

Zimbabwe

Stamp Duties Act

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Zimbabwe

Stamp Duties Act

Chapter 23:09

Commenced on 1 October 1954

[Up to date as at 31 December 2016]

[Note: This version of the Act was revised and consolidated by the Law Development Commission of Zimbabwe]

AN ACT to impose duties and fees in respect of certain instruments, to provide for the stamping of such instruments, to provide for the management of stamp duties and fees and for other matters connected with the foregoing.

Part I – Preliminary

1. Short title

This Act may be cited as the Stamp Duties Act *[Chapter 23:09]*.

2. Interpretation

In this Act—

“**affixed**”, in relation to an adhesive stamp, means securely fixed by means of an adhesive paste and by no other means;

“**authorized officer**” means a person appointed in terms of section four;

“**broker**” includes a person who is licensed or required to be licensed as a broker under the Securities Act *[Chapter 24:25]*, where he or she deals in securities on behalf of a principal;

[definition of “broker” inserted by section 120 of Act 17 of 2004]

“**broker’s note**” means the note required to be sent by any broker or agent to his principal advising the sale or purchase of any marketable security or of any movable or immovable property;

[definition of “broker’s note” amended by section 120 of Act 17 of 2004]

“**Commissioner**” means—

- (a) the Commissioner in charge of the department of the Zimbabwe Revenue Authority which is declared in terms of the Revenue Authority Act *[Chapter 23:11]* to be responsible for assessing, collecting and enforcing the payment of the taxes leviable under the Income Tax Act *[Chapter 23:06]*; or
- (b) the Commissioner-General of the Zimbabwe Revenue Authority, in relation to any function which he has been authorised under the Revenue Authority Act *[Chapter 23:11]* to exercise;

[definition of “Commissioner” substituted by section 36 of Act 17 of 1999]

“**duly stamped**”, in relation to an instrument, means that the instrument is stamped with a stamp as defined in this section to the proper value including the penalty, if any, and that such stamp has been cancelled in accordance with law by the proper person;

“**duty**” means any duty leviable by means of stamps under this Act or any other enactment;

“**executed**”, in relation to an instrument, means executed as required by or sufficient in law;

“**forge**” or “**forged**” includes counterfeit or counterfeited;

“**instrument**” means any written document executed in Zimbabwe or executed outside Zimbabwe relating to any matter or thing performed or done or to be performed or done in Zimbabwe;

“**interim policy of insurance**” means any instrument issued within Zimbabwe which purports to cover any risk under a contract of insurance pending the receipt from outside Zimbabwe of a final policy covering the same risk;

“**local authority**” means a municipal council, rural district council or town council;

“**marketable security**” means—

- (a) any security, stock, debenture, share or any other interest capable of being sold in a share market or exchange or otherwise;
- (b) the scrip, certificate, warrant or other instrument by which the ownership of or title to any such security, stock, debenture, share or other interest aforesaid is represented;

“**material**” includes material of every description upon which words or figures can be expressed;

“**Minister**” means the Minister of Finance or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“**policy of life insurance**” means a policy upon any life or lives or upon any event or contingency relating to or depending upon any life or lives, except a policy of insurance against accident to a person or in respect of any injury, incapacity, sickness or the like, or a policy whereby a sum is payable to cover any compensation or damage due under an enactment relating to workers’ compensation or employer’s liability or the common law, in respect of the death or illness of or injury to an employee;

“**revenue officer**” means the Commissioner or any officer in the department referred to in paragraph (a) of the definition of “Commissioner”;

[definition of “revenue officer” substituted by section 36 of Act 17 of 1999]

“**stamp**” means a stamp impressed by means of a die or an adhesive stamp;

“**stamped**”, in relation to an instrument or any material, means that the instrument or material is impressed with a stamp to the proper value by means of a die or has an adhesive stamp of the proper value affixed thereto;

“**this Act**” includes Chapter II of the Finance Act *[Chapter 23:04]*;

“**unstamped**” means not duly stamped as required by this Act or any other enactment;

“**write**”, “**written**”, “**writing**” includes every mode in which words or figures can be impressed upon material.

Part II – Administration

3. Appointment of revenue officers

- (1) *[subsection deleted by section 36 of Act 17 of 1999]*
- (2) Notwithstanding section 5 of the Income Tax Act *[Chapter 23:06]*, the Commissioner may, for the purposes of performing the duties and functions assigned to him by that Act, use any information acquired by him in terms of those Acts.

[subsection amended by section 36 of Act 17 of 1999]

4. Authorized officers

The Minister may, by notice in a statutory instrument, appoint any person or class of persons as an authorized officer or authorized officers for the purposes of this Act in respect of all instruments or other matters or such of the foregoing or such classes thereof as may be specified in the notice.

Part III – Stamp duty, stamping of instruments and defacement of stamps

5. Imposition of duties upon instruments and other matters

Subject to this Act, there shall be charged, levied and paid upon every instrument or other matter described in Chapter II of the Finance Act [Chapter 23:04] the duties specified therein.

6. Manner of denoting payment of duty and use of stamps in payment of duty

- (1) The payment of any duty shall, save as is otherwise in this Act specially provided, be denoted by means of an adhesive stamp or stamps affixed to the instrument chargeable and defaced in terms of this Act:

Provided that the Minister may, by notice in a statutory instrument, declare that the duty on any instrument or class of instruments may or shall be denoted by impressed stamps instead of adhesive stamps and the payment of the duty may or shall, as the case may be, be denoted accordingly.

- (2) Where—

- (a) the duty to which an instrument is liable makes it necessary to affix thereto a large number of stamps and the Commissioner or a revenue officer in his discretion so authorizes; or
- (b) the Minister by regulation specifies any instrument or other matter or any class thereof to which this subsection shall apply;

a special receipt may be issued for the duty instead of the affixing of stamps, and upon the issue of such receipt the revenue officer or authorized officer shall endorse upon the instrument a certificate of the due payment of the said duty, which certificate shall contain a reference to the number and date of the receipt issued and shall set forth the amount paid as such duty.

- (3) The duty on any instrument which is notarially executed shall be denoted on the notarial minute or original of such instrument; and if any notarially executed instrument liable to duty is found to be unstamped after the time for stamping allowed in respect of such instrument under this Act, the notary by or before whom the same was executed or passed shall be liable to have the instrument properly stamped; but nothing herein contained shall be construed as exempting from liability to duty or any penalty any other person who is by law liable in respect of the duty or penalty.
- (4) In respect of cheques issued by a person or classes of persons or for a purpose or in circumstances prescribed by the Minister by notice in a statutory instrument, and subject to such conditions as may be so prescribed, payment of duty shall not be required to be denoted by means of stamps affixed to or impressed on such cheques but may be acknowledged by means of the issue by the Commissioner or a member of the Public Service deputed by him, of a special receipt, and any such cheque in respect of which arrangements satisfactory to the Commissioner have been made for the payment of the said duty and which bears on its face the words "Duty paid" shall be deemed to be duly stamped, and where in any proceedings in any court there is produced a cheque bearing on its face the words "Duty paid" it shall be presumed until the contrary is proved that the duty chargeable thereon has been paid and the cheque shall be deemed to be duly stamped.
- (5) In respect of such instruments or class thereof, other than cheques, executed by such persons or class of persons as the Minister may for the purposes of this subsection prescribe by statutory instrument, where arrangements satisfactory to the Commissioner for the payment of the duty to which any such instrument is liable have been made, the payment of the said duty shall not be required to be denoted by means of stamps affixed to or impressed on such instrument but may be acknowledged by means of the issue by the Commissioner or a member of the Public Service deputed by him of a special receipt.

7. How instruments shall be written and stamped

Every instrument written upon any stamped material shall be written in such manner, and every instrument partly or wholly written before being stamped shall be so stamped, that the stamp appears on the face of the instrument and cannot be used for or applied to any other instrument written upon the same piece of material.

8. Facts and circumstances affecting duty to be set forth in instruments

All facts and circumstances affecting the liability of any instrument to duty or the amount of duty with which any instrument is chargeable shall be fully and truly set forth in the instrument, and every person who, with intent to evade the payment of duty—

- (a) executes any instrument in which all such facts and circumstances are not fully and truly set forth; or
- (b) being employed or concerned in or about the preparation of any instrument, fails fully and truly to set forth therein all such facts and circumstances;

shall incur the penalty provided by this Act.

9. Distinct matters contained in one instrument to be stamped separately

An instrument containing or relating to several distinct matters shall be separately and distinctly charged, in respect of each of the matters, with duty as if each such matter were contained in a separate instrument.

10. Determination of duty in special cases

- (1) Where an instrument is chargeable with *ad valorem* duty in respect of an amount stated in any foreign currency, the duty shall be calculated in Zimbabwean currency, according to the current rate of exchange on the date of the instrument.
- (2) Where an instrument contains a statement of current rates of exchange or average price and is stamped in accordance with that statement, it shall, in respect of the statement, be deemed to be duly stamped, unless and until it is shown that the statement is untrue and that the instrument is in fact not duly stamped.
- (3) Where an instrument is chargeable with *ad valorem* duty such duty, in respect of so much of the subject matter of the instrument as is, at the time of execution, amenable to valuation—
 - (a) where a fixed amount is stated in the instrument, shall be calculated upon that amount; or
 - (b) where a fixed amount is not stated in the instrument, and—
 - (i) a maximum amount, contingent or otherwise, is stated in the instrument, whether or not a minimum amount, contingent or otherwise, is also so stated, shall be calculated upon that maximum amount; or
 - (ii) no maximum amount, contingent or otherwise, is stated in the instrument but a minimum amount, contingent or otherwise, is so stated, shall be calculated upon that minimum amount;

or

 - (c) where a fixed amount is stated in the instrument and the instrument contains a reference to an additional amount, contingent or otherwise, which is not stated in the instrument, shall be calculated upon the sum of that fixed amount and such additional amount calculated in terms of paragraph (b).
- (4) For the purposes of subsection (3)—
 - (a) where an amount is not stated in the instrument but is ascertainable at the time of execution of the instrument by implication or reference from the terms of the instrument, the amount so ascertainable shall be deemed to be stated in the instrument;
 - (b) where section eight has not been contravened or is not applicable and an amount is not stated in the instrument or ascertainable as aforesaid, but is, at the time of execution of the instrument, known to or ascertainable by any person executing the instrument, the amount so known or ascertainable shall be deemed to be stated in the instrument.

- (5) For the purposes of paragraph (b) of subsection (4) a revenue officer may request any executant of the instrument in question fully and truly to declare to such officer any matters known to him which in the opinion of such officer may be relevant to the value of the instrument.
- (5a) Any person who wilfully fails or refuses to comply with a revenue officer's request under subsection (5) 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.

[subsection inserted by section 4 of Act 22 of 2001]

- (6) Where any duty is calculable by reference to the amount of any value or consideration and—
- (a) such amount is in dispute between the persons executing the instrument, it may be fixed by a revenue officer; or
 - (b) such amount is in dispute between the persons executing the instrument and a revenue officer, it may be fixed by the Commissioner; or
 - (c) an amount fixed by a revenue officer in terms of paragraph (a) is in dispute between any executant of the instrument and that revenue officer, it may be fixed by the Commissioner:

Provided that this subsection shall not apply in the case of any matter provided for in Part V of this Act or Item 5 of the Schedule to Chapter II of the Finance Act *[Chapter 23:04]*.

11. Persons liable to stamp particular instruments

- (1) Subject to this section, the person who shall be liable and required to stamp—
- (a) a bond, shall be the person giving or passing the bond;
 - (b) a cession, shall be the cedent;
 - (c) a policy of insurance, shall be the person issuing the policy;
 - (d) an instrument by which property, as defined in section nineteen, is acquired, shall be the person acquiring the property;
 - (e) an instrument not referred to in paragraph (a), (b), (c) or (d) and in respect of which no specific provision is made elsewhere in this Act, shall be the person making or executing the instrument.
- (2) Notwithstanding subsection (1), any person may, within the prescribed period, stamp any instrument and recover the cost of stamping from the person liable thereto.
- (3) Nothing in this section contained shall prohibit any agreement between parties as to the distribution between themselves of liability to pay the amount of duty chargeable.

12. Time at which instruments shall be stamped

- (1) Every instrument liable to duty which is executed in Zimbabwe, shall, save as is otherwise provided in this Act, be duly stamped within seven days of the execution thereof. If an instrument is executed by two or more persons, the said period of seven days shall be calculated from the date on which the instrument is signed by the later or latest executant thereof.
- (2) Except as is otherwise provided in this Act, an instrument liable to duty executed outside Zimbabwe shall be duly stamped within seven days after the date on which it is first received within Zimbabwe, and the person first receiving within Zimbabwe any such instrument shall note thereon the date of the receipt and sign such note.
- (3) An instrument liable to duty executed within Zimbabwe may, within twenty-one days after its execution, and an instrument executed outside Zimbabwe may, within twenty-one days after its receipt within Zimbabwe, be stamped in the presence of any authorized officer, who shall, in the attestation of the stamping, deface the stamp or stamps as required by section fourteen.

- (4) Notwithstanding this section, an instrument liable to duty may be stamped at or before the time prescribed by this section where the amount of the duty cannot then be determined or otherwise in order to avoid the payment of any penalty imposed in terms of section thirteen, and if thereafter it appears to the Commissioner that the amount of duty so paid is—
 - (a) in excess of the amount required to be paid, a refund of such excess shall be made;
 - (b) less than the amount required to be paid, the penalty imposed in terms of section thirteen shall only be payable on the amount of duty unpaid.
- (5) If any person liable to stamp any instrument is in doubt whether he is so liable, or as to the extent of his liability, and he has within twenty-one days after the execution of such instrument lodged it with an authorized officer for submission to the Commissioner for his decision whether such liability exists or as to the extent of such liability, the date of the execution of such instrument shall be deemed, for the purposes of this section, to be the date on which the decision of the Commissioner is communicated to the person who lodged such instrument as aforesaid.

13. Validating penalty if instrument not stamped within time prescribed

- (1) If through inadvertence an instrument liable to duty is not duly stamped at or within the time prescribed by section twelve, it may, save as is otherwise specially provided in section forty-three, thereafter be duly stamped in the presence of an authorized officer but subject to payment of a validating penalty according to the scale set out in the Schedule, which shall in no case exceed an amount equivalent to a fine of level six:

[subsection substituted by section 27 of Act 15 of 2002 and proviso repealed by section 25 of Act 3 of 2009]

- (2) Any validating penalty payable in terms of subsection (1) shall, save as is otherwise in this Act specially provided, be denoted by means of an adhesive stamp or stamps affixed to the instrument and the stamps representing the duty and the penalty shall be defaced by an authorized officer as required by section fourteen:

Provided that the Minister may, by notice in a statutory instrument, declare that the validating penalty payable on any class of instruments specified therein by a member of a class of persons specified therein may or shall be denoted by impressed stamps instead of adhesive stamps and the payment of such penalty may or shall, as the case may be, be denoted accordingly.

- (3) If in any case there is good reason to believe that any omission or default in respect of stamping was intentional and with a view to evasion of the duty payable, the authorized officer shall, instead of acting under this section, proceed as provided by subsection (2) of section forty-three.

14. How adhesive stamps shall be defaced

- (1) Subject to this Act, an instrument, the duty on which is required to be denoted by an adhesive stamp, shall not be deemed to be duly stamped unless the person defacing the stamp defaces the same by writing or impressing in ink on or across the stamp his name or initials, or the name or title of his firm or company, or his business name, together with the true date of the defacement, in such manner as effectually and permanently to deface the stamp and render the same incapable of being used for any other instrument.
- (2) Whenever it is shown to the satisfaction of an authorized officer that an undefaced or insufficiently defaced stamp affixed to any instrument for purposes of duty was affixed at the proper time for stamping, such authorized officer may deface the stamp as hereinbefore provided, and thereupon the stamp so defaced shall in respect of its value be reckoned as denoting payment of so much of the duty chargeable on the instrument as is represented by the defaced stamp.
- (3) Every authorized officer may, whenever he considers it necessary, require evidence on oath or other satisfactory proof of the date of the execution of any instrument presented to him for the purpose of defacing any stamp thereto affixed, or if the instrument was executed outside Zimbabwe, of the date when it was first brought into Zimbabwe for use therein.

- (4) No authorized officer shall be required to deface or authorize defacement of the stamps affixed to any instrument, or to witness or attest the stamping thereof, if he is of opinion that the stamps thereon are of less value than the amount of duty for which the instrument is liable.

15. Persons who are required to deface adhesive stamps

Whenever duty is denoted by adhesive stamps, liability or responsibility to deface the stamps shall be determined as follows—

- (a) the stamps on all instruments which are required to be executed or stamped before any particular class of public officer or any authorized officer shall, if not defaced by the person liable to stamp the instrument, be defaced by such officer or authorized officer;
- (b) the stamps on any notarial instrument shall be defaced by the notary by or before whom the instrument is passed;
- (c) the stamps on any other instrument may be defaced by any party thereto, and, if not so defaced, the stamps shall be defaced by the person liable under this Act to stamp the instrument.

Part IV – Provisions relating to particular instruments

16. Cheques

- (1) Subject to this section, every person who issues, receives, endorses, transfers, negotiates, presents for payment or pays any cheque liable to duty and not duly stamped shall be liable to the penalty provided by this Act, and the person who takes or receives from any other person any such cheque, either in payment or as security or by purchase or otherwise, shall not be entitled to recover thereon or to make the same available for any other purpose whatever.
- (2) In the case of any cheque delivered or presented without being duly stamped, any banker to whom it is presented in the ordinary course of business may—
- (a) duly deface any stamp thereon which is not duly defaced; or
- (b) if the cheque is unstamped, affix thereto a stamp or stamps both for the amount of duty for which the cheque is liable and for the amount of any validating penalty prescribed in section thirteen, and deface the stamps as if he were the authorized person mentioned in that section;

and any such cheque shall thereupon, so far as respects the duty, be deemed to be valid and available.

- (3) Where a cheque has been stamped in accordance with subsection (2)—
- (a) the banker who stamped the cheque shall be entitled to charge the value of the stamps affixed thereunder in account against the person from whom the cheque was received; and
- (b) any person against whom any such charge is made shall have the right to recover the amount charged from the drawer or any endorser of the cheque or from any other person who was in default in respect of the stamping of the cheque.

17. Broker's notes

- (1) Every person who effects any sale or purchase as a broker or agent shall, within seven days thereafter, make, execute and transmit to the principal or principals from whom he claims any fee for brokerage, commission or agency in such transaction, a broker's note or notes which shall specify the marketable security or the property sold or purchased, and shall state the full and true sale or purchase price.

[subsection amended by section 9 of Act 18 of 2004]

- (2) No broker, agent or other such person shall have any legal claim to any charge for brokerage, commission or agency with reference to any sale or purchase unless a duly stamped broker's note is issued in

conformity with this section; and there shall be legibly and conspicuously printed or stamped on the face of every such note issued or used the following words: "This note requires to be stamped and unless 'duly stamped' no claim for brokerage, commission or agency can be legally made".

- (3) The duty upon a broker's note may be added to the charge for brokerage or agency.
- (4) Every broker or agent shall keep in book form a copy or counterfoil of every broker's note issued by him and such book shall at all reasonable times be open to inspection by any person acting under the authority of a revenue officer.

17A. Off-market share transfer instruments

- (1) Every person (hereinafter referred to as the "transfer secretary") who registers the transfer of a marketable security—
 - (a) that is a listed security as defined in the Zimbabwe Stock Exchange Act [Chapter 24:18]; and
 - (b) which is purchased or sold otherwise than through a share market or exchange;
 shall transmit to a revenue officer the duty payable in respect of the transfer, together with an instrument (hereinafter referred to as an "off-market share transfer instrument") specifying the marketable security sold or purchased and the full and true sale or purchase price.
- (2) Upon due compliance by a transfer secretary with subsection (1), a revenue officer shall return it, duly stamped, to the transfer secretary.
- (3) Notwithstanding any other law to the contrary, no transfer of a marketable security referred to in subsection (1) shall be deemed to have been completed before the date on which the off-market share transfer instrument relating to the transfer is duly stamped.

[subsection inserted by section 23 of Act 10 of 2003]

18. Policies of insurance

- (1) Where a renewal of any policy of insurance liable to duty is effected by payment of premium, a premium-receipt shall be issued and stamped for the proper amount of duty payable on renewal.
- (2) Every person who—
 - (a) receives or takes credit for any premium or consideration for any policy of insurance or renewal thereof liable to duty and does not within one month after receiving or taking credit for such premium or consideration make out and execute a duly stamped policy, receipt or instrument; or
 - (b) pays or allows in account, or agrees to pay or allow in account, any money upon or in respect of any policy of insurance or renewal thereof which is not duly stamped;
 shall incur the penalty provided by this Act.
- (3) Where any increased stamp duty becomes payable on a policy of insurance after the execution thereof the payment of such duty may be denoted by affixing stamps to the policy or to the endorsement or other instrument which sets out the circumstances giving rise to such increase in duty or to any receipt which acknowledges the payment of any premium.
- (4) Any person issuing tickets, coupons, notices, bills or other documents purporting to be, or to entitle to, an insurance in the event of death, accident, sickness or the like or any person in Zimbabwe acting as agent in any such matter shall annually in the month of January transmit or deliver to a revenue officer a declaration setting forth, with such particulars as may be required, the total amount derived during the year ending the previous 31st December from the issues or sales above mentioned and shall at the same time pay the duty due thereon and, in default thereof, shall incur the penalty provided by this Act.

[subsection amended by section 33 of Act 17 of 1997]

Part V – Provisions relating to registration of ownership of, and real rights in, immovable property

19. Interpretation in Part V

In this Part—

“**date of acquisition**” means, in the case of the acquisition of property by way of a transaction, the date on which the transaction was entered into, irrespective of whether the transaction was conditional or not or was entered into for the benefit of a company already registered or on behalf of a company still to be registered and, in the case of the acquisition of property otherwise than by way of a transaction, the date upon which the person who so acquired the property became entitled to claim it:

Provided that where property has been acquired by the exercise of an option to purchase or a right of pre-emption, the date of acquisition shall be the date upon which the option or right of pre-emption was exercised;

“**declared value**”, in relation to property, means the value of the property as declared in the declaration completed in terms of section twenty-eight by the person who has acquired the property;

“**fair value**”, in relation to property, means the fair market value of that property as at the date of acquisition thereof;

“**property**” means immovable property of any description other than—

- (a) a right under a mortgage bond; or
- (b) a lease where the letting is for a period of less than twenty-five years; or
- (c) a mining tribute agreement; or
- (d) any servitude not being a *fideicommissum*, *usufruct*, *usus* or *habitatio*;

“**transaction**” means an agreement whereby one party thereto agrees to sell, grant, donate, cede, exchange or otherwise dispose of property to another, and includes leases of twenty-five years’ duration or more.

20. Application

This Part shall apply in respect of the registration by the Registrar of Deeds of the acquisition of property.

21. Joint owners

Whenever any property is registered by the Registrar of Deeds in the names of two or more persons as joint owners, all such persons shall be deemed for the purposes of payment of duty to have equal shares and interest in the property unless the particular share of interest of each is declared and set forth in the title deed.

22. State grants

Notwithstanding anything to the contrary contained in this Part or in Item 5 of the Schedule to Chapter II of the Finance Act [Chapter 23:04], in the case of a grant of land by the State no duty shall be payable in respect of the value of any improvements made to the land by the grantee at his own expense between the date of occupation of the land by the grantee and the date of the grant.

23. Value of property on which duty payable

- (1) Subject to this section, the value on which duty shall be payable shall be the amount of consideration payable by the person who has acquired the property or, if no consideration is payable, the declared value of the property.
- (2) In the case of a transaction whereby one property is exchanged for another and no additional consideration is payable by either party to the transaction, the value on which duty shall be payable in

respect of the acquisition of each property shall, subject to subsections (4) and (5), be the declared value of each property:

Provided that if the properties exchanged are not of equal value, duty shall, subject to the said provisions, be paid in respect of the acquisition of each property on the declared value of the property which has the greater value.

- (3) In the case of a transaction whereby one property is exchanged for another and additional consideration is payable by either party to the transaction, the value on which duty shall be payable shall, subject to subsections (4) and (5), be—
 - (a) in respect of the acquisition of the property for which the additional consideration is payable, the declared value of that property, or the declared value of the property given in exchange for that property plus the additional consideration payable, whichever is the greater; and
 - (b) in respect of the acquisition of the other property, the declared value thereof, or the declared value of the property given in exchange for that property less the additional consideration payable, whichever is the greater.
- (4) If the Registrar of Deeds is of the opinion that the consideration payable or the declared value is less than the fair value of the property in question he may determine the fair value of that property, and thereupon the duty shall be calculated in accordance with the fair value as so determined or the consideration payable or the declared value, whichever is the greatest.
- (5) In determining the fair value in terms of subsection (4), the Registrar of Deeds shall have regard to any valuation of the property concerned made on behalf of the person liable to pay the duty by a member of such institution or association of valuers as is prescribed, and may have regard, according to the circumstances of the case, *inter alia*, to any one or more of the following—
 - (a) the nature of the right in land and the period for which it has been acquired or, where it has been acquired for an indefinite period or for the natural life of any person, the period for which it is likely to be enjoyed;
 - (b) the local authority valuation of the property concerned;
 - (c) any valuation of the property concerned made by a valuation officer of the State;
 - (d) any valuation of the property concerned made by a disinterested person who is appointed by the Registrar of Deeds and is a member of an institution or association prescribed in terms of this subsection.
- (6) If the fair value of property as determined by the Registrar of Deeds—
 - (a) exceeds the amount of the consideration payable in respect of that property, or the declared value, as the case may be, by not less than one-third of such consideration or declared value, as the case may be, the costs of any valuation made by a person referred to in paragraph (d) of subsection (5) shall be paid by the person liable for the payment of the duty;
 - (b) does not exceed such consideration or declared value, as the case may be, to such extent, the costs of such valuation shall be borne by the State.
- (7) Subsections (4) and (5) shall not apply in respect of the acquisition of property sold by public auction, unless the Registrar of Deeds is satisfied that the sale was not a *bona fide* sale by public auction, or that there was collusion between the seller and the purchaser or their agents.

24. Separate properties acquired in one transaction

- (1) Where more than one property is the subject of the same transaction the rate of duty payable in respect of each property shall be calculated on the value of that property as if it were the subject of a separate transaction:

Provided that where one building stands on two or more pieces of land such pieces of land shall be

regarded as being one property.

(2) For the purposes of this section—

“property” and “piece of land” mean land which is described as a separate entity in any document, diagram or plan tendered for registration by the Registrar of Deeds.

25. Additions to consideration

If either party to a transaction has undertaken, agreed, or in any manner become liable, in connection with the acquisition, or the registration of the acquisition, of property, to pay to any person whomsoever any sum of money over and above the sum paid or to be paid to the seller, such sum not being one to which section twenty-six applies, then such sum shall be added to the consideration payable in respect of the acquisition of the property.

26. Exclusions from consideration

There shall for the purpose of the payment of duty be excluded from the consideration payable in respect of the acquisition of any property—

- (a) any duty, imposts, costs or fees payable in connection with the registration of the acquisition of the property, including—
- (i) the costs of survey of the property; and
 - (ii) the charges and commission payable to any auctioneer, broker or agent by whom the sale of the property may have been effected not exceeding five *per centum* of the purchase price; and
 - (iii) the charges of legal practitioners, conveyancers and agents incurred in the transfer of the property and the cost of all deeds, including any mortgage bond, necessary for such transfer;
- and
- (b) any sum paid—
- (i) in terms of a condition in a permit imposed in terms of subsection (1) of section 42 of the Regional, Town and Country Planning Act [*Chapter 29:12*]; or
 - (ii) as endowment moneys in terms of the Town and Country Planning Act [*Chapter 213 of 1974*].

27. Valuation of consideration

- (1) Where the consideration payable in respect of the acquisition of any property is in the form of rent, royalty, share of profits or any other periodical payment, and the actual amounts of the periodical payments are fixed or are determinable in terms of the transaction, the value of the consideration shall be the aggregate of the said amounts payable over the period, including renewal periods, for which the property has been acquired by the person liable to pay the duty or, where the said aggregate amount exceeds the fair value of the property as determined by the Registrar of Deeds, *mutatis mutandis*, in accordance with subsection (5) of section twenty-three the value of the consideration shall be such fair value.
- (2) Where the consideration in respect of the acquisition of any property is in the form of rent, royalty, share of profits or any other periodical payment, and the actual amounts of the periodical payments are not fixed, or if the property has been acquired for an indefinite or unlimited period or for the natural life of any person, the value of the consideration shall be a value which the Registrar of Deeds considers fair in the circumstances.
- (3) Where the consideration in respect of the acquisition of any property is in the form of goods, services, rights or privileges, the value of the consideration shall be the current market value of such goods, services, rights or privileges at the date of acquisition or, where the market value of such goods, services,

rights or privileges as at the date of acquisition cannot be ascertained, the value of the consideration shall be a value which the Registrar of Deeds considers fair in the circumstances.

- (4) Where the consideration in respect of the acquisition of any property is in the form of shares in or other securities of a company, whether already registered or still to be registered, or is in the form of rights to acquire such shares or securities, the value of the consideration shall be—
 - (a) in the case of shares or securities which, on the date of acquisition, are quoted on the official list of a securities exchange registered under the Securities Act [Chapter 24:25] or on any recognized exchange outside Zimbabwe, their middle market price on that date; or
[paragraph amended by section 120 of Act 17 of 2004]
 - (b) in the case of other shares or securities or rights thereto, a value which the Registrar of Deeds considers fair in the circumstances, and for the purpose of determining the fair value the Registrar of Deeds may call for the value of the shares to be notified to him by the company auditor, and the cost of obtaining any such valuation shall be borne by the person liable to pay the duty.

28. Declarations to be submitted to Registrar of Deeds

- (1) Declarations appropriate to the manner of the acquisition of property in any particular case shall, in substance as near as possible to the forms prescribed, be submitted to the Registrar of Deeds by the parties, or, as the case may be, the agents of the parties to the transaction whereby the property has been acquired, and if the Registrar of Deeds so directs, also by the auctioneer, broker or other person who acted for or on behalf of either party to the transaction or, if the property has been acquired otherwise than by way of a transaction, by the person who acquired the property.
- (2) Where no suitable form of declaration has been prescribed for any particular kind of acquisition of property, the Registrar of Deeds may require from any person concerned in the acquisition a declaration setting forth the material facts of the case and containing such other information as he may consider necessary.
- (3) In every declaration completed in terms of this section, the person making the declaration shall state the extent of the improvements, if any, upon the land, and such other particulars as may be prescribed.

29. Powers of Registrar of Deeds

- (1) The Registrar of Deeds may—
 - (a) call upon any person to supply to him any information or to produce any documents which the Registrar of Deeds may consider necessary for the purpose of determining the amount of the duty payable in respect of the acquisition of any property;
 - (b) decline to accept any payment of duty otherwise than as a deposit on account of duty until the appropriate declarations referred to in section twenty-eight are submitted to him;
 - (c) assess the amount of the duty payable in terms of this Part at any time that the declarations referred to in section twenty-eight are submitted to him.
- (2) If the Registrar of Deeds is satisfied that any declaration required to be completed in terms of section twenty-eight cannot be obtained, he may dispense with the production of such declaration or may accept in lieu thereof a declaration by some other person whom he considers able to furnish the particulars required to be given.
- (3) Where any person claims to be exempted from the payment of duty in respect of the acquisition of property, the Registrar of Deeds shall require due proof of all facts and circumstances on account of which such exemption is claimed, and may require the production of any relevant documents.
- (4) Where the Registrar of Deeds is satisfied in cases of fraud or where material information has been withheld by any person that the duty payable under this Act in respect of the acquisition of any property

has not been paid in full, he shall, whether or not the acquisition has already been registered in the Deeds Registry, recover the difference between the amount of the duty payable and the amount paid.

30. Registration of acquisition of property prohibited where duty not paid

The Registrar of Deeds shall not make any record in his Deeds Registry of an acquisition of property made on or after the 30th July, 1964, if he has reason to believe that the amount of duty tendered in respect of the acquisition is less than the amount of duty payable under this Act.

31. Penalties

- (1) Any person who wilfully or negligently fails to comply with any requirement or demand by the Registrar of Deeds or the Commissioner under this Part shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
- (2) Any person who in supplying information, producing documents or making a declaration, required under or by virtue of any of the provisions of this Part—
 - (a) knowingly fails to disclose any material fact relevant to the nature of the transaction by which property has been acquired or to the consideration payable in respect of any property or to the value on which duty is payable; or
 - (b) makes a false statement knowing it to be false or not reasonably believing it to be true;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[subsection substituted by section 28 of Act 15 of 2002]

- (3) If, upon conviction of any person for an offence under subsection (1) or (2), it is proved that that person has been previously convicted under either of those subsections, then such person shall be liable to a fine not exceeding level fourteen, or to imprisonment for a period not exceeding the period provided in subsection (1) or (2), as the case may be, or to both such fine and such imprisonment.

[subsection inserted by section 23 of Act 10 of 2003]

32. Appeals from decisions of Registrar of Deeds

- (1) Any person who considers himself aggrieved by a decision of the Registrar of Deeds under any of the provisions of this Part or under Item 5 of the Schedule to Chapter II of the Finance Act *[Chapter 23:04]* may, within thirty days after the decision became known to him, appeal to the Commissioner who may confirm, vary or set aside such decision.
- (2) For the purposes of subsection (1) the Commissioner may call for such documents, declarations and other information as he may consider necessary.
- (3) Any decision of the Commissioner in terms of this section relating to the fair value of any property or to the value of any consideration payable in respect of the acquisition of any property shall, for the purposes of this Act, be deemed to be a decision of the Registrar of Deeds.

33. Stamps on copy held by Registrar of Deeds

Any stamps denoting the payment of duty or fees paid in terms of this Part and Item 5 of the Schedule to Chapter II of the Finance Act *[Chapter 23:04]* shall be affixed to, and any certificate made in terms of subsection (2) of section six shall be endorsed upon, that copy of the instrument which is retained by the Registrar of Deeds.

34. Cancellations of acquisitions

As often as the acquisition of any property is by the judgment of a competent court set aside, cancelled or declared or made void, no duty shall be payable thereon and any duty paid shall be refunded.

35. Regulations

The Minister may make regulations providing for—

- (a) such matters as may in terms of this Part be prescribed; and
- (b) the manner in which the value of a *fideicommissum*, *usufruct*, *usus* or *habitatio* may be ascertained for the purposes of payment of duty.

Part VI – Offences and penalties

36. Offences in relation to stamping of instruments, defacement of stamps and evasion of duty

Any person who—

- (a) in relation to the stamping of any instrument or the defacement of any stamp on any instrument, wilfully uses, enters or attests any date other than the true date; or
- (b) wilfully misstates any facts or circumstances relative to the character of any instrument or the duty to which any instrument is liable; or
- (c) by any wilful act or omission, evades or attempts to evade, or aids any other person in evading, any duty payable under this Act;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment

[section substituted by section 29 of Act 15 of 2002]

37. Offences in relation to dies and stamps and unlawful possession of stamped paper

- (1) Every person who does or causes or procures to be done or knowingly aids, abets or assists any other person in doing any of the acts following, that is to say, who—
 - (a) forges a die or stamp;
 - (b) prints or makes an impression upon any material with a forged die knowing the same to be forged;
 - (c) with intent to defraud, prints or makes an impression upon any material from a genuine die;
 - (d) cuts, tears or in any way removes from any material any stamp, with intent that any fraudulent use should be made of such stamp or of any part thereof;
 - (e) mutilates any stamp, with intent that any fraudulent use should be made of any part thereof;
 - (f) with intent to defraud, fixes or places upon any material any stamp or part of a stamp which, whether with such intent or not, has been cut, torn or in any way removed from any other material;
 - (g) erases or otherwise removes, or does any act which appears to erase or remove, from any stamped material any name, sum, date or other matter or thing whatsoever thereon written with intent that any fraudulent use should be made of the stamp upon such material;
 - (h) sells or exposes for sale, or utters or uses, any forged stamp or any stamp which has been fraudulently printed or impressed from a genuine die, knowing the same to be forged or to be so printed or so impressed;
 - (i) knowingly and without lawful excuse, the proof whereof shall lie upon him, has in his possession any forged die or stamp or any stamp which has been fraudulently printed or impressed from a

genuine die, or any stamp or part of a stamp which has been fraudulently cut, torn or otherwise removed from any material or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date or other matter or thing has been fraudulently erased or otherwise, either really or apparently, removed;

- (j) with intent to defraud and so that the stamp may be used again, removes or causes to be removed from any instrument any adhesive stamp;
- (k) sells or offers for sale or utters any adhesive stamp which to his knowledge has been so removed, or utters any instrument having thereon any adhesive stamp which has to his knowledge been so removed as aforesaid;

shall be guilty of an offence and shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[subsection substituted by section 30 of Act 15 of 2002]

- (2) Every person who without lawful authority or excuse, the proof whereof shall lie upon him, purchases or receives or knowingly has in his possession or custody—
 - (a) any paper manufactured or provided for the purpose of making or impressing stamps by or for the proper authorities, before the same has been duly stamped and issued for public purposes; or
 - (b) any plate, die, dandy roller, mould or other implement peculiarly used in the manufacture of such paper;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[subsection amended by section 4 of Act 22 of 2001]

38. Presumption in case of forged stamps

If any forged stamp is found in the possession of any person authorized to sell or distribute stamps, that person shall, until the contrary is proved by him, be deemed to have had the stamp in his possession, knowing it to be forged and with intent to sell, use or utter it, and shall be liable to the punishment hereinbefore provided in the case of a person who sells or exposes for sale or utters or uses any forged stamp.

39. Powers of search for and seizure of forged stamps

- (1) On sworn information that there is good reason to suspect any person of being guilty of any of the offences mentioned in sections thirty-six, thirty-seven and thirty-eight, or to suspect that any stamps either forged, stolen or fraudulently obtained are in any place or in the possession or custody of any person, any magistrate or justice of the peace or any other officer who is authorized to issue a search warrant may issue a search warrant authorizing any police officer or proper officer to search the said place or person, or any person suspected of being or having been in any way engaged, or concerned in the commission of any such offence or of secreting any machinery, implements or utensils applicable to the commission of any such offence, or any place where such machinery, implements or utensils or any stamps, stolen, forged or fraudulently obtained may be, and, if upon the search any of the said articles or things are found, the same may be seized and carried away, and shall afterwards be delivered to the nearest magistrate, who shall have the custody thereof until the same are dealt with in accordance with law.
- (2) Any articles or things so seized shall be adjudged to be forfeited to the State by the court having jurisdiction as to the offence, and thereafter shall be dealt with as the Minister may direct:

Provided that nothing herein contained shall affect the rights of any person who is otherwise entitled by law to the possession or custody of any stamps, machinery, implements or utensils stolen or improperly obtained.
- (3) Where any stamps are seized under warrant, the person authorized by the warrant shall, if required, give

to the person in whose custody or possession the stamps are found an acknowledgement of the number, particulars and amount of the stamps, and permit the stamps to be marked on the back before the removal thereof.

40. Penalty for failure to stamp and for use of unstamped instrument

Save as is otherwise provided in this Act, any person liable to stamp any instrument liable to duty who fails to stamp the same as required by this Act, or in any manner makes use of an unstamped instrument, shall be liable to pay double the duty payable and shall in addition incur a penalty not exceeding an amount equivalent to a fine of level six.

[section amended by section 4 of Act 22 of 2001]

Part VII – Supplementary and miscellaneous

41. Recovery of duty and penalties by action

- (1) Any duty and penalties payable under this Act or any other law shall be a debt due to the State and, notwithstanding anything to the contrary in any law relating to magistrates courts, may, whatever the amount, be recovered by action in a magistrates court of the province in which the person liable to the duty or penalties resides or carries on business. Such magistrates court may, on its own motion or at the request of either party to the proceedings, reserve any question of law that may arise thereon for the decision of the High Court, and the question shall be stated by the magistrate in the form of a special case, and may be argued before and shall be determined by the High Court, which may give such directions in the matter, and may make such order as to costs, as to it may seem fit.

[subsection as amended by section 10 of Act No. 9 of 1997 and by section 4 of Act 22 of 2001]

- (2) Nothing in this section contained shall be construed as depriving any person of any other remedy for the recovery of duty or penalties mentioned in this Act, or as exempting from prosecution and punishment any person who is liable thereto under any other section of this Act.

[subsection as amended by section 32 of Act 17 of 1999]

- (3) An official of the department referred to in paragraph (a) of the definition of “Commissioner” in section two, who is so directed by the Commissioner, may request any person to produce to him for inspection any instrument liable to duty under this Act, whether stamped or unstamped, which is held by such person either on such person’s behalf or on any other person’s behalf.

[subsection as amended by section 32 of Act 17 of 1999]

- (4) Any person who, without reasonable excuse, the proof whereof lies on him, fails or refuses to comply with a request by an official in terms of subsection (1) 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.

[subsection inserted by section 4 of Act 22 of 2001]

42. Stamping of unstamped instruments with amount of duty and penalty recovered

Upon the recovery as prescribed in this Act of any duty or penalty, the instrument in respect of which the duty or penalty is payable shall be stamped to denote the amount of duty and penalty recovered, and, upon defacement of the denoting stamps as required by this Act, the instrument shall be deemed for all purposes to be duly stamped. The stamping and defacement required by this section may be effected by the registrar or clerk of the court or by any authorized officer.

43. Non-availability of unstamped instruments

- (1) Save as is otherwise expressly provided by this Act or any other enactment, no instrument which is

required to be stamped shall be available for any purpose whatever unless the same is duly stamped, and in particular shall not be produced or given in evidence or be made available in any court of law, except—

- (a) in criminal proceedings; or
- (b) in any proceedings by or on behalf of the State for the recovery of any stamp duties on the instrument or of any penalties alleged to have been incurred by reason of the instrument not being duly stamped:

Provided that the court before which an instrument which is not duly stamped is tendered may permit or direct the instrument to be stamped in accordance with subsection (1) of section thirteen, but subject to a penalty of twice the amount therein mentioned, and on the instrument being so stamped may admit it in evidence. The registrar or clerk of the court may in every such case act as the authorized officer.

If it subsequently appears that any such instrument has been inadvertently received or admitted, then on its being brought to the notice of the court aforesaid, the court shall direct that it be duly stamped, and the penalty as aforesaid properly paid by the person on whose behalf the said instrument was tendered.

- (2) It shall be the duty of every officer in the public service to take cognizance of the requirements of this Act in respect of the stamping of any instrument which comes before him in his official capacity, and no instrument which is liable to duty and not duly stamped may be issued, received, lodged, filed, enrolled or registered, unless or until the same is duly stamped. In the event of any refusal by any person to have such instrument duly stamped, or if there is good reason to believe that fraud or evasion of duty was intended, the public officer shall impound the instrument and transmit it to a revenue officer for the purpose of the recovery of the duty and any penalty incurred.

44. Agreements to evade duty shall be void

Every contract, agreement or undertaking made for the purpose of evading, defeating or frustrating the requirements of this Act as to the stamping of instruments, or with a view to precluding objection or inquiry relative to the due stamping of any instrument shall be void.

45. Allowances or refunds of stamp duties or fees

- (1) The Commissioner or a revenue officer may make or authorize to be made a refund in respect of any stamp which has been inadvertently spoiled or rendered unserviceable for use, or which has been rendered obsolete by demonetization in accordance with regulations, if it be shown to his satisfaction that the stamp has not served or been made available in any manner whatsoever for purposes of duty or for any other use:

Provided that the stamp, and, if necessary, any instrument or material to which it is attached, shall be delivered to the Commissioner or a revenue officer to be marked or destroyed.

- (2) Notwithstanding subsection (1), the Commissioner may, if he considers it equitable to do so, authorize the refund, wholly or in part, of any sum paid in respect of the purchase of stamps or the payment of any duty.
- (3) Whenever a refund is made in terms of this section the officer making such refund shall deduct from the amount to be refunded an administrative charge calculated at the rate of five *per centum* of that amount, but no such charge shall exceed the amount prescribed by the Commissioner by notice in the *Gazette*.

[Subsection amended by section 31 of Act 15 of 2002]

- (4) Notwithstanding subsections (1) and (2), no refund shall be made in terms of this section if the amount thereof, after a deduction in terms of subsection (3), would be less than the amount prescribed by the Commissioner by notice in the *Gazette*.

[subsection amended by section 31 of Act 15 of 2002]

- (5) Any refund made in terms of this Act shall be regarded as a drawback and shall be made from moneys received in terms of this Act.

46. Certified copies of instruments

Every person who attests or certifies any copy, duplicate or grosse of any instrument liable to duty shall add to his attestation or certificate a statement of the amount of duty stamped on the original instrument.

47. Certificate by revenue officer that an instrument is duly stamped shall be conclusive

A note or certificate made on any instrument under the official stamp of a revenue officer and signed by him or by his authority, stating that the instrument is duly stamped or is not liable to duty or to further duty, shall be conclusive in all courts and places of the facts so certified.

48. Exemption of State from payment of stamp duty

No stamp duty imposed in terms of this or any other enactment which if paid would be a charge against the Consolidated Revenue Fund shall be paid by the State.

49. Exemption of diplomats and similar persons from payment of stamp duty

- (1) No stamp duty imposed by this Act, other than a stamp duty referred to in subsection (2), shall be payable by a person—
 - (a) who is neither a citizen of Zimbabwe nor permanently resident in Zimbabwe; and
 - (b) who is—
 - (i) a diplomatic agent or a member of the administrative and technical staff of a mission as defined in Article I set out in the First Schedule to the Privileges and Immunities Act [Chapter 3:03]; or
 - (ii) a consular officer or consular employee as defined in Article I set out in the Second Schedule to the Privileges and Immunities Act [Chapter 3:03]; or
 - (iii) a representative or official of an international or regional organization or agency specified in a notice published in terms of section 7 of the Privileges and Immunities Act [Chapter 3:03].
- (2) No stamp duty imposed by this Act in respect of any agreement or transaction which relates to immovable property shall be payable by any official of a foreign government in so far as such agreement or transaction relates to—
 - (a) any premises of the mission as defined in paragraph (i) of Article I set out in the First Schedule to the Privileges and Immunities Act [Chapter 3:03]; or
 - (b) any consular premises as defined in paragraph (j) of Article I set out in the Second Schedule to the Privileges and Immunities Act [Chapter 3:03], or the residence of the career head of any consular post as defined in the said Article I.

50. Exemption of indigent persons from payment of stamp duty and certain fees

Subject to any rule of the High Court, no stamp duty imposed in terms of this Act or any other enactment shall be payable by any person who has been granted leave to take or defend any proceedings as an indigent person in respect of those proceedings, and any stamp duty or fee paid by any such person in respect of those proceedings before such leave was granted shall be refunded upon application by such person.

51. Regulations relating to provision of stamps

- (1) The Minister may make regulations relating to—
 - (a) the provision, custody and management of proper and sufficient dies and materials for impressing or denoting stamp duties;

- (b) the making, custody, management, supply, sale and distribution of stamps required for the purpose of this Act;
- (c) the authorization of persons to act as custodians or distributors of stamps or to examine stamps;
- and generally for the better carrying out of the objects and purposes of this Act.
- (2) Any stamp manufactured under the authority of the Minister for the purposes of this Act shall, notwithstanding the fact that it was not manufactured under regulations made in terms of this section, be as valid as if it had been manufactured under regulations made in terms of this section.

52. Regulations relating to demonetization

The President may make regulations as to the demonetization or withdrawal of any die or any particular issue of stamps.

Schedule (Section 13(1)) Scale of validating penalties

<i>If the instrument is presented for stamping within the undermentioned periods from the date of execution or date of receipt in Zimbabwe</i>	<i>Penalty to be paid</i>
Three months	A sum equal to half the unpaid duty
Six months	A sum equal to the unpaid duty
Twelve months	A sum equal to twice the unpaid duty.
Exceeding twelve months	A sum equal to three times the unpaid duty

[Schedule amended by section 61 of Act 18 of 2002 and by section 26 of Act 3 of 2009]