

CHAPTER 408**NOTARIAL ACTS (TEMPORARY PROVISIONS)
ACT**

To make provision for the deposit of Notarial Acts at the Archives before they are inspected in terms of article 117 of the Notarial Profession and Notarial Archives Act, Cap. 55.

12th July, 1999

Act X of 1999, as amended by Act VI of 2001.

- 1.** The short title of this Act is Notarial Acts (Temporary Provisions) Act. Short title.
- 2.** (1) In this Act, unless the context otherwise requires - Interpretation.
- "archives" and "archivist" mean the archives and the archivist referred to in article 95 of the Notarial Law;
- "Court of Revision" means the Court of Revision of Notarial Acts referred to in article 110 of the Notarial Law;
- "Land Registry applications" means applications made pursuant to the provisions of the Land Registration Act; Cap. 296.
- "Minister" means the Minister responsible for the Notarial Archives;
- "Notarial Law" means the Notarial Profession and Notarial Archives Act; Cap. 55.
- "Public Registry Notes" means notes entered in the Public Registry pursuant to the Notarial Law or the Public Registry Act; Cap. 56.
- "special commissioner" means a special commissioner for Notarial Acts appointed in terms of article 3;
- "uninspected notarial acts" and "uninspected acts" mean those original notarial acts which have not been inspected and deposited in the archives in accordance with article 117 of Notarial Law.
- (2) Unless the context otherwise requires, indices, notarial acts, registers and volumes refer to such expressions as used in Notarial Law.
- 3.** (1) The Minister shall by not later than two months from the coming into force of this Act appoint a special commissioner for notarial acts having the powers and functions set out in this Act. Special commissioner for notarial acts.
Amended by:
VI. 2001.31.
- (2) The Minister may at any time appoint further special commissioners as circumstances may demand.
- (3) A special commissioner shall be appointed by the Minister for a term not exceeding three years as may be established in his letter of appointment and may be reappointed for further periods each of not more than eighteen months.
- (4) (a) No person shall be qualified to be appointed as special commissioner unless he -

- (i) is a retired judge or a retired magistrate; or
- (ii) is a notary who has retired from legal practice; or
- (iii) is an advocate or a legal procurator; or
- (iv) is a public officer in Government employment not below the rank of principal:

Provided that a public officer who is posted at the archives shall not be qualified to be appointed as special commissioner.

- (b) A special commissioner who is not a retired judge or a retired magistrate, or a retired notary, advocate or legal procurator, shall be debarred from inspecting wills.
- (c) A special commissioner shall not start inspecting acts unless he has taken before the Attorney General the oath of office in the following terms:

"I, swear to exercise to the best of my ability the office of Special Commissioner for Notarial Acts. So help me God."

Notary may request deposit of uninspected acts.

- 4.** (1) Every notary may request to deposit at the archives any uninspected notarial acts received by him.

Provided that no such request may be made in respect of uninspected acts received by the notary after June of the year in which the request is made if the request is made after June in any year, and after December of the preceding year if the request is made before June in any year.

(2) Such a request shall be made by means of an application filed in the Court of Revision requesting the special commissioner to fix the date, time and place when the special commissioner shall inspect the notarial acts.

(3) Together with the application the notary shall file a note indicating:

- (a) the number of volumes of acts inter vivos and wills to which the request refers;
- (b) the number of acts in each volume;
- (c) the number of pages in each volume indicating the number of the first and last page;
- (d) the progressive number of the first act and of the last act in each volume;
- (e) the date of the first and of the last act in each volume;
- (f) a declaration stating that the registers of the said acts have been prepared; and
- (g) a declaration that all public registry notes have been filed in the Public Registry and all Land Registry applications relative to the acts contained in the volumes have been lodged.

(4) The application and note filed in accordance with this article shall be served on the special commissioner by the Registrar

of the Court of Revision within three working days of their filing.

- (5) (a) The special commissioner shall, by not later than one month from the date of filing of the application made according to sub-article (2), by summons under his hand, call on the Notary to produce the uninspected acts in bound form together with their respective indices at such date, time and place as indicated in the summons and each volume shall be inspected by the special commissioner but only to ascertain that the note filed in accordance with sub-article (3) is correct as to the particulars referred to in paragraphs (b) to (e) of the same sub-article of this article in respect of each volume.
- (b) The special commissioner may ask the Notary, where possible, to correct any inaccuracies in the enumeration of acts, their pagination and in their sequence.
- (c) The special commissioner shall on the last page of each volume enter and sign a declaration that such volume has been inspected by him in accordance with this Act.
- (6) (a) The special commissioner shall further, make a *procès-verbal* of such inspection indicating any discrepancy resulting from the particulars given in the note filed according to sub-article (3). The *procès-verbal* shall be signed by the special commissioner and the notary. Together with the *procès-verbal* the special commissioner shall annex a copy of the aforesaid note, which shall also be signed by the special commissioner and the notary.
- (b) Within seven working days from date of the *procès-verbal* the special commissioner shall cause -
- (i) a copy thereof to be filed in the registry of the Court of Revision; and
- (ii) a copy thereof to be served on the notary.

(7) Within fifteen working days from the date of the *procès-verbal* mentioned in sub-article (6), the special commissioner shall deposit in the archives the volumes of original acts inspected by him and their relative indices. The special commissioner shall deliver two copies of the *procès-verbal* to the archivist who shall acknowledge receipt of the volumes and indices by signing one of them and returning it to the special commissioner.

(8) As soon as the volumes and indices are handed over to the archivist, they shall be deemed to have been regularly deposited thereat in accordance with the provisions of Notarial Law.

Provided that nothing herein contained shall preclude the carrying out of an inspection in accordance with the provisions of Notarial Law of the Acts so deposited and their respective registers. Such inspection of Acts deposited in the archives shall be carried out at the archives.

(9) The provisions of the foregoing sub-articles shall apply mutatis mutandis to a notary with respect to uninspected notarial acts of which he is a keeper in terms of Notarial Law.

Compulsory
deposit.

5. (1) Each notary, shall, by not later than 1st October, 2000, file in the registry of the Court of Revision a note containing the information and declarations referred to in article 4(3) in respect of any uninspected acts received by him up to the 30th June, 2000.

(2) The notes filed in accordance with this sub-article shall be served on the special commissioner for Notarial Acts within three working days.

(3) A notary who has not prepared all the registers in respect of uninspected acts to which this article refers shall indicate in the note the acts in respect of which the registers are still to be drawn up.

(4) A notary who has not yet filed all the Public Registry notes or lodged all Land Registry applications in connection with or pursuant to uninspected acts to which this article refers shall indicate in the note the acts in respect of which such notes and applications have not been filed or lodged.

(5) Every notary shall within one year from the note made in accordance with sub-article (1) prepare the registers that still require to be drawn up.

(6) Every notary shall within two months from the said note enter in the Public Registry such notes that still require to be entered in the Public Registry and lodge in the Land Registry the applications that still require to be lodged therein.

Cap. 296.

(7) Without prejudice to any civil liability for damages incurred in connection therewith, where any of the registers have not been prepared or any Public Registry notes have not been entered or any Land Registry applications have not been lodged, no disciplinary penalty may be imposed in accordance with Notarial Law and the Land Registration Act in respect of any such omission declared in accordance with sub-articles (3) and (4) provided that the registers are prepared within the period specified in sub-article (5) and all the notes entered and applications lodged within the period specified in sub-article (6).

(8) Notwithstanding any provision of the Notarial Law, a Notary who has made a declaration in accordance with sub-article (3) hereof may prepare any such register to which the declaration refers, in whole or in part, by photocopying on plain paper the original acts and the documents annexed thereto.

(9) A notary who has made a declaration in accordance with sub-articles (3) or (4) shall within one year from the declaration referred to in sub-article (1) in the case of the registers and within two months from the said declaration in the case of the Public Registry notes and Land Registry applications, file separate notes in the Court of Revision indicating that all outstanding registers referred to in the declaration have been prepared and all the notes and applications referred to in the declaration have been entered or lodged. The notes filed in accordance with this sub-article shall be

served within three working days on the special commissioner.

(10) The provisions of the foregoing sub-articles shall apply *mutatis mutandis* to a notary with respect to uninspected notarial acts of which he is a keeper in terms of the Notarial Law.

6. (1) The special commissioner shall from time to time, after 1st October, 2001, by summons under his hand, call on notaries having uninspected acts to which article 5 refers to produce any or all such uninspected notarial acts in bound form with their respective indices at such date, time and place as indicated in the summons and each volume shall be inspected by the special commissioner limitedly to ascertain that the particulars referred to in article 4(3)(b) to (e) as contained in the note made in accordance with article 5 are correct.

Inspection of acts to which article 5 refers.

(2) Article 4(6) to (9) shall apply to the inspection carried out by the special commissioner according to sub-article (1).

(3) The provisions of the foregoing sub-articles shall apply *mutatis mutandis* to a notary with respect to uninspected notarial acts of which he is a keeper in terms of the Notarial Law.

7. Any notary who contravenes any of the provisions of the Act shall be guilty of a breach of duty and shall be liable to the disciplinary punishment contemplated in article 132 of the Notarial Law. Such punishment shall be imposed by the Court of Revision following procedures which shall be initiated by an application filed for the purpose by the special commissioner. The provisions of article 112 and of Title II of Part VI of the Notarial Law shall apply to such disciplinary punishment.

Penalties for contraventions of this Act.

8. The Minister may make regulations generally for the better carrying out of the provisions of this Act and in particular may -

Power to make regulations.

- (a) prescribe any procedure that is to be followed in carrying out the provisions of this Act, and
- (b) extend the provisions of this Act to uninspected notarial acts received after the 30th June, 2000.