

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5054 GIBRALTAR Thursday 25th May 2023

B. 13/23

BILL

FOR

AN ACT to amend the Gibraltar Land Titles Act 2011 to make provision for the electronic registration of deeds and wills, to amend the Stamp Duties Act 2005 to permit the electronic stamping of documents and to make provision for a budget measure, and for related purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Land Registry Portal and Electronic Stamping Act 2023.

Commencement.

2. This Act comes into force on the day to be appointed by the Chief Minister by notice in the Gazette and different days may be appointed for different provisions.

Amendment to the Gibraltar Land Titles Act 2011.

3.(1) The Gibraltar Land Titles Act 2011 is amended in accordance with this section.

(2) In section 2-

(a) after “Land Titles Register” insert –

““Land Registry Portal” or “Portal” has the meaning given in section 8A;”;

(b) in the definition of “Registrar of Land Titles”, after “Registrar of Land Titles” insert “or “Registrar””.

(3) In section 4(2)(c), after “certified” insert “or had a stamp certificate issued in respect of it”.

(4) After section 8, insert-

“Land Titles Registry Portal.

8A.(1) The Registrar may provide, or arrange for the provision of, a web infrastructure providing a single point of access to all services and information available from the Registrar, to be known as the Land Registry Portal, for use for such purposes as the Registrar thinks fit relating to the registration of deeds and wills under this Act.

(2) The Schedule has effect.”.

(5) In section 9-

(a) in paragraph (b) for “endorsed on” substitute “issued in respect of”;

(b) after paragraph (g) insert-

“(h) the use of the Portal.”.

(6) After section 12 insert –

“SCHEDULE

Land Registry Portal.

Access to the Portal.

1.(1) Any person who wants to register a deed or will under this Act must apply to the Registrar for access to the Portal.

(2) A single application for access to the Portal covers an entire legal entity and the applicant must have authority to apply on behalf of the entire legal entity.

(3) The application for access to the Portal requires acceptance of the conditions of use for the Portal that the Registrar may issue from time to time.

Terms of access.

2.(1) The terms on which access to the Portal is authorised shall be such as the Registrar thinks fit, and may in particular include charges for access.

(2) The power under subparagraph (1) may be used not only for the purposes of regulating the use of the Portal, but also for –

(a) securing that the person granted access uses the Portal in accordance with the conditions of use of the Portal; or

(b) enabling access to be monitored.

(3) The person granted access may terminate their access at any time by notice to the Registrar.

(4) The Registrar may terminate access if the person granted access fails to comply with the conditions of use.

(5) Rules may make provision about the termination of access.

Unrepresented individuals.

3.(1) The Registrar has a duty to provide such assistance as the Registrar thinks appropriate for the purpose of enabling persons who have no legal representation to register a deed or will.

(2) The duty under subparagraph (1) does not extend to the provision of legal advice.”.

Amendment to the Stamp Duties Act 2005.

4.(1) The Stamp Duties Act 2005 is amended in accordance with this section.

(2) In section 2-

(a) after the definition of “duty” insert-

““Electronic Stamping System” has the meaning in section 4A;”;

(b) for the definition of “stamp” substitute –

““stamp” means –

(a) a stamp impressed by means of a die; or

(b) a stamp certificate;”;

(c) for the definition of “stamped” substitute-

““stamped” with reference to instruments and material, applies to –

(a) instruments and material impressed with stamps in accordance with the provisions of this Act prior to the commencement of the Land Registry Portal and Electronic Stamping Act 2023; or

(b) instruments or material stamped via the Electronic Stamping System, in respect of which a stamp certificate has been issued for that instrument by the Commissioner of Stamp Duties in accordance with the provisions of this Act for the time being in force at the time of stamping;”;

(d) after the definition of “stamped” insert-

““stamping” includes issuing a stamp certificate;

“stamp certificate” means a certificate issued electronically by the Commissioner by means of the Electronic Stamping System;”.

(3) For section 4 substitute-

“4. All stamp duties for the time being chargeable under the provisions of this Act upon any instruments are to be paid and denoted according to the provisions of this Act and, except where express provision is made to the contrary, are to be denoted by the issue by the Commissioner of Stamp Duties of a stamp certificate corresponding to the instrument.”.

(4) After section 4 insert-

“Electronic Stamping System.

4A.(1) The Commissioner shall establish or operate an electronic system known as the Electronic Stamping System.

(2) Any person may in accordance with arrangements made under this section pay stamp duty on an instrument in accordance with the provisions of this Act.

(3) The Commissioner may issue a stamp certificate using the Electronic Stamping System denoting in respect of an instrument –

- (a) that the stamp duty chargeable on the instrument (including any penalty) has been paid;
- (b) that the instrument is not chargeable with any stamp duty; or
- (c) that the stamp duty with which the instrument is chargeable depends in any manner on the duty paid on another instrument.”.

(4) The Commissioner may –

- (a) determine the information and particulars that may be electronically transmitted under the Electronic Stamping System, including the form and the manner they are to be transmitted;
- (b) determine the procedure for the use of the Electronic Stamping System, including the procedure in circumstances where there is a breakdown or interruption in the computer service;
- (c) generally do such things as appear to the Commissioner to be necessary for the proper functioning of the Electronic Stamping System.

Electronic assessment and stamping of documents.

4B. For the purposes of this Act, the issue by the Commissioner using the Electronic Stamping System of a stamp certificate for an instrument shall comprise an assessment of the duty (and any penalty) in relation to the instrument.”.

(5) Delete section 8.

(6) In section 10-

- (a) delete “upon the first mentioned instrument”;
- (b) before “certificate” insert “stamp”;
- (c) after “certificate” delete “under the hand of the Commissioner”;
- (d) after “Commissioner” insert “in relation to the first mentioned instrument”.

(7) In section 11(1) delete the words from “and in such case” to the end of the proviso.

(8) For section 12 substitute -

“12. Every instrument in respect of which a stamp certificate has been issued by the Commissioner certifying that it is not chargeable with duty, or that it is duly stamped, shall be admissible in evidence and available for all purposes, notwithstanding any objection relating to duty, provided that a stamp certificate shall not be issued otherwise than in accordance with the assessment of the Commissioner.”.

(9) In section 15-

- (a) in subsection (1) after “the stamps thereon,” insert, “or of the lack of a stamp certificate issued in respect of the instrument,”;
- (b) in subsection (3) for “on the instrument” substitute “by way of stamp certificate”.

(10) In section 16-

(a) for subsection (2) substitute-

“(2) The Commissioner shall upon receipt of the amount of unpaid duty, together with the penalty, issue a stamp certificate.”;

- (b) for subsection (3)(a) substitute “a stamp certificate must be sought from the Commissioner before the expiration of six months after the instrument is first executed;”.

(11) After section 19B insert-

“Exemption on certain affordable housing estates.

19C.(1) This section applies to the first assignment of the underlease of residential property at affordable housing estates developed by Government after the coming into effect of this section.

(2) The conveyance or transfer on sale of residential property to which this section applies shall be exempt from ad-valorem duty as contained in this Act.

(3) For the purposes of this section “affordable housing estates developed by the Government” means such residential property prescribed by the Minister in writing.”.

(12) Delete section 30.

(13) In section 39 for the words from “Accountant General shall have endorsed” to “has been paid” substitute “Commissioner shall issue a receipt for the amount of duty paid and include on it the authorisation number for the stamp certificate relating to the instrument and this shall be prima facie evidence that the duty in the amount stated on the stamp certificate has been paid.”.

(14) Delete section 45.

(15) In section 46-

(a) in paragraph (j) for “.” substitute “;”;

(b) after paragraph (j) insert-

“(k) providing generally for the operation of the Electronic Stamping System, including as to the use of the Electronic Stamping System, the issue of stamp certificates, and as to measures to protect the integrity of the Electronic Stamping System.”.

(16) In Schedule 1 –

(a) in the entry relating to “CERTIFICATE from the Commissioner” delete “, or that the full and proper duty has been paid upon the original of the original of any document under section 30”;

(b) delete the entry relating to “DUPLICATE or COUNTERPART of any instrument Chargeable with duty” up to and including the words “And see SECTION 30.”.

Transitional and savings provisions.

5.(1) Nothing in this Act shall have any effect in relation to any instrument registered or stamped before the coming into operation of this Act.

(2) Any instrument submitted but not yet stamped before the coming into force of this Act shall be stamped in accordance with the provisions of the Stamp Duties Act 2005 as they were in force at the time of submission.

Consequential amendments.

6. In section 13(6) of the Limited Liability Partnerships Act 2009, references to an instrument being “stamped” include references to an instrument in respect of which a stamp certificate has been issued in accordance with the Stamp Duties Act 2005.

EXPLANATORY MEMORANDUM

This Bill amends the Gibraltar Land Titles Act 2011 to make provision for the Registrar of Land Titles to create a web infrastructure via which applications to register deeds and wills will be made. This is designed to make it easier to submit applications for registration.

The Bill also amends the Stamp Duties Act 2005 in line with the changes to the registration process to establish a new Electronic Stamping System which will permit stamping of instruments by way of an electronically issued stamp certificate, thereby facilitating the digital registration of deeds and wills under the Gibraltar Land Titles Act 2011. The Bill also makes provision for a 2019 budget measure in relation to affordable housing.

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