professional association within or outside Zimbabwe;

he or she must inform the Registrar in writing of that fact no later than seven days after he or she is notified of it or becomes aware of it.

(7) In addition, a registered user must inform the Registrar in writing if any of his or her agents or employees who are authorised to use the electronic registry have been subjected to any disciplinary or other action described in subsection (6) no later than seven days after the user is notified of it or becomes aware of it.

(8) Any person who contravenes subsection (5) or (6) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

94 Digital signatures

(1) Every digital signature intended for use in connection with the electronic registry shall comply with the following requirements, namely, it must—

- (a) be unique to the registered user and under the sole control of the registered user; and
- (b) be capable of verification; and
- (c) be linked or attached to electronically transmitted data in such a manner that, if the integrity of the data transmitted is compromised, the digital signature is invalidated; and
- (d) be in complete conformity with the requirements prescribed by the Registrar and contained in the user agreement.

(2) The Registrar shall, on registering a user, allocate to the registered user—

- (a) if the user is a natural person, a digital signature or sufficient digital signatures for the user and each agent or employee of the user nominated in an annexure to the user agreement; or
- (b) if the user is not a natural person, sufficient digital signatures for each employee of the user nominated in the user agreement.

95 Production and retention of documents

Where any provision of this Act prescribes or requires that documents, records, information or the like should be retained for a specific period, that requirement shall be deemed to have been satisfied by a registered user if such documents, records, information or the like are so retained in electronic form that—

- (a) the information contained therein remains accessible so as to be subsequently usable; and
- (b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and
- (c) the details which will facilitate the identity of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record.

96 Sending and receipt of electronic communications

(1) An electronic communication through the electronic registry or the record of such communication shall be attributed to the originator—

- (a) if it was sent by the originator; or
- (b) if it was sent by a person who had the authority to act on behalf of the originator in respect of that communication or record; or

(c) if it was sent by a computer system programmed by or on behalf of the originator to operate automatically.

(2) Where the Registrar and a registered user have not agreed that an acknowledgment of receipt of electronic communication be given in any particular form or by any particular method, an acknowledgement may be given by—

- (a) any communication by the Registrar, electronic or otherwise; or
- (b) conduct by the Registrar or any officer sufficient to indicate to the registered user that the electronic communication has been received.

(3) Where the Registrar and the registered user have agreed that an electronic communication shall be binding only on the receipt of an acknowledgement of such electronic communication, then, unless such acknowledgement has been so received within such time as agreed upon, such electronic communication shall be deemed not to have been sent.

(4) As between the electronic registry and any other computer system of a registered user, the lodgement of an electronic communication occurs when it enters a computer system outside the control of the originator.

(5) The time of receipt of an electronic communication shall be the time when the electronic communication enters the computer—

- (a) where the electronic communication is by a registered user, at any office of the Deeds Registry, or to the Registrar, to whichever it was addressed, and such office shall be the place of receipt; or
- (b) if the electronic communication is sent by the Deeds Registry or the Registrar to a registered user, at the place of receipt that is stipulated in the user agreement.

(6) Whenever any registered user is authorised to submit and sign electronically any deed, return, record, declaration, form, notice, statement or the like, which is required to be submitted and signed in terms of this Act, such signature electronically affixed to such electronic communication and communicated to the Deeds Registry or the Registrar, shall, for the purposes of this Act, have effect as if it was affixed thereto in manuscript, and acceptance thereof shall not be denied if it is in conformity with the user agreement concluded between the Registrar and the registered user.

(7) The Registrar may, notwithstanding anything to the contrary contained in this section, permit any registered user to submit electronically any deed, return, record, declaration, form, notice, statement or the like, which is required to be submitted in terms of this Act, by using the Internet, and subject to such exceptions, adaptations or additional requirements as the Registrar may stipulate or prescribe, this section shall apply to the submission of the foregoing documents using the Internet.

97 Obligations, indemnities and presumptions with respect to digital signatures

(1) If the security of a digital signature allocated to a registered user has been compromised in any manner the registered user shall inform the Registrar in writing of that fact without delay.

(2) No liability shall attach to the Registrar, the Deeds Registry or any officer or employee thereof for any failure on the part of a registered user to ensure the security of the digital signature allocated to him or her and, in particular, where electronic data authenticated by a digital signature is received by the Deeds Registry or the Registrar —

- (a) without the authority of the registered user to whom such signature was allocated; and
- (b) before notification to the Deeds Registry or the Registrar by the registered user that the security of the digital signature allocated to him or her has been compromised;

the Deeds Registry or the Registrar shall be entitled to assume that such data has been communicated by, or with the authority of, the registered user of that digital signature.

(3) Where in any proceedings or prosecution under this Act or in any dispute to which the Deeds Registry is a party, the question arises whether an digital signature affixed to any electronic communication to the Deeds Registry or the Registrar was used in such communication with or without the consent and authority of the registered user, it shall be presumed, in the absence of proof to the contrary, that such signature was so used with the consent and authority of the registered user.

98 Alternatives to electronic communication in certain cases

(1) Whenever the electronic registry or a computer system of a registered user is inoperative, the registered user and the Registrar shall communicate with each other in writing in the manner prescribed in this Act.

(2) The Registrar may at any time require from any registered user the submission of any original document required to be produced under any of the provisions of this Act.

99 Unlawful uses of computer systems

(1) A person who, not being the registered user of a digital signature to whom it is allocated, uses such a signature in any electronic communication to the Deeds Registry or the Registrar without the authority of such registered user, commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(2) A person who—

- (a) makes a false electronic record or falsifies an electronic record; or
- (b) dishonestly or fraudulently—
 - (i) makes, affixes any digital signature to, transmits or executes an electronic record or communication;
 - (ii) causes any other person to make, affix any digital signature to, execute, transmit or execute an electronic record or communication;

commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

100 Restrictions on disclosure of information

(1) Except for the purposes of a prosecution in respect of an offence under this Act, no user of the electronic registry who is registered to use it purposes other than conveyancing work or notarial practice shall—

- (a) disclose to any other person any information relating to an individual without the consent of the individual concerned; or
- (b) put any information obtained from the electronic registry into the public domain unless such information is sufficiently anonymised, that is to say it must only be presented in bulk for statistical purposes and so presented as not to name any individual to which such information relates.

(2) No—

- (a) user of the electronic registry, or employee or agent of such user; or
- (b) former user of the electronic registry, or former employee or agent of such user; or
- (c) officer employed in the deeds registry, or former officer so employed;

shall for personal gain make use of information acquired by means of the electronic registry that relates to the financial affairs of any person, or to any commercial secret, or disclose such information to any other person, without the consent of the person to whom the information relates or to whom the commercial secret belongs, except—

- (d) for the purpose of legal proceedings under this Act or any other law; and
- (e) to the extent that it may be necessary to do so for the purpose of this Act or any other law, to another officer employed in the deeds registry.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to the forfeiture of any proceeds accruing to him or her on account of the contravention and to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”.

4 New Schedule inserted in Cap. 2:13

The principal Act is amended by the insertion of the following Schedule, the existing Schedule becoming the First Schedule—

“SECOND SCHEDULE (Section 92)

USER AGREEMENT

Scope and Purpose of User Agreement

1(1). This User Agreement ("Agreement") enables the user to (*tick applicable*):

- (a) engage in conveyancing work and/or notarial practice ;
- (b) have access to the electronic registry for research or information gathering purposes .

(2) This Agreement governs access to, and the use and disclosure of data in, the electronic registry by the user and each agent or employee of the user nominated in an annexure to this agreement.

Interpretation

2(1) In this Agreement “User” or “Registered User” includes every agent or employee of the User nominated in an annexure to this Agreement

(2) Unless the context otherwise requires, any word or phrase used in this Agreement which has been defined in the Deeds Registries Act (“the Act”) shall bear the same meaning when used in this Agreement.

Electronic Registry User Agreement Training Course

3. The Registered User agrees (if he or she has not already completed such course) to complete at his or her own expense the Electronic Registry User Agreement Training Course prescribed by the Registrar as a condition for the continuance of this Agreement, and such additional courses in connection with the use of the electronic registry as the Registrar may from time to time prescribe.

Interconnectivity requirements

4. The registered user shall—

- (a) use the computer equipment and facilities of a class or kind specified in regulations made in terms of section 88 of the Act or of the description specified in the annexure hereto;
- (b) affix a digital signature that is compliant with the requirements of section 94(1) of the Act to any electronic communication or record in such a manner as may be directed by the Registrar;
- (c) allow reasonable access to the computer system of the registered user by the Registrar for such verification and audit purposes as by the Act and this Agreement may be required or expedient;
- (d) keep such electronic and material records in the manner and for such period as by the direction and in the opinion of the Registrar are necessary or convenient to be kept in connection with the proper functioning of the electronic registry

Confidentiality and security

5(1) This Agreement prohibits the Registered User from releasing, disclosing, publishing, or presenting any individually identifying information obtained under its terms except—

- (a) in the normal course of conveyancing work or notarial practice; or
- (b) with the consent of the individual concerned; or
- (c) to such extent as may be prescribed under regulations made in terms of section 88 of the Deeds Registries Act.

(2) No person other than the Registered User or his or her authorised agents (whose names and other relevant particulars shall be notified in advance to the Registrar) shall use or have access to the electronic registry.

(2) The Registered User hereby acknowledges that he or she is aware of the provisions of section 100 (“Restrictions on disclosure of information”) of the Act.

Integrity of electronic registry data

6 (1) The Registered User or his or her authorised agents undertake that, in accessing or obtaining any records by means of the electronic registry, every reasonable precaution shall be taken to ensure the integrity of such records against unauthorised alteration or damage or unauthorised access by persons who are not registered users.

(2) The Registered User hereby acknowledges that he or she is aware of the provisions of section 98 (“Unlawful uses of computer systems”) of the Act.

Electronic signatures and passwords

7(1) If or to the extent that the Registrar does not allocate to the Registered User any digital signature or password for accessing and using the electronic registry, the registered user shall without delay give notice to the Registrar of every electronic signature and password to be used by the registered user for the purpose of accessing and using of the electronic registry, and the registered user undertakes that no other electronic signature and password than the ones referred to in this clause shall be used by him or her for that purpose.

(2) The Registered User undertakes that every precaution shall be taken to ensure that every electronic signature and password referred to in subclause (1) is protected against unauthorised access by or disclosure to persons who are not his or her authorised agents.

(3) The Registered User hereby acknowledges that he or she is aware of the provisions of section 97 (“Obligations, indemnities and presumptions with respect to digital signatures”) of the Act.

Use of electronic registry data for gain

8. This Agreement prohibits a Registered User from releasing, disclosing, publishing, or presenting any information obtained from the electronic registry for gain except—

- (a) in the normal course of conveyancing work or notarial practice;
- (b) to such extent and under such conditions as may be prescribed under regulations made in terms of section 88 of the Act

Commencement, Term and Renewal of Agreement, and Quarterly Returns

9(1) A non-refundable application fee of such amount as shall be prescribed under regulations made in terms of section 88 of the Act (or, until the amount is so prescribed, a fee of one hundred United States dollars) must be paid before the registered user may access the electronic registry.

(2) No later than seven days after the end of each quarter year ending on the 31st March, 30th June, 30th September and 31st December in each year, the user shall submit a quarterly return of the number and nature of the transactions initiated by the user through the electronic registry during the quarter to which the return relates, and together with such return the user shall tender payment of a fee related to the volume and nature of such transactions in the amount prescribed by regulations made in terms of section 88 of the Act

(3) This agreement expires on the 31st December of every year but is automatically renewable (subject to previous compliance with its terms) upon payment of a non-refundable renewal fee of such amount as shall be prescribed under regulations made in terms of section 88 of the Act (or, until the amount is so prescribed, a fee of one hundred United States dollars)

Breach and termination of Agreement

10(1) Any violation of the terms of this Agreement, or the happening of event specified in section 93(4) of the Act, shall be grounds for the immediate termination of this Agreement.

- (2) The Registrar shall determine—
 - (a) whether a registered user has violated any term of the Agreement;
 - (b) what actions, if any, are necessary to remedy a violation of this Agreement, and the registered user shall comply with pertinent instructions from Registrar
- (3) Actions taken by Registrar may include but not be limited to—
 - (a) the imposition of a civil penalty payable to and forming part of the funds of the Deeds Registry not exceeding ten United States dollars for every day that the registered user fails to comply with an instruction of the Registrar after being notified of it (provided that the amount of such penalty shall not accumulate so as to exceed one thousand eight hundred United States dollars, at which point the Registrar must terminate this Agreement or take other action to enforce this agreement);
 - (b) providing notice of the termination or violation to affected parties and prohibiting registered user from accessing the electronic registry in the future

Condonations, etc.

11. The rights of the Registrar under this Agreement will not be prejudiced in any way by any extension of time or any other indulgence or concession which he or she may grant to the User in respect of the performance of any of the User’s obligations under this Agreement.

Material changes

12. Any material changes to the particulars furnished by a registered user in his or her application to become a registered user or in the particulars furnished below shall be promptly notified the Registrar, and in any event within seven days from the change having occurred or been made.

Signed: _____ (Registered User)

Date: _____

Print or Type Name: _____

Title: _____

Organization: _____

Address: _____

Address: _____

Phone (land and/or cell): _____ Fax: _____

E-mail: _____

Signed: _____ (Registrar)

Date: _____

