

CHAPTER 6:01

ADMINISTRATION OF ESTATES ACT

Ord. 6,1907; Acts 12/1929, 3/1932, 2/1935, 37/1938 (ss. 19 and 20), 29/1951 (s. 2), 25/1956 (ss. 6 and 7), 3/1957, 15/1958, 9/1962, 14/1962 (s. 2), 22/1964 (s. 54), 30/1969, 29/1970 (s. 2), 42/1971 (s. 5), 77/1971 (s. 21), 57/1972 (s. 4), 39/1973 (s. 52)19/1977, 39/1978 (s. 13), 41/1978 (s. 31), 17/1979 (s. 13), 15/1981, 29/1981, 15/1982, 11/1991 (s. 21), 9/1995, 6/1997, 9/1997, 12/1997 (s. 4), 16/1998 (s. 68), 9/1999 (s. 82), 22/2001 (s. 4); R.G.N.s 26/1963, 386/1964, 217/1970; S.I. 574/1981 (and by 789/1981), 638/1981.

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AN ACT to consolidate and amend the law relating to the administration of the estates of deceased persons, minors, mentally disordered or defective persons and persons absent from Zimbabwe, and to provide for the control of moneys belonging to persons whose whereabouts are unknown.

[Date of commencement: 5th July, 1907.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Administration of Estates Act [*Chapter 6:01*].

2 Interpretation

In this Act—

“Assistant Master” means the Assistant Master of the High Court referred to in paragraph (c) of subsection (1) of section *three* or any person performing his functions in terms of subsection (2) of that section;

[Definition substituted by section 4 of Act 12 of 1997.]

“magistrate for the district” means the magistrate whose court is situated within the district concerned or, where there is no magistrates court situated within the district concerned, the magistrate whose court is situated nearest thereto;

“Master” means the Master of the High Court referred to in paragraph (a) of subsection (1) of section *three* or any person performing his functions in terms of subsection (2) of that section;

[Definition substituted by section 4 of Act 12 of 1997.]

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act. PART II

MASTER'S OFFICE

3 Master and other officers

(1) Subject to the law relating to the Public Service, there shall be□

- (a) a Master of the High Court; and
- (b) a Deputy Master of the High Court; and
- (c) an Assistant Master of the High Court at Bulawayo; and
- (d) such further Assistant Masters of the High Court and other officers as may be necessary for the proper administration of this Act; whose offices shall be public offices and form part of the Public Service.

(2) Subject to this Act and any directions the Master may give them, the officers referred to in paragraph (b), (c) and (d) of subsection (1) shall perform such of the Master's functions, whether under this Act or any other enactment, as the Master may assign to them.

[Section substituted by section 4 of Act 12 of 1997.]

4 Office of record

(1) The office of the Master shall be an office of record for that part of Zimbabwe defined in the First Schedule and the office of the Assistant Master shall be an office of record for the remainder of Zimbabwe:

Provided that such of the records filed in the office of the Assistant Master as the Master may specify shall, if the Master so directs, be transferred for safekeeping to the office of the Master or such other central office of record as he may specify.

(2) Any provision of this Act or any other enactment which requires any document to be lodged with the Master shall—

- (a) if such document relates to a death which occurred outside the area defined in the First Schedule or to the death of a person who at the time of his death was ordinarily residing outside such area; or
- (b) if such document is required to be lodged by a person residing outside such area; be read and construed as requiring such document to be lodged with the Assistant Master.

PART III

ESTATES OF DECEASED PERSONS

Death Notices

5 Death notices to Master, Assistant Master or magistrate

(1) Whenever any person dies leaving any property in possession, reversion or expectancy or leaving a will, the nearest relative or connection of the deceased who is at or near the place of death, or in default of any such near relative or connection, the person who at or immediately after the death has the chief charge of the house in or of the place on which the death occurs shall, within fourteen days thereafter, cause a notice of death to be framed in the form A in the Second Schedule, and shall cause that notice, signed by himself, to be delivered or transmitted—

- (a) if the death occurs in Harare or the district thereof, to the Master;
- (b) if the death occurs in Bulawayo or the district thereof, to the Assistant Master; (c) if the death occurs in any other district, to the magistrate for that district.

A notice delivered or transmitted under this subsection to the Master or Assistant Master shall in all cases be accompanied by a duplicate or fair and true copy thereof and, if delivered or transmitted to a magistrate, by two duplicate or fair and true copies thereof.

(2) Every magistrate to whom such notice as aforesaid is given shall cause the duplicate copy thereof to be examined and compared with the original, and if need be corrected, and shall authenticate such duplicate or copy with his signature.

(3) The magistrate shall file and register the same and shall forthwith transmit the original notice—

- (a) to the Master if the death occurred within the area defined in the First Schedule;
- (b) to the Assistant Master if the death occurred outside the area defined in the First Schedule.

(3a) Any person who, without just cause, fails to comply with subsections (1) to (3) shall be guilty of an offence and liable to a fine not exceeding level one or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001.]

(4) If it appears that the person signing the death notice was not present at the death, the Master may call upon such person for proof of death.

6 If death notice defective executor to furnish further information

(1) If the information in any death notice is defective or insufficient, the Master may call upon any executor, after his appointment, to furnish such further information as may be required, and every executor so called upon shall without delay return his written answers to such questions as the Master may put for that purpose.

(2) An executor who, without just cause, fails to comply with subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001.]

Wills

7 Deposit of wills with Master

(1) Any person may deposit with the Master or Assistant Master, either open or enclosed under a sealed cover, any will, codicil or testamentary instrument executed by him.

(2) The Master and the Assistant Master shall each keep, or cause to be kept, a register of the names and descriptions of the persons depositing with him every such deed, and the date on which it was so deposited.

(3) Every such deed shall be accompanied by a duplicate or fair and true copy thereof, which, together with the original, shall be kept under the charge and custody of the Master or Assistant Master, as the case may be, until the death of the maker thereof, unless re-delivery of the same is demanded by the said maker, or in his lifetime by his lawful agent specially authorized for that purpose, and when any such deed is re-delivered in manner aforesaid, the maker or his agent, as the case may be, shall sign a receipt for the same.

8 Transmission of wills

(1) Every person other than the Master or Assistant Master who has at the time of the death of the maker thereof in his possession any deed purporting to be or entitled the last will, codicil or other testamentary instrument of any other person, or into whose possession any such deed comes after the death of the maker thereof, shall forthwith, at the first opportunity, deliver or transmit every such deed— (a)

when such person resides in Harare or the district thereof, to the Master;

(b) when such person resides in Bulawayo or the district thereof, to the Assistant Master;

(c) when such person resides in any other district, to the magistrate for the district in which he resides or is at the time.

(2) If delivered or transmitted to the Assistant Master or a magistrate under paragraph (b) or (c) of subsection (1), such person shall also furnish a duplicate or true copy thereof.

(3) The magistrate shall cause such duplicate or copy to be examined and compared with the original and, if need be, corrected, and shall authenticate such duplicate or copy with his signature, and shall file and register the same, and shall forthwith transmit the original deed—

(a) to the Master if the deceased person ordinarily resided at the time of his death within the area defined in the First Schedule;

(b) to the Assistant Master if the deceased person ordinarily resided at the time of his death outside the area defined in the First Schedule.

(4) If, in the case of a will, codicil or other testamentary instrument transmitted or delivered under paragraph (b) of subsection (1), the district of Bulawayo is not the district in which the deceased person ordinarily resided at the time of his death, the Assistant Master shall transmit the duplicate or copy of such will, codicil or other testamentary instrument authenticated as aforesaid to the magistrate for such last-mentioned district, and such magistrate shall file and register the same.

(5) If, in the case of a will, codicil or other testamentary instrument transmitted under paragraph (c) of subsection (1), the magistrate to whom such deed is transmitted or delivered is not the magistrate for the district in which such deceased person ordinarily resided at the time of his death, he shall transmit the duplicate or copy of such will, codicil or other testamentary instrument, authenticated as aforesaid, to the magistrate for such last-mentioned district, and such last-mentioned magistrate shall file and register the same.

(6) Every notary public shall, when called upon by the Master to do so, transmit the original minute of any notarial will, codicil or testamentary instrument passed before him to the Master.

(7) Any person failing to comply with the provisions of this section 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 amended by section 4 of Act 12 of 1997 and section 4 of Act 22 of 2001.]

9 Search for concealed will

Every judge of the High Court and every magistrate or justice of the peace, upon information taken on oath being transmitted to him by the Attorney-General or the Master, or upon the information of any person made on

oath before any such judge, magistrate or justice of the peace that there is reason to suspect that any will, codicil or other testamentary instrument is concealed in any place within the jurisdiction of such judge, magistrate or justice of the peace, may, by warrant under his hand, cause every such place to be searched.

[Section amended by section 4 of Act 12 of 1997.]

10 Order for delivery of will

If any person who is reasonably believed to be in possession of or have under his control any will, codicil or other testamentary instrument, after the death of the testator, refuses or fails to deliver or transmit the same in manner hereinbefore provided, the Master is hereby authorized and required forthwith to apply to the High Court or any judge thereof for an order of such Court or judge on such person forthwith to deliver such will, codicil or other instrument.

[Section amended by section 4 of Act 12 of 1997.]

11 Registration of wills at testator's death

Every deed being or purporting to be the will, codicil or other testamentary instrument of any person which has been deposited with or transmitted to the Master or Assistant Master, as the case may be, in manner hereinbefore provided shall, after the death of the maker thereof, be registered by the Master or Assistant Master, as the case may be, in his Register of Wills, for which purpose the Master and the Assistant Master are hereby authorized and required to open or cause to be opened every such deed which may be sealed up:

Provided that—

- (i) notwithstanding any such registration all questions as to the validity and legal effect of every such deed shall be reserved and remain for the decision of the High Court;
- (ii) where such deed has been deposited with the Master or Assistant Master previous to the death of the maker thereof, the Master or Assistant Master, as the case may be, shall cause the duplicate or copy deposited with the said deed to be examined and compared with the original, and if need be corrected, and shall authenticate such duplicate or copy with his signature, and shall transmit the same if the deceased ordinarily resided at the time of his death in any district other than the district of Bulawayo or Harare, to the magistrate for such first-mentioned district, and the said magistrate shall cause the same to be filed and registered.

[Section amended by section 4 of Act 12 of 1997.]

Inventories

12 Inventory of estate in community

(1) When one of two spouses who have been married in community of property dies, the survivor shall, within thirty days after the death of the deceased, cause an inventory of all property, goods and effects, movable and immovable, of what kind soever which, at the time of the death, formed part of or belonged to the estate possessed in community between the predeceasing and surviving spouses, to be made in the presence of two impartial witnesses, being persons of good credit and repute, and of such persons having an interest in the distribution of the joint estate as heirs or legatees of the predeceased spouse as may attend.

(2) Every such inventory shall be subscribed by the surviving spouse and witnesses aforesaid and such heirs or legatees as are present at the making thereof.

(3) Without derogation from section *thirteen*, a surviving spouse who fails to cause an inventory to be made in terms of this section shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted amended by section 4 of Act 22 of 2001.]

13 Penalty on omission of inventory

(1) Every surviving spouse who wilfully neglects to cause an inventory of the joint estate to be made in manner and within the period hereinbefore provided, or knowingly omits to enter in such inventory any article of property of whatsoever kind, shall, in the distribution of such estate, forfeit all right to and share in anything which may accrue to the joint estate after the death of the predeceasing spouse and in and to such property so omitted in the inventory.

(2) Every loss which has been caused by the destruction or deterioration of any such property so omitted in the inventory, or which has accrued to the joint estate after the death of the predeceasing spouse by the loss or deterioration of any part thereof, shall, in the distribution of the estate, fall upon and be borne by such surviving spouse solely and exclusively.

(3) Nothing in this section contained shall free or exempt any person who wilfully, or for any fraudulent purpose, makes or causes to be made any false inventory of any such joint estate from any penalty or punishment hereinafter or by any other law provided with respect to the offence of making false inventories.

14 Inventory on the death of person not married in community

(1) On the death of any person not being one of two spouses married in community of property, the wife or husband of the deceased or, in default or absence of the wife or husband, the child or children of the deceased or, in default, absence or minority of the child or children, the next of kin of the deceased or, in default, absence or minority of the next of kin, the person who at or immediately after the death has the chief charge of the house in or of the place on which the death occurs shall, within fourteen days after the death, make or cause to be made in the presence of two impartial witnesses, being persons of good credit and repute, an inventory of all goods and effects belonging to the deceased and being in the house or upon the premises at the time of death, and of all other goods and effects known by the person making such inventory or causing such inventory to be made to have belonged to the deceased.

(2) Every such inventory shall be subscribed by the person making or causing the same to be made and by the witnesses aforesaid.

(3) Any person who fails to make an inventory in terms of this section or to cause such an inventory to be made shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001.]

15 Transmission to Master, Assistant Master or magistrate

(1) Every person hereinbefore required or directed to make, or cause to be made, any such inventory as aforesaid shall, so soon as the same has been made, forthwith deliver or transmit every such inventory— (a) if such person resides in Harare or the district thereof, to the Master;

(b) if such person resides in Bulawayo or the district thereof, to the Assistant Master;

(c) if such person resides in any other district, to the magistrate.

(2) An inventory delivered or transmitted under paragraph (c) of subsection (1) shall be accompanied by a duplicate or fair and true copy thereof.

(3) The magistrate shall cause the duplicate or copy of every such inventory so delivered or transmitted to him to be examined, and if need be corrected; and shall authenticate such duplicate or copy with his signature, and file the same of record in his office, transmitting the original to the Master.

16 Inventory by order of the High Court, judge or Master

The High Court, or any judge thereof, or the Master, on sufficient cause appearing at any time may order that an inventory of any property belonging to any deceased person, or to the joint estate of any deceased person and the surviving spouse, shall be taken by any person named in such order.

17 Particulars required as to immovable property

Every person who is required by section *twelve, fourteen* or *sixteen* to make an inventory shall include therein a specified list of all immovable property wherein to his knowledge the deceased had an interest at the date of his death, and, if possible, a reference to the title under which the deceased held such interest, and the date of such title.

18 ...

[Section repealed by section 4 of Act 22 of 2001.]

19 Penalty for false inventory

If any person required and directed under and by virtue of section *twelve, fourteen* or *sixteen* to make or cause to be made an inventory of any estate, goods or effects wilfully makes a false inventory thereof, he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

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

Custody of Estate Pending Issue of Letters of Administration

20 Custody of estate in community

When one of two spouses who have been married in community of property dies, the joint estate shall remain under the charge of the survivor until the executor of the deceased, or the tutor testamentary or dative of the minor children of the marriage, or the Master or curator *bonis* lawfully appointed to such minor children, takes proceedings for the administration, distribution and final settlement of the joint estate:

Provided that nothing in this section shall prevent any such joint estate from being placed under sequestration as insolvent.

21 Custody of estate of person not married in community

On the death of any person not being one of two spouses married in community of property, the spouse of the deceased or, in default or absence of the spouse, the child or children of the deceased or, in default, absence or minority of the child or children, the next of kin of the deceased or, in default, absence or minority of the next of kin, the person who at or immediately after the death has the chief charge of the house in or of the place on which

the death occurs shall secure and take charge of all goods and effects of whatever description belonging to the deceased and being in the house or upon the premises at the time of death, and shall retain the same in his or her custody and possession until delivery thereof is demanded by the executor of the deceased or by any other person lawfully appointed by the High Court or any judge thereof or the Master, to receive delivery of the same.

22 Custody of estate by curator *bonis*

(1) In all cases where it may be necessary or expedient to do so, the Master may appoint a curator *bonis* to take the custody and charge of any estate until letters of administration are granted to executors testamentary or dative for the due administration and distribution thereof.

(2) Every such curator *bonis* may collect such debts and may sell or dispose of such perishable property belonging to the estate as the Master shall specially authorize.

(3) Every appointment made by the Master of any curator *bonis* shall, upon the application of any person having an interest in such estate, be subject to be reviewed and confirmed or set aside by the High Court or any judge thereof; and the High Court or judge, by whom such appointment is set aside, may appoint some other fit and proper person to be curator *bonis*.

Letters of Administration

23 Letters of administration

The estates of all persons dying either testate or intestate shall be administered and distributed according to law under letters of administration to be granted in the form B in the Second Schedule by the Master to the testamentary executors duly appointed by such deceased persons, or to such persons as shall, in default of testamentary executors, be appointed executors dative to such deceased persons in manner hereinafter mentioned. **24 Letters of administration to executors as appointed by will**

(1) In all cases in which any deceased person has by will or codicil duly appointed any person to be his executor, the Master shall, upon the written application of such executor, forthwith grant letters of administration to him as soon as such will or codicil has been registered in the office of the Master.

(2) If it appears to the Master, or if any person by writing lodged with the Master objects, that any will or codicil by virtue whereof any person claims to be the testamentary executor of any person deceased is not in law sufficient to warrant and support such claim, then and in every such case letters of administration may be refused by the Master until the validity and legal effect of such will or codicil has been determined by the judgment of some competent court or until such objection as aforesaid has been withdrawn by the person by whom the same was made or until such person has had sufficient time to apply to such court as aforesaid for an order restraining the issue of letters of administration:

Provided that letters of administration shall not be granted to any such executor as aforesaid who at the time of making such written application is or resides outside Zimbabwe.

(3) If the Master or Assistant Master has reason to believe that any such last-mentioned executor is not resident in Zimbabwe, or that, although he may at the time of making such application be within Zimbabwe, he will not remain therein until he has finally liquidated and settled the estate to be administered by him, the Master or Assistant Master, as the case may be, may grant letters of administration to such executor but shall not deliver those letters of administration to him until—

- (a) he accepts *domicilium citandi* within Zimbabwe; and
- (b) he nominates and appoints under power of attorney some other person resident in Zimbabwe with full power to act for him in the administration of the estate; and
- (c) he finds sufficient security to the satisfaction of the Master or Assistant Master, as the case may be, for the due and faithful administration by him of such estate.

25 Appointment of executor

(1) When any person has died without having by any valid will or codicil appointed any person to be his executor, or where any person duly appointed to be the executor of any deceased person has predeceased him or refuses or becomes incapacitated to act as such, or within such reasonable time as the Master considers sufficient, neglects or fails to obtain letters of administration, then and in every such case the Master shall cause to be published in the *Gazette*, and in such other manner as to him seems fit, a notice calling upon the surviving spouse, if any, and the next of kin, legatees and creditors of the deceased to attend at his office, at the time therein specified, to see letters of administration granted to such person or persons as may then be appointed by him executor or executors, to the estate of such deceased person.

(2) When it appears to the Master necessary or expedient so to do, he may in such notice call upon such persons as aforesaid to attend before any magistrate, at such time and place as may be appointed, for the purpose of proposing some person or persons to be by such magistrate recommended to the Master as fit and proper to be by him appointed executor or executors.

(3) The Master shall at the meeting so to be held at his office, or upon receiving the report of such magistrate, appoint such person or persons as to him seems fit and proper to be executor or executors of the estate of the deceased, and shall grant letters of administration accordingly, unless it appears to him necessary or expedient to postpone such appointment and to call another, or other such meeting or meetings, as aforesaid:

Provided that when it appears to the satisfaction of the Master that the estate of any deceased person as is hereinbefore mentioned is manifestly insolvent, then and in every such case it shall not be necessary for him to take any such proceedings as aforesaid for the appointment of an executor or executors.

26 Competition for the office of executor dative

In every case in which a competition takes place for the office of executor dative the surviving spouse, or failing him or her the next or some of the next of kin, or failing him or them a creditor or creditors, or failing him or them failing a legatee or legatees, shall be preferred by the Master to the office of executor: Provided that—

- (i) nothing in this section shall prevent any one or more of the above classes of persons from being conjoined in the said office with one or more of any of the above-mentioned classes of persons;
- (ii) when it appears to the Master or to the High Court or any judge thereof, on reviewing the appointment of the Master, that any good reason exists against the appointment of all or any of the above-mentioned persons or classes of persons, as executor or executors, any such person or class of persons may be passed by and some other fit and proper person or persons may by the Master, or by the High Court or judge, be appointed executor or executors;
- (iii) every such appointment so made by the Master shall, on the application of any person having an interest in such estate, be subject to be reviewed and confirmed or set aside by the High Court or any judge thereof; and the High Court or judge by whom such appointment is set aside may appoint some other fit and proper person or persons to be executor or executors.

27 Appointment of tutor as executor

When it happens that any of the next of kin or creditors or legatees of any deceased person are minors under the guardianship of any tutor duly appointed, then and in every such case such tutor shall be entitled to be preferred to the office of executor dative under section *twenty-six*, in the same manner in all respects as the minor, whose tutor he is, would, if of full age, have been entitled to be preferred to that office under the said section.

28 Assumption of executor under power contained in will

(1) Nothing in this Act shall prevent a testamentary executor from assuming another person as executor under a power conferred on him by the testator in his will or codicil:

Provided that no person shall be entitled or qualified to act as assumed executor unless—

- (a) he is the testator's surviving spouse or next of kin or is registered in terms of the Estate Administrators Act [*Chapter 27:20*]; and
 - (b) the Master has granted him letters of administration as such during the lifetime of the testamentary executor.
- (2) The Master shall grant a person letters of administration as an assumed executor in terms of subsection (1) if the Master is satisfied that the power of assumption under the will or codicil concerned has been properly exercised.

(3) Every provision of this Act and any other law relating to executors shall apply to persons who are assumed as executors under this section.

[Section substituted by section 68 of Act 16 of 1998]

29 Appointment of new executor

When by reason of any testamentary or assumed executor whom letters of administration have been granted having died or become incapacitated to act as such, or having been removed from his office by the decree of any competent court or a judge thereof there does not remain for the administration of the estate any executor whatever, or so many executors, either testamentary or assumed, as by the provisions of the will or codicil by which such executors were appointed, or permitted to be assumed, are required to form a quorum of executors, and when it happens that any executor dative, after letters of administration have been granted to him, dies or becomes incapacitated or is removed in manner aforesaid, then and in every such case proceedings for the appointment of an executor in place of such executor so dying or so becoming incapacitated or removed, shall be taken by the Master in like manner in all respects as provided in section *twenty-five*, *twenty-six* and *twenty-seven*.

29A Disqualification from appointment as executor in certain cases

The Master shall not grant letters of administration to a person in terms of section *twenty-five*, *twenty-seven* or *twenty-nine* unless that person is□

- (a) registered under the Estate Administrators Act [*Chapter 27:20*]; or
- (b) a surviving spouse or next of kin of the deceased person concerned.

30 Revocation of letters of administration

(1) Letters of administration granted to any person as testamentary executor shall at all times be subject to be revoked and annulled by the decree of the High Court on the proof to the satisfaction of the High Court that the will or codicil, in respect of which such letters have been granted to such person, is null or has been revoked either wholly or in so far as it relates to the nomination of such executors.

(2) Any letters of administration granted to any person as executor dative shall be at all times subject to be revoked and annulled by the Master, on production to him of any will or codicil by which any other person, who is then legally capable and qualified and who consents to act as executor, has been legally nominated testamentary executor to the estate which such executor dative has been appointed to administer.

(3) If the non-production of such will or codicil, prior to letters of administration having been granted to the executor dative, has been owing to the fault or negligence of the person therein nominated testamentary executor, such person shall be personally liable for, and may be compelled at the instance of the Master or any person interested, to make good to the estate all expenses which have been incurred in respect of and with reference to the appointment of the executor dative.

(4) The Master shall revoke letters of administration granted to a person as executor if the Master is satisfied that□

- (a) when the letters of administration were granted to him, that person was registered under the Estate Administrators Act [*Chapter 27:20*] and his registration has subsequently been cancelled or suspended in terms of that Act; or
- (b) in the case of an executor dative, the person is not the surviving spouse or next of kin of the deceased person and, when the letters of administration were granted to him, he was not registered under the Estate Administrators Act [*Chapter 27:20*] or his registration under that Act was suspended.

[Subsection inserted by section 68 of Act 16 of 1998.]

(5) Any person who is aggrieved by a decision of the Master to revoke or annul letters of administration in terms of subsection (2) or (4) may appeal against the decision to the Court within the time and in the manner prescribed in rules of court.

[Subsection inserted by section 68 of Act 16 of 1998.]

31 Security for due administration

(1) Every executor dative, assumed executor or curator *bonis* shall, before he is permitted to enter on the administration of the estate, find security to the satisfaction of the Master for the due and faithful administration of the estate to which he has been appointed, for such amount as in the circumstances of each particular case is reasonable.

(2) Every executor testamentary shall be under the like obligation of finding security, unless—

- (a) he is the parent, child or surviving spouse of the deceased testator; or
- (b) the testator has specially directed in his will that the Master dispense with such security.

(3) The Master shall allow the reasonable costs of finding security to be charged out of the estate.

(4) The Master may, notwithstanding the provisions of this section, require any executor to furnish security in a sum not exceeding the liabilities of the estate and any inheritance or legacies bequeathed to third parties.

32 Administration of small estates

(1) If any person dies whose estate is unrepresented and, in so far as the same is in Zimbabwe, appears to the Master to be under the value of such amount as the Minister may specify in terms of subsection (2), the Master may—

- (a) cause such estate to be administered and distributed in accordance with by an executor dative, to be by him summarily appointed for that purpose; or
- (b) dispense with the appointment of an executor dative and direct how such estate shall be administered and distributed.

(2) The Minister may, by statutory instrument, specify an amount for the purposes of subsection (1) and may in like manner revoke or amend any such statutory instrument.

(3) Any person who fails to comply with a direction of the Master in terms of paragraph (b) of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

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

33 Interpretation in sections 34 to 37

In sections *thirty-four* to *thirty-seven*—

“British Consular Court” means any British court having jurisdiction under an order in council made in pursuance of the Foreign Jurisdiction Act 1890 of the United Kingdom, or any amendment thereof;

“letters of administration” includes every document issued, or a copy of every such document duly certified, by any lawful and competent judicial or other public authority in any State, under and by which document any person or body corporate is authorized and empowered to act as the personal representative of any deceased person, or as executor or administrator, either testamentary or dative, either of the whole estate of any deceased person which is legally situate in such State or of so much of such estate so situate as consists of immovable, real or personal property, as the case may be;

“State” includes England, Scotland, Ireland and every British Colony and British Possession, and any territory whereof the Sovereign of the United Kingdom holds the mandate.

34 Operation of sections 34 to 37 only with regard to letters granted in States specially proclaimed

This section, as well as section *thirty-five*, *thirty-six* and *thirty-seven*, shall come into force with regard to all letters of administration at any time granted in any State as and from the date of and during the period, if any, limited by a notice which the President may see fit to publish in the *Gazette* declaring such State to come under the operation thereof, and thereupon such provisions shall continue in force, either until any period so limited as aforesaid or any notice of the extension thereof in the *Gazette* has expired, or until a further notice is similarly published by the President intimating that the said provisions shall no longer apply to letters of administration granted in such State.

35 Recognition of foreign letters of administration

Whenever letters of administration granted in any State are produced to, and a copy thereof deposited with, the Master by the person in whose favour such letters of administration have been granted, or his duly authorized agent, such letters may be signed by the Master and sealed with his seal of office, and shall thereupon be of the same effect and have as full operation in Zimbabwe with respect to, and the Master shall have the same control over, the administration of the entire estate of the deceased situate in Zimbabwe as though the said letters had been letters of administration granted by the Master:

Provided that—

- (i) the Master shall not sign and seal any such letters so produced in any case where letters of administration have been granted already by him in respect of the estate of any deceased person which is situate in Zimbabwe;
- (ii) before any such letters are signed and sealed a certificate of death and a duly certified copy of the will, if any, of the deceased, and an inventory of all property within Zimbabwe known to belong to him, shall be lodged with the Master, and the same stamps, fees of office, duties and security shall be paid and given which would be required if the said letters had been letters dative granted by the Master;
- (iii) if the Master refuses to sign and seal any such letters of administration so produced the person thereby authorized and empowered to act may, after notice to the Master, make application to the High Court for relief and thereupon the High Court shall make such order as to it seems just;
- (iv) the person in whose favour such letters of administration have been granted shall insert in the *Gazette*, and in such newspaper as the Master may direct, a notice calling upon all creditors and persons interested *ab intestato* or otherwise to lodge with the Master the particulars of their claims and of their objections to the signing and sealing of such letters of administration within a period of twenty-one days after the notice in the *Gazette*;
- (v) if within the said period no such claims or objections have been lodged or if such claims have been paid and proof of such payment is produced to the Master and it further appears that there are no minors resident in Zimbabwe who are interested in the distribution of the estate, then such letters of administration may be signed and sealed by the Master in manner hereinbefore provided without observance of the usual and customary forms and without his requiring security to be given;
- (vi) if the Master refuses to sign and seal such letters of administration, proviso (iii) shall apply;
- (vii) the Master shall notify the proper officer of the High Court granting such letters of administration that he has signed and sealed the same without security being given and shall transmit with such notification a certified copy of any inventory lodged with him as by proviso (ii) is required.

36 Letters granted by British Consular Courts recognized

Letters of administration lawfully granted by any British Consular Court shall be deemed and taken to be granted in a State to which section *thirty-five* applies.

37 Evidence of foreign letters of administration

A copy, certified by the Master, of the copy of any letters of administration deposited with him under section *thirty-five* shall be admitted in evidence in all legal proceedings in Zimbabwe as though such certified copy were the original letters, and a certificate under the hand of the Master to the effect that he has, in accordance with the said provisions, signed and sealed any letters of administration authorizing and empowering any person to act thereunder shall be admitted in all legal proceedings in Zimbabwe as *prima facie* proof of the legal right and title of such person to administer so much of the estate of the deceased person named in such certificate as is situate in Zimbabwe.

Duties of Executors

38 Inventory by executor

(1) Every executor shall, so soon as letters of administration have been granted to him in manner aforesaid, forthwith make an inventory showing the value of all property, goods and effects, movable and immovable, of whatever kind belonging to the estate which he has been appointed to administer, and shall in the same manner from time to time thereafter and so soon as he finds or knows of any such property, goods or effects belonging to such estate and not contained in such first-mentioned inventory, make an additional inventory or inventories, showing the value of all such last-mentioned property, goods and effects.

(2) Every such executor shall forthwith cause every such inventory and additional inventory to be transmitted to the Master.

(3) When any such additional inventory is so transmitted by any executor dative or assumed, he shall find such further security as the Master may require of him.

39 Penalty for false inventory

If any person required and directed under and by virtue of section *thirty-eight* to make or cause to be made an inventory of any estate, goods or effects wilfully makes a false inventory thereof, he 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.

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

40 Valuation of assets

When any executor fails to place any value upon the assets or any portion thereof, or places a value on them which does not meet with the approval of the Master, the Master may cause the value of such assets to be appraised by any impartial person or persons and the value so ascertained shall be taken to be the true value of such assets for the purposes of this Act.

41 Liability in certain cases for debts and legacies If—

- (a) before letters of administration are granted by the Master to any executor for the administration of any estate, any person takes upon himself to administer, distribute or in any manner dispose of such estate or any part thereof, except in so far as may be authorized by a competent court or by the Master or may be absolutely necessary for the safe custody or preservation thereof or for providing a suitable funeral for the deceased or for the subsistence of the family or household or livestock left by the deceased; or
- (b) any person to whom letters of administration have been granted administers, distributes or in any manner disposes of any property or effects belonging to the estate of which he is the executor, and which have not been contained in the inventory or inventories of such estate lodged with the Master prior to the granting of the said letters of administration, or are not contained in any inventory or additional inventory made by him and transmitted by him to the Master in terms of section *thirty-eight*; every such person shall thereupon become personally liable to pay to the creditors and legatees of the deceased all debts due by the deceased at the time of his death or which have thereafter become due by his estate, and all legacies left by the deceased in so far as the proceeds and assets of such estate are insufficient for the full payment of such debts and legacies:

Provided that when any person who is sued for the payment of any debt or legacy which he has rendered himself personally liable to pay in manner aforesaid proves to the satisfaction of the court before which he is sued that the true amount and value of the property which has actually been duly administered, distributed and disposed of by him did not exceed a certain sum, and that his administration, distribution or disposal of the same was not fraudulent, then and in every such case such person shall only be personally liable for so much of such sum as he fails to prove has been distributed or disposed of in such manner and for such purposes as by law the same ought to have been distributed or disposed of, and for the amount of the costs by him incurred in and concerning such suit by the plaintiff therein, notwithstanding that by reason of such person's personal liability having been restricted in manner aforesaid such plaintiff has not recovered from such person any part of the debt or legacy sued for.

42 Duty of person in possession of assets of estate of deceased person

Every person not being the executor of the estate of a deceased person duly appointed in Zimbabwe who has or comes into possession or custody of any property or asset belonging to such estate shall forthwith either deliver such property or asset to the duly appointed executor, if any, then being in Zimbabwe or report the particulars thereof to the Master; and if such first-mentioned person fails to do so, or parts with any such property or asset to any person not authorized by the Master by letters of administration or other direction to receive the same, he shall, apart from any other liability he may incur thereby, be liable for all dues payable to the public revenue in respect of such property or asset.

43 Public notice by executors to creditors and others to lodge their claims

Every executor shall, so soon as he has entered on the administration of the estate, forthwith cause a notice to be published in the *Gazette* and in some newspaper published or circulating in the district in which the deceased ordinarily resided, calling upon all persons having claims due, or not yet due, as creditors against the deceased or his estate, to lodge the same with such executor within such period from the date of publication thereof as is therein specified, not being less, save and except as in section *sixty-six* is provided, than thirty days or more than three months, as in the particular circumstances of each case is by the executor deemed proper. All claims which would be capable of proof in case of the insolvency of the estate shall be deemed to be claims of creditors for the purposes of this Act.

44 Suspension of execution against deceased estate

(1) No person who has obtained the judgment of any court against any deceased person in his lifetime, or against his executor in any suit or action commenced against such executor, or which, having been pending against the deceased at the time of his death, has thereafter been continued against the executor of such person, may sue out or obtain any process in execution of any such judgment before the expiration of the period notified in the *Gazette* in manner in this Act provided.

(2) No such person as aforesaid shall sue out and obtain any process in execution of any such judgment as aforesaid within six months from the time when letters of administration have been granted to the executor against whom execution of such judgment is sought without first obtaining an order from the High Court or some judge thereof for the issue of such process.

[Subsection amended by section 4 of Act 12 of 1997.]

45 Duties of executors after expiration of period for lodging claims

(1) On the expiration of the period notified in the *Gazette* in manner hereinbefore in this Act provided, every such executor as aforesaid shall forthwith proceed to rank, according to their legal order of preference, all such claims of creditors against the deceased or his estate as have been lodged with him, or of the existence of which he has knowledge, and shall pay off and discharge the same so soon as the funds necessary for that purpose have been realized out of the estate.

(2) If the proceeds of such estate are found to be insufficient for the payment of all the just and valid claims of creditors to which it is liable, the executor thereof shall be liable to pay to any person having any such just and valid claim the amount which such person would have been entitled to receive in respect of such claim if ranked according to the legal order of preference, in so far as such executor has within the said period last-mentioned or afterwards at any time when he knew of the existence of such claim, paid such amount to any person the payment of whose claim against the deceased or his estate, according to the legal order of preference, ought to have been postponed until such just and valid claim as aforesaid had been satisfied; reserving always to such executor recourse against the person to whom payment of his claim may have been improperly made.

(3) When such notice to creditors as aforesaid has been duly published as aforesaid, no creditor claiming on the estate of any deceased person who has not lodged his claim with the executor within such period as aforesaid, or thereafter, before the distribution of the funds of the estate, shall in respect thereof be entitled to recover from any person having a just and valid claim as a creditor against such estate restitution of any part of such funds which may have been paid to such person in satisfaction thereof after the expiry of such period, and before the claim of the person seeking such restitution was lodged with the executor, although if lodged in due time such last-mentioned claim would, according to the legal order of preference, have been preferent to that of the person to whom such payment had previously been made; nor shall such person have any claim against any executor in respect of any such distribution as aforesaid of the funds of any such estate made by him after the expiry of such period as aforesaid, and before the claim of such person was known to such executor.

46 Preference on estate for funeral expenses

Every person by whom the funeral of any deceased person is performed, or who causes the same to be performed, shall for the amount of the expenses of such funeral, in so far as the same were suitable to the condition of the deceased, have a preference on the property and assets of the estate of the deceased before any other debt or claim which may have been owing by the deceased at the time of his death or which may arise against his estate after his death.

47 Executor may require solemn declaration in support of claim

(1) Any executor may, if he thinks fit, require any person preferring any claim as a creditor against the estate of which he is executor to substantiate such claim by a solemn declaration, setting forth the details of such claim with such particularity as the executor may reasonably require, and may refuse to recognize any such claim until such declaration has been delivered to him.

(2) It shall be competent for any court by which any such claim is adjudged in favour of any claimant to decline to grant such claimant his costs against the estate if such court deems that the information given by the claimant to the executor was insufficient and that the executor acted with prudence and discretion in contesting such claim.

48 If estate insolvent

If an executor, after inquiry, finds that the estate is insolvent he shall immediately take the necessary proceedings for having such estate placed under sequestration as insolvent, unless the creditors consent to receive a dividend in full satisfaction of their claims and proof of such consent is produced to the Master.

49 Master may permit surviving spouse to take over estate at appraisal

If one of two spouses dies intestate, or dies testate and has made no provision to the contrary in the will, the Master may, if it appears to him that it will be for the benefit of the minor children, if any, of the deceased spouse to do so, permit the estate belonging to such deceased spouse to be taken over by the survivor at a valuation, to be made by a person appointed in terms of section *one hundred and twenty-eight*, instead of being realized according to law:

Provided that no person having any lawful claim against the estate of such deceased spouse shall be delayed or defeated in obtaining payment of such claim by virtue of anything herein contained.

50 Claims by minors, absent persons and others

If any executor in administering and distributing any estate finds that any minor not having a lawful guardian or tutor, or any mentally disordered or defective person not having a lawful curator, or any person absent from Zimbabwe and not having a lawful representative within the same, has any valid right or claim to such estate or any part thereof, such executor shall forthwith transmit to the Master a statement in writing containing the name of such minor, mentally disordered or defective person or absent person and specifying the nature and value of the property to which such minor, mentally disordered or defective person or absent person has such right or claim.

51 Executor to pay to Master money devolving upon minors, mentally disordered or defective persons or absent persons

(1) If any executor in administering and distributing any estate finds that any sum of money has devolved upon or become due from such estate to any minor, mentally disordered or defective person or person absent from Zimbabwe, not having a guardian, tutor, curator or lawful representative within the same, such executor shall forthwith pay such money into the hands of the Master:

Provided that if the person from whose estate such money has devolved or become due has, by will or deed, directed that the same shall be otherwise dealt with, nothing in this section contained shall be taken to prevent such executor from carrying into effect the provisions of such will or deed.

(2) Every executor administering and distributing any intestate estate shall forthwith pay into the hands of the Master any sum of money which has devolved upon or become due from any such estate to any minor or mentally disordered or defective person, and any sum of money which has devolved upon or become due from any such estate to any person absent from Zimbabwe and not having a lawful representative within the same.

(Subsection amended (by repeal of proviso) by section 2 of Act No. 6 of 1997)

(3) The Master may receive into the Guardian's Fund any moneys set aside for annuities or subject to usufructs bequeathed by last will, and any moneys due to any minor child, and interest shall be allowed on any moneys so received by the Master in like manner as is provided in section *ninety-eight*.

(4) Notwithstanding subsections (1) and (2), the Master may permit an executor to pay any sum of money referred to in those subsections into an account at a bank, building society or other financial institution and, subject to such terms and conditions as the Master may specify, to withdraw from the account from time to time such amounts as may be needed for the maintenance of the minor, mentally disordered or intellectually handicapped person or person absent from Zimbabwe, as the case may be, to whom the sum of money devolved.

(Subsection inserted by section 2 of Act No. 6 of 1997.)

(5) This section shall not be taken to limit any power possessed by the High Court to order any sum of money referred to in subsection (1), (2) or (3) to be paid to any person for any purpose.

(Subsection inserted by section 2 of Act No. 6 of 1997.)

52 Administration and distribution accounts

(1) Every executor shall administer and distribute the estate in respect of which he is appointed according to law and the provisions of any valid will relating to that estate.

(2) As soon as may be after the expiration of the period notified in the *Gazette* in manner hereinbefore in this Act provided, and not later than six months from the day on which the letters of administration were issued to him, or within such further time as the Master may upon sufficient cause being shown allow, the executor shall frame and lodge with the Master an account showing the administration and distribution of the estate up to the date when the account was lodged, together with a true copy of that account.

(3) If any such account is not the final account it shall set forth all debts due to the estate and still outstanding and all property still unrealized, and the reasons why the same have not been collected or realized, as the case may be.

(4) The executor shall from time to time, as the Master may direct, render periodical accounts of his administration and distribution until the estate is finally liquidated.

(5) Every executor's account, except in such cases as the Master may rule otherwise, shall lie open for inspection—

(a) at the office of the Master if the deceased resided or carried on his principal business within the area defined in the First Schedule; or

(b) at the office of the Assistant Master if the deceased resided or carried on his principal business outside the area defined in the First Schedule; and if the deceased resided or carried on his principal business in any district other than the district of Harare or Bulawayo, a duplicate thereof shall lie open at the office of the magistrate for the district in which the deceased resided or carried on his principal business, for inspection for not less than three weeks by any person interested in the estate.

(6) The executor shall give due notice that the account is so open to inspection by advertisement in the *Gazette* and in a newspaper circulating in the district wherein the deceased resided or carried on his principal business, and shall state in that notice the period during which and the place at which the account will lie open for inspection.

(7) The magistrate shall cause to be affixed in some public place in or about his office a list of all such accounts as have been lodged in his office and the date on which each such account will be transmitted to the Master; and upon the expiry of the period allowed for inspection he shall endorse on each account his certificate that the account has lain open in his office for inspection in accordance with this section and shall transmit the account to the Master.

(8) Any person interested in the estate may at any time before the expiration of the period allowed for inspection lodge with the Master in writing any objection, with the reasons thereof, to that account.

(9) The Master shall consider such account, together with any objections that may have been duly lodged, and shall give such directions thereon as he may deem fit: Provided that—

(i) any person aggrieved by any such direction of the Master may, within thirty days after the date of the Master's direction, and after giving notice to the executor and to any person affected by the direction, apply by motion to the High Court for an order to set aside the direction and the High Court may make such order as it may think fit;

[Proviso amended by section 4 of Act 12 of 1997.]

(ii) when any such direction affects the interests of a person who has not lodged such an objection, the account so amended shall again lie open for inspection in the manner and with the notice aforesaid unless the person so affected consents in writing to the account being acted upon.

(10) When an account has been open to inspection and no objection has been lodged, or if any objection has been lodged and has not been sustained or has been withdrawn, or the person objecting has not applied to the High Court within the time prescribed the executor shall proceed to pay out the creditors and heirs and shall lodge with the Master the vouchers in support of the account.

[Subsection amended by section 4 of Act 12 of 1997.]

(11) Upon the final and complete liquidation of the estate to the satisfaction of the Master the executor shall then be entitled to obtain his discharge from the Master as such executor.

53 Summons if account has not been lodged within six months

(1) As often as any executor fails to lodge with the Master the account mentioned in section *fifty-two*, the Master or any person having an interest in such estate may at any time, after the expiration of six months from the day on which the letters of administration were granted to such executor, summon him to show cause before the High Court why such account has not been so lodged as aforesaid.

[Subsection amended by section 4 of Act 12 of 1997.]

(2) The Master, or such other person as aforesaid, shall not later than one month before suing out any such summons apply by letter to the executor in default requiring him to lodge his account on pain of being summoned to do so under this section.

(3) An executor receiving any such application from the Master, or such other person as aforesaid, may lay before the Master such grounds and reasons as he may be able to advance why he has not lodged his account and

the Master, should such grounds and reasons seem to him sufficient, may grant to such executor such an extension of time for the lodging of such account as he in the circumstances deems reasonable; reserving always the right of any person having an interest in such estate to bring in review before the High Court, or any judge thereof, by motion the decision of the Master under which any such extension is granted.

(4) Any such executor so in default, if he fails to satisfy the Master that he ought to receive an extension of time, may apply to the High Court, or any judge thereof, by motion of which he shall give notice to the Master and such other person as aforesaid, for an order granting to such executor an extension of time in which to lodge his account.

[Subsection amended by section 4 of Act 12 of 1997.]

54 Master entitled to costs in certain cases

Although the High Court or judge is of opinion that the grounds and reasons laid before the Master by any executor who is summoned to lodge his account as aforesaid were such as would have warranted the Master in granting an extension of time, the Master, or such other person at whose instance summons is issued, shall nevertheless be entitled to his costs if, before summoning the executor whose grounds and reasons the Master has overruled and declared insufficient, he has allowed such executor sufficient time for enabling him to apply to the High Court or some judge thereof for such an order as aforesaid granting to such executor an extension of time.

[Section amended by section 4 of Act 12 of 1997.]

55 Costs, unless otherwise ordered, to be paid by executor in default

The costs adjudged to the Master, or such other person as aforesaid, upon any summons sued out by him or on his behalf shall be payable by the executor in default in his individual capacity and he shall not be at liberty to charge the same to the estate under his administration unless authorized so to do by the High Court.

[Section amended by section 4 of Act 12 of 1997.]

56 Remuneration of executors

Every executor shall, in respect of his administration, distribution and final settlement of any estate, be entitled to claim, receive or retain out of the assets of such estate, or from any person who as heir, legatee or creditor is entitled to the whole or any part of such estate, such remuneration as may have been fixed by the deceased by will or deed or otherwise as fair and reasonable compensation to be assessed and taxed by the Master, subject to the review of the High Court, upon the petition of such executor or of any person having an interest in such estate:

Provided that if any executor fails to lodge the account of his administration and distribution of the estate within six months from the date on which letters of administration were granted to him and has no lawful and sufficient excuse for such failure, it shall be competent for the Master to disallow the whole or any portion of the fees which such executor might otherwise have been entitled to receive in respect of his administration of such estate.

[Subsection amended by section 4 of Act 12 of 1997.]

57 Transfer or mortgage of property held in community

The survivor of two spouses who were married in community of property shall not, without the consent of the Master in writing, transfer any land belonging to the joint estate and registered in the name of such survivor unless and until an account of the administration of such estate has been lodged with and accepted by the Master, nor shall the survivor, unless and until such account has been so filed and accepted, mortgage without such consent any such land as aforesaid, except for the purpose of—

- (a) securing to the minor heirs of such deceased spouse the inheritance rightfully due to them; or (b) raising money in order to pay such inheritance into the hands of the Master.

58 Property bequeathed with limited interest and transfer to administrator

(1) If a usufructuary or other limited interest, other than a fiduciary interest, in immovable property or a mortgage bond or a notarial bond has been bequeathed to any person with a direction that after the expiry of such interest the property or bond shall devolve upon any other person, whether certain or uncertain, the executor shall—

- (a) if the identity of the ultimate beneficiary is certain, transfer the property or cede the bond to him with the express reservation in the deed of transfer or cession of the rights of the person entitled to the limited interest; or
- (b) if the identity of the ultimate heir or legatee is uncertain, transmit the title deed or bond to the Registrar of Deeds in order that the terms of the will or a reference thereto may be endorsed on the title deed or bond and lodge with the Master proof that such endorsement has been made:

Provided that, if it is uncertain whether or not the interest bequeathed is a fiduciary interest, the executor shall transmit the title deed or bond to the Registrar of Deeds in order that the terms of the will or a reference thereto may be endorsed on the title deed or bond and lodge with the Master proof that such endorsement has been made.

(2) If an administrator has been appointed to administer any property of a deceased person under his will, the executor of the estate shall—

- (a) transfer to the administrator such of the movable property of the deceased as should, according to the distribution account, be delivered; and
- (b) cause the appropriate terms of the will or a reference thereto to be endorsed by the Registrar of Deeds against any title deeds or bond, whereupon the administrator shall become the owner of the immovable property or the holder of the bond, as the case may be; and
- (c) lodge with the Master a quittance by the administrator for such property and proof that any deeds and bonds have been endorsed in accordance with paragraph (b).

(3) Nothing in this section shall affect the right of any executor to sell any property for the purpose of paying the debts of the estate of the deceased.

59 Penalty for refusing to deliver title deed to executor when required

(1) Any person who is in possession of a title deed that is required by an executor in order to comply with section *fifty-eight* and who refuses to deliver it to the executor or unreasonably delays its delivery to the executor□

- (a) 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; and
- (b) shall be liable to pay all reasonable costs to which the executor may be put in obtaining possession of the deed.

[Subsection as substituted by section 4 of Act 22 of 2001.]

(1a) Where a person delivers to an executor a title deed referred to in subsection (1), his rights in respect of any property to which the deed relates, or in respect of any debt or other thing secured by the deed shall not be affected by his delivery of the deed to the executor.

[Subsection as substituted by section 4 of Act 22 of 2001.]

(2) Every executor shall, so soon as such deed is no longer required for the purposes of complying with section *fifty-eight*, return it to the person from whom it was received, if, but for this section, such person would be entitled to possession thereof.

60 Court may grant its consent to alienation or mortgage of property subject to certain restrictions

Whenever under a will or other instrument any unborn person will be entitled to any interest in immovable property which is subject to any restriction imposed by such will or other instrument, the High Court may grant its consent on behalf of any such unborn person, whether already conceived or not, to the alienation or mortgage of such property as if such unborn person were a minor *in esse*.

61 Duties of surviving spouse appointed executor testamentary

Every surviving spouse who has been appointed executor testamentary of his or her deceased spouse shall, so soon as the estate of the deceased has been administered and an account thereof framed according to law—

- (a) secure the inheritances ascertained by the said account to be due to the minor children or descendants of the deceased spouse in such manner as the deceased spouse has directed or failing such direction by deed of *kinder-bewys* in customary form; or
- (b) pay the said inheritance into the hands of the Master.

62 Revision of accounts

The Master may, upon any administration and distribution account being tendered, require proof that section *fifty-eight* and *sixty-one* have been duly complied with and may refuse to accept or file such account until he is satisfied.

63 Particulars to be sent to Registrar of Deeds

The Master shall from time to time furnish the Registrar of Deeds with a return giving the name of every person married in community of property with regard to whom or to whose estate an inventory has been filed, showing that such person had at the time of his or her death an interest in any immovable property registered in the name of his or her surviving spouse. Such return shall embody all material information respecting such property, and the interest therein, of the deceased which is contained in the inventory lodged with the Master and in the will, if any, of the deceased.

64 State, Master and Registrar exempt from liability in certain cases

No omission to render any such return as is by section *sixty-three* required, no rendering of an incomplete return and no transfer of a mortgage bond *bona fide* passed before the Registrar of Deeds against section *fiftyseven*, and no error or omission in any bond accepted by the Master to secure the inheritances of minor children and no release from or cancellation of any such bond *bona fide* made by the Master shall subject the State, the Master or the

Registrar of Deeds to any liability in respect of damage sustained by any person in consequence of such omission, return, transfer, mortgage, acceptance, release or cancellation. *Estates under \$4000*

65 When Master may summarily appoint executor dative

(1) In all cases in which it appears from the death notice or inventory filed in respect of the estate of any deceased person, and from such other information as the Master may call for, that the value of the assets of such estate does not exceed such amount as the Minister may specify in terms of subsection (2), the Master in the case of an intestate estate, or in the case of a testate estate in which the executor testamentary may be unable or unwilling to act, may summarily, and without observance of the usual and customary forms, appoint an executor dative to administer the estate of such deceased person:

- Provided that a person shall not be appointed as an executor dative in terms of this section unless he is—
- (a) registered under the Estate Administrators Act [*Chapter 27:20*]; or
 - (b) a surviving spouse or next of kin of the deceased person concerned.

[Proviso inserted by section 68 of Act 16 of 1998.]

(2) The Minister may, by statutory instrument, specify an amount for the purposes of subsection (1) and may in like manner revoke or amend any such statutory instrument.

66 Master may fix time for filing claims and account

Any executor appointed as in section *sixty-five* mentioned shall administer such estate in accordance with the requirements of this Act:

Provided that the Master may at any time direct that—

- (a) such estate is to be administered within a less time than six months;
- (b) the advertisement calling upon creditors to file their claims is to be inserted once only in the *Gazette* and in any newspaper published and circulating in Zimbabwe, and that all claims are to be filed within a period, not being less than fourteen days or more than three months, fixed by the Master and notified in such advertisement;
- (c) the administration and distribution account in such estate is to be filed within a period, not being less than fourteen days, after the last date fixed for the sending in of claims.

Estates of Persons not Ordinarily Resident in Zimbabwe

67 Estate of person not resident in Zimbabwe

(1) In this section—

“bank” means a bank registered in terms of the Banking Act [*Chapter 24:20*];

[Definition revised by Law Reviser.]

“building society” means a society registered in terms of the Building Societies Act [*Chapter 24:02*];

“finance house” means a finance house registered in terms of the Banking Act [*Chapter 24:02*];

[Definition substituted for former definition of “financial institution” by section 82 of Act 9 of 1999.]

“shares” means any part of the share capital of any company and includes debentures, debenture stock or any other like form of marketable security.

(2) Upon the death of any person who is neither ordinarily resident within Zimbabwe nor the owner of any property other than—

- (a) shares in a company or a building society;
- (b) stocks or any rights to dividends due thereon;
- (c) moneys invested in participation bonds or any rights to interest thereon;
- (d) moneys deposited with a bank, building society or finance house or any rights to interest thereon;

the Master may summarily and without observance of the usual and customary forms and without requiring security or an account of the administration and distribution of the estate, sign and seal letters of administration produced to him under section *thirty-five*; or if no such letters are produced, the Master may appoint a person registered under the Estate Administrators Act [*Chapter 27:20*] to be executor dative to administer the estate of the deceased or dispense with such an appointment and direct the manner in which the estate shall be administered:

Provided that before the signing and sealing or appointment or direction—

- (a) evidence to the satisfaction of the Master is produced that no person in Zimbabwe will be prejudiced; (b) the duty payable in respect of the shares has been paid or secured to the satisfaction of the Master.

(3) Upon the death of any person domiciled in the United Kingdom whose only assets in Zimbabwe are shares, the Master or any other person appointed for the purpose by the Minister may, on the filing with him of a certificate of the death of such person, an officially certified copy of the probate or letters of administration in his estate and an inventory showing that the only assets in such estate in Zimbabwe consist of shares, authorize the transfer of such

shares to the person entitled thereto, subject to the condition that security for the payment of estate and succession duty and other charges to be assessed by the Master and for the payment of the claims of all creditors of the said estate in Zimbabwe is given to the satisfaction of the Master or other person appointed by the Minister, as the case may be:

Provided that no such security shall be required in respect of creditors if a satisfactory affidavit is lodged to the effect that there are none.

PART IIIA

ESTATES OF PERSONS SUBJECT TO CUSTOMARY LAW

(Part IIIA inserted by section 3 of Act No. 6 of 1997.)

68 Interpretation in Part IIIA

(1) In this Part

“beneficiary”, in relation to a deceased person’s estate, means— (a)
a surviving spouse or child of the deceased person; or

(b) where the deceased person left no surviving spouse or child, any person who is entitled to inherit any property in the estate in terms of this Part;

“estate” includes any immovable property forming part of the estate;

“executor” means a person appointed as executor of an estate in terms of section *sixty-eight B*;

“family”, in relation to a deceased person referred to in subsection (1) of section *sixty-eight A*, means the persons who are recognised under customary law as constituting the deceased person’s family;

“heir”, in relation to a deceased person referred to in subsection (1) of section *sixty-eight A*, means his heir at customary law;

“Master” includes a magistrate or other person designated by the Minister in terms of *sixty-eight I*;

“net estate” means the residue of an estate remaining after the discharge or settlement of the claims of creditors.

(2) Any reference in this Part to a share or a fraction of an estate shall be construed as a share or fraction, as the case may be, determined according to value.

(3) A marriage contracted according to customary law shall be regarded as a valid marriage for the purposes of this Part notwithstanding that it has not been solemnized in terms of the Customary Marriages Act [*Chapter 5:07*], and any reference in this Part to a spouse shall be construed accordingly:

Provided that such a marriage shall not be regarded as valid for the purposes of this Part if, when it was contracted, either of the parties was married to someone else in accordance with the Marriage Act [*Chapter 5:11*] or the law of a foreign country under which persons are not permitted to have more than one spouse.

(4) A marriage contracted according to the Marriage Act [*Chapter 5:11*] or the law of a foreign country under which persons are not permitted to have more than one spouse shall be regarded as a valid marriage for the purposes of this Part even if, when it was contracted, either of the parties was married to someone else in accordance with customary law, whether or not that customary law marriage was solemnised in terms of the Customary Marriages Act [*Chapter 5:07*]:

Provided that, for the purposes of this Part, the first-mentioned marriage shall be regarded as a customary-law marriage.

68A Application of Part IIIA

(1) Subject to subsection (2), this Part shall apply to the estate of any person to whom customary law applied at the date of his death.

(2) This Part, other than section *sixty-eight C*, shall not apply to any part of an estate that is disposed of by will.

68B Appointment of executor

(1) Upon the death of a person referred to in subsection (1) of section *sixty-eight A*, the Master shall summon the deceased person’s family, or such members of the family as are readily available, for the purpose of appointing a person to be the executor of the deceased person’s estate.

(2) The Master, with the concurrence of the relatives present at a meeting summoned in terms of subsection

(1), shall appoint a person to be the executor of the estate of the deceased person referred to in that subsection:

Provided that—

- (i) if the relatives are unable to agree upon a person to be appointed as executor, the Master shall appoint a person as provided in section *twenty-six*, which section shall apply, *mutatis mutandis*, in relation to any such appointment;

- (ii) no person shall be appointed as executor under this subsection unless he is (a) registered under the Estate Administrators Act [*Chapter 27:20*]; or (b) a member of the deceased person's family.

[Proviso (ii) inserted by section 68 of Act 16 of 1998.]

(3) The heir of the deceased person concerned shall be eligible for appointment as executor in terms of subsection (2), if the deceased person's relatives present at a meeting summoned in terms of subsection (1) agree on his appointment.

(4) Subject to this Part, an executor appointed in terms of subsection (2) shall be responsible for—

- (a) discharging the claims of creditors against the estate of the deceased person concerned; and
- (b) administering and safeguarding the estate of the deceased person concerned, pending its distribution in terms of this Part.

(5) In the exercise of his responsibilities in terms of subsection (4), an executor shall have such of an executor's powers under this Act, and shall be subject to such of an executor's duties, as may be prescribed or as the Master may confer or impose on him.

68C Inheritance of customary articles by heir

Upon the death of a person referred to in subsection (1) of section *sixty-eight A*, his heir shall inherit the person's name and *tsvimbo* or *intonga* and any traditional articles which, under customary law, pass to his heir on the person's death.

68D Inheritance plan

(1) As soon as possible after the death of a person referred to in subsection (1) of section *sixty-eight A* and the discharge or settlement of any legitimate claims against his estate, his executor shall draw up a plan providing for such of the following matters as may be appropriate—

- (a) the conservation and application of the net estate for the benefit of the beneficiaries;
- (b) the distribution of all or any part of the net estate to the beneficiaries;
- (c) the sale or disposal of any property of the net estate for the benefit of the beneficiaries; (d) the maintenance of any beneficiary.

(2) When drawing up a plan in terms of subsection (1), an executor shall—

- (a) pay due regard to the principles set out in subsection (2) of section *sixty-eight F*, to the extent that they are applicable; and
- (b) so far as is practicable, consult the deceased person's family and the beneficiaries and endeavour to obtain the beneficiaries' agreement to it.

68E Consideration and approval of inheritance plan

(1) As soon as possible after drawing up a plan in terms of section *sixty-eight*, an executor shall submit it to the Master for approval.

(2) On receipt of a plan drawn up in terms of *sixty-eight D*, the Master shall take such steps as he considers necessary or appropriate to satisfy himself that—

- (a) the executor has consulted all the members of the deceased's family and beneficiaries whom he could with reasonable diligence have consulted, and has obtained the beneficiaries' agreement to the plan; and
- (b) the beneficiaries who have agreed to the plan have done so with full knowledge and understanding of their rights.

(3) If the Master—

- (a) is satisfied that a plan submitted to him in terms of subsection (1) has been agreed to by all the beneficiaries concerned or by such of them as the executor could with reasonable diligence have consulted, the Master shall approve the plan and authorize the executor to distribute or administer the estate in accordance with it;
- (b) has reason to believe that the executor has failed to consult a member of the deceased's family or a beneficiary whom he could with reasonable diligence have consulted, the Master shall refuse to approve the plan until that family member or beneficiary has been consulted and, in the case of a beneficiary, his agreement to the plan has been obtained;
- (c) has reason to believe that one or more of the beneficiaries concerned have not agreed to a plan submitted to him in terms of subsection (1), the Master shall proceed to determine, in accordance with section *sixty-eight F*, any issues in dispute between the executor and the beneficiary or beneficiaries, and shall direct the executor to distribute or administer the estate in accordance with his determination.

68F Resolution of dispute over inheritance plan

(1) In determining any issue between an executor and a beneficiary in terms of paragraph (c) of subsection (3) of section *sixty-eight E*, the Master shall—

- (a) adopt such procedure as, in his opinion, will resolve the issue in the speediest and least expensive manner consistent with real and substantial justice; and
 - (b) ensure that the executor and the beneficiary concerned are afforded a reasonable opportunity to state their respective cases.
- (2) The Master shall be guided by the following principles, to the extent that they are applicable, when determining any issue between an executor and a beneficiary in terms of paragraph (c) of subsection (3) of section *sixty-eight E*—
- (a) any personal articles which, under customary law, devolve upon a member of the deceased person's family should be given to that family member, and their value excluded from the net estate for the purposes of paragraphs (b) to (j);
 - (b) where the deceased person was a man and is survived by two or more wives and had one or more children—
 - (i) one-third of the net estate should be divided between the surviving wives in the proportions two shares to the first or senior wife and one share to the other wife or each of the other wives, as the case may be; and
 - (ii) the remainder of the estate should devolve upon—
 - A. his child; or
 - B. his children in equal shares; as the case may be, and any of their descendants *per stirpes*;
 - (c) where the deceased person was a man and is survived by two or more wives, whether or not there are any surviving children, the wives should receive the following property, in addition to anything they are entitled to under paragraph (b)—
 - (i) where they live in separate houses, each wife should get ownership of or, if that is impracticable, a usufruct over, the house she lived in at the time of the deceased person's death, together with all the household goods in that house;
 - (ii) where the wives live together in one house at the time of the deceased person's death, they should get joint ownership of or, if that is impracticable, a joint usufruct over, the house and the household goods in that house;
 - (d) where the deceased person is survived by one spouse and one or more children, the surviving spouse should get—
 - (i) ownership of or, if that is impracticable, a usufruct over, the house in which the spouse lived at the time of the deceased person's death, together with all the household goods in that house; and
 - (ii) a share in the remainder of the net estate determined in accordance with the Deceased Estates Succession Act [*Chapter 6:02*];
 - (e) where the deceased person was a woman whose husband at the time of her death had more than one wife, and she is survived by her husband and had one or more children—
 - (i) one-third of her net estate should devolve upon her husband; and
 - (ii) the remainder of her estate should devolve upon—
 - A. her child; or
 - B. her children in equal shares; as the case may be, and any of their descendants *per stirpes*;
 - (f) where the deceased person is not survived by a spouse or child, the net estate should devolve upon his surviving parents, brothers and sisters, if any, in equal shares;
 - (g) where the deceased person is survived by one spouse but no children—
 - (i) the surviving spouse should get—
 - A. ownership of or, if that is impracticable, a usufruct over, the house in which the spouse lived at the time of the deceased person's death, together with all the household goods in that house; and
 - B. half the remainder of the net estate;
 - (ii) the balance of the net estate should devolve upon the deceased person's surviving parents, brothers and sisters, if any, in equal shares;
 - (h) where the deceased person is not survived by a spouse and had one or more children, the net estate should devolve upon—
 - (i) that child; or
 - (ii) those children, in equal shares; as the case may be, and any of their descendants *per stirpes*;
 - (i) so far as possible, the net estate should be applied to meeting the basic needs of beneficiaries who have no other means of support;
 - (j) subject to paragraphs (a) to (i), the net estate should devolve according to customary law.

68G Determination of whether customary law applied to deceased person

(1) Section 3 of the Customary Law and Local Courts Act [*Chapter 7:05*] shall apply in determining the question whether or not customary law applied to a deceased person for the purposes of this Part: Provided that it shall be presumed, unless the contrary is shown, that—

- (a) customary law applied to a person who, at the date of his death, was married in accordance with customary law; and
- (b) the general law of Zimbabwe applied to a person who, at the date of his death, was married in accordance with the Marriage Act [*Chapter 5:11*] or the law of a foreign country, even if he was also married to the same person under customary law.

(2) Where there is a dispute among the beneficiaries of an estate as to whether or not customary law applied to the deceased person for the purposes of this Part, the question shall be referred to the Master, who shall determine it in the speediest and least expensive manner consistent with real and substantial justice.

68H Exemption of small estates from provisions of this Part

Without derogation from section *sixty-five*, if the Master is satisfied that the net value of any estate does not exceed such amount as may be prescribed, he may exempt the estate concerned from all or any of the provisions of this Part.

68I Designation of persons to perform functions of Master

The Minister may, by notice in the *Gazette*, designate— (a) any magistrate or class of magistrates; or

(b) any other person or class of persons; as persons entitled to perform, subject to such conditions as may be specified in the notice, all or any of the functions of the Master in terms of this Part.

68J Appeals against decisions of Master

Any person who is aggrieved by any decision of the Master in terms of this Part may appeal against the decision to the High Court within the time and the manner prescribed in rules of court.

68K No derogation from Cap. 6:03

This Part shall not be construed as limiting the right of any person to apply for, receive or enjoy any benefit under the Deceased Persons Family Maintenance Act [*Chapter 6:03*]

(Part IIIA inserted by section 3 of Act No. 6 of 1997.)

PART IV

ESTATES OF MINORS AND ABSENT PERSONS

69 Appointment by father or mother only of tutors to minors

(1) No person, except the father of any minor or the mother of any minor whose father is dead or has abandoned the minor, by any will or other deed shall nominate and appoint any tutor to administer and manage the estate or to take care of the person of such minor.

(2) Nothing in subsection (1) contained shall prevent any person who gives or bequeaths any property to any person from appointing any curator to administer and manage such property during the minority or during the continuance of the insanity of the person to whom the same is given or bequeathed, in like manner and as fully in all respects as the same might lawfully have been done prior to the 5th July, 1907.

(3) All curators so appointed shall be called curators nominate.

70 Tutors testamentary

(1) All tutors nominated and appointed by fathers or mothers in manner aforesaid to their minor children shall be called tutors testamentary, whether such tutors have been nominated and appointed by wills or by any other deeds duly executed by such fathers or mothers.

(2) No tutor testamentary shall assume or enter upon the administration or management of the estate or property of any minor, except in so far as it may be necessary for the preservation and safe custody of the same, until letters of confirmation have been granted to him by the Master in the form C in the Second Schedule.

71 Mode of granting letters of confirmation

(1) The Master shall, on application in writing being made to him for that purpose, grant letters of confirmation as tutor testamentary to every person who has been lawfully nominated and appointed tutor testamentary to any minor by any valid will or deed.

(2) Whenever it comes to the knowledge of the Master that any person who has been nominated tutor testamentary by any valid will or deed to any minor possessed of property has not applied for letters of confirmation, the Master shall, by writing, require such person to inform him whether he is willing to act as such tutor testamentary and if he consents so to do shall grant him letters of confirmation accordingly.

(3) No letters of confirmation as tutor testamentary shall in any case be granted to any person who is at the time by law incapacitated or disqualified to hold the office of tutor.

(4) Letters of confirmation shall not be granted to any such tutor who is at the time of making such application or resides outside Zimbabwe.

72 Letters of confirmation to curators nominate

(1) No curator nominate shall assume or enter upon the administration or management of any estate or property, except in so far as may be necessary for the preservation and safe custody of the same, until letters of confirmation have been granted to him by the Master.

(2) In order to obtain the grant of such letters of confirmation proceedings shall be taken by any such person, and by the Master in like manner in all respects, as is provided by section *seventy-one* as to the granting of letters of confirmation to tutors testamentary, and such letters shall be in the form D in the Second Schedule.

73 Security *rem pupilli salvam fore*, by curators and tutors nominate in like manner as before this Act

The High Court, or any judge thereof, on the application of the Master or of any relation or of any person having an interest in the due administration of the estate or property of any minor in every case in which, prior to the 5th July, 1907, any tutor testamentary might by law have been required to give security *rem pupilli salvam fore*, may make an order that letters of confirmation shall not be granted to any tutor testamentary or curator nominate as aforesaid until he has found security to the satisfaction of the Master to such amount as, in the circumstances of each particular case, is reasonable for the due and faithful administration and management of such estate or property.

74 Appointment of tutors dative by Master

(1) In every case in which it comes to the knowledge of the Master that any estate or property within Zimbabwe has devolved on or come to belong to any minor, being within its limits, and not being at the time under the natural guardianship of his father or mother or of a tutor testamentary duly confirmed, the Master, except when it is known to him that a tutor testamentary has been duly nominated and appointed to such minor by any valid will or deed, in which case he shall proceed in manner for that purpose provided by section *seventy-one*, shall cause to be published in the *Gazette* and in such other manner as to him seems fit, a notice calling on the relations of the minor, both paternal and maternal, to attend at his office, at the time therein specified, to see letters of confirmation granted to some person to be appointed by him tutor dative of such minor:

Provided that when it appears to the Master expedient so to do, he may in such notice call on the relatives of such minor, both paternal and maternal, to attend before any magistrate, at such time and place as he may appoint, for the purpose of stating any objection which may exist to any of the next of kin or other person being appointed tutor dative or of proposing some person to be by such magistrate reported to the Master as fit and proper to be by him appointed tutor dative.

(2) The Master shall, at the meeting so to be held at his office or upon receiving the report of such magistrate, appoint such person as to him seems fit and proper to be tutor dative of such minor, and shall grant letters of confirmation as such, unless it appears to him necessary or expedient to postpone such appointment and to call another meeting:

Provided that no person shall be appointed as tutor dative in terms of this subsection unless he is

(a) registered under the Estate Administrators Act [*Chapter 27:20*]; or (b) a relative of the minor concerned.

[Proviso inserted by section 68 of Act 16 of 1998.]

(3) When any such minor is not possessed of or does not have claim to any other estate or property except such as has been given or bequeathed to such minor by some person who has duly appointed a curator nominate to administer and manage the same during the minority of such minor, or except some estate or property paid over to and in the hands of the Master under section *fifty-one*, it shall not be necessary, though it shall in all cases be competent, for the Master to take any such proceedings as aforesaid for the appointment of a tutor dative.

75 Review of Master's appointment

Every such appointment made by the Master shall, on the application of any one of the relations of, or of the curator nominate of any estate or property belonging to, such minor, be subject to be reviewed and confirmed or set aside by the High Court or any judge thereof, and the High Court or judge by whom such appointment shall be set aside shall appoint some other fit and proper person to be tutor dative of such minor.

76 Assumption of tutors and curators

(1) Nothing in this Act shall prevent a tutor testamentary of a minor or a curator nominate of an estate from assuming another person as tutor or curator, as the case may be, under a power conferred on him by the will or deed under which he was appointed:

Provided that no person shall be entitled or qualified to act as assumed tutor or curator unless

- (a) he is either
 - (i) a relative of the minor or absent person concerned; or
 - (ii) registered in terms of the Estate Administrators Act [*Chapter 27:20*]; and
- (b) the Master has granted him letters of confirmation as such during the lifetime of the tutor testamentary or curator nominate, as the case may be.

(2) The Master shall grant a person letters of confirmation in terms of subsection (1) if the Master is satisfied that the power of assumption under the will or deed concerned has been properly exercised.

(3) Every provision of this Act and any other law relating to tutors or curators dative, as the case may be, shall apply to persons who are assumed as tutors or curators under this section.

[Section substituted by section 68 of Act 16 of 1998.]

77 Proceedings in case of death, incapacity or removal of tutors or curators

When by reason of any tutor of any minor, either testamentary or assumed, or of any curator of any estate, either nominate or assumed, to whom letters of confirmation have been granted, having died or become incapacitated to act as such or having been removed from his office by any competent court or a judge thereof, there does not remain for the guardianship of such minor or for the administration or management of such estate respectively any tutor or curator whatever, or so many tutors, either testamentary or assumed, or curators, nominate or assumed, as by the provisions of the will or deed by which such tutors or curators were respectively appointed or permitted to be assumed, are required to form a quorum of tutors or curators for the guardianship of such minor or for the administration and management of such estate respectively, and when it happens that any tutor dative, after letters of confirmation have been granted to him, dies or becomes incapacitated or is removed in manner aforesaid, then and in every such case proceedings for the appointment of a tutor dative in place of the person so dying or becoming incapacitated or removed shall be taken by the Master in like manner and in all respects as is provided by section *seventy-four*.

78 Revocation of letters of confirmation

(1) Letters of confirmation granted to any person as tutor testamentary or as curator nominate of the estate of any minor shall be at all times subject to be revoked and annulled by the High Court or any judge thereof, on proof to the satisfaction of the High Court or judge that the will or deed in respect of which such letters have been granted to such person is null or has been revoked either wholly or in so far as relates to the appointment of such tutor or curator.

(2) Letters of confirmation granted to any person as tutor dative shall be at all times subject to be revoked or annulled by the Master, on production to him of any valid will or deed by which any other person who is then legally capable and qualified, and who consents to act as tutor, has been legally appointed tutor testamentary of the minor to whom such tutor dative had been appointed:

Provided that if the non-production of such will or deed, prior to letters of confirmation having been granted to the tutor dative, has been owing to the fault or negligence of the person therein appointed tutor testamentary, such person shall be personally liable for and may be compelled by the Master or any person related to the minor to pay to the minor's estate and account for all expenses which have been incurred in respect of and with reference to the appointment of the tutor dative.

(3) The Master shall revoke letters of confirmation granted to a person as tutor or curator if the Master is satisfied that

- (a) when the letters of confirmation were granted to him, that person was registered under the Estate Administrators Act [*Chapter 27:20*] and his registration has subsequently been cancelled or suspended in terms of that Act; or
- (b) in the case of a tutor dative, the person is not a relative of the minor concerned and, when the letters of confirmation were granted to him, he was not registered under the Estate Administrators Act [*Chapter 27:20*] or his registration under that Act was suspended.

[Subsection inserted by section 68 of Act 16 of 1998.]

(4) Any person who is aggrieved by a decision of the Master to revoke or annul letters of administration in terms of subsection (3) may appeal against the decision to the Court within the time and in the manner prescribed in rules of court.

[Subsection inserted by section 68 of Act 16 of 1998.]

79 Appointment of curator dative of estate or property of person whose whereabouts are unknown

(1) If it comes to the knowledge of the Master that there is within Zimbabwe any property belonging to any person whose whereabouts are unknown, and whom he believes to be permanently absent from Zimbabwe without

having a legal representative therein, the Master may cause to be published in the *Gazette* and in such other manner, if any, as he may think fit a notice calling on all whom it may concern to attend before him at the time and place therein specified to see letters of confirmation granted to some person to be appointed by him curator dative of the property of such absent person, and the Master shall at the time and place so specified appoint by letters of appointment a fit and proper person who is registered in terms of the Estate Administrators Act [*Chapter 27:20*] to be such curator dative as aforesaid:

Provided that if the only property known by the Master to belong to the person believed to be absent consists of money payable to him by the executor of a deceased person or by the trustee of an insolvent estate, or under section *ninety-one*, the Master shall not take any such proceedings as aforesaid.

[Subsection amended by section 68 of Act 16 of 1998.]

(2) Letters of appointment granted under subsection (1) to a curator dative shall authorize him to take custody and charge of all the said person's property wherever situate within Zimbabwe.

80 Appointment of curator dative of property belonging to absent persons not having a legal representative in Zimbabwe

(1) If it comes to the knowledge of the Master that, in consequence of the death of any person, any estate or property has devolved on or come to belong to any person absent from Zimbabwe, and not having a legal representative within the same, the Master shall cause to be published in the *Gazette*, and in such other manner as to him seems fit, a notice calling on all whom it may concern to attend before him, at the time therein specified, to see letters of confirmation granted to some person to be appointed by him curator dative of the estate or property of such absent person.

(2) The Master shall, at the meeting so to be held before him, appoint some fit and proper person who is registered in terms of the Estate Administrators Act [*Chapter 27:20*] to be curator dative as aforesaid.

[Subsection amended by section 68 of Act 16 of 1998.]

(3) When the only property known by the Master to belong to any such absent person consists of a sum or sums of money due and payable to him by the executor of any deceased person or by the trustee of any insolvent estate, it shall not be necessary for the Master to take any such proceedings as aforesaid; but the Master may, pursuant to section *fifty-one* demand, recover and receive payment of all such sums of money which shall be, after the same are so received by him, disposed of in manner hereinafter in this Act provided.

81 Appointment of curator *ad litem* and curator *bonis*

(1) Nothing in this Act contained shall prevent the High Court or any judge thereof from appointing a curator *ad litem* to any person in every case and in such manner in all respects in which such appointment might by law have been made by the High Court if this Act had not been passed.

(2) In all cases where the same may be necessary or expedient, the Master may appoint a curator *bonis* to take the custody and charge of any estate or property until, for the purpose of the due administration and management of the same, letters of confirmation are granted to some person as tutor testamentary or dative or as curator nominate or dative in manner hereinbefore in this Act provided.

(3) Every such appointment as curator *bonis* so made by the Master shall, on the application of any person having an interest in such estate, be subject to be reviewed and confirmed or set aside by the High Court or any judge thereof.

(4) The High Court or judge by whom any such appointment is set aside shall appoint some other fit and proper person to be curator *bonis*.

82 Security for due administration by tutors and curators

Every tutor, either dative or assumed, and every curator dative and curator *bonis*, who is appointed by the Master or the High Court or judge to administer the estate or property of any minor or absent person shall, before he is permitted to enter on the administration of such estate or property, find security to the satisfaction of the Master to such amount as in the circumstances of each particular case is reasonable for the due and faithful administration and management of such estate and property.

83 Disqualifications of persons as tutors or curators

Every person shall be deemed incapacitated and disqualified to hold, and shall be incapable of holding, the office of tutor, either testamentary or dative, or of curator, either nominate or dative, in every case and for every cause in and for which any person appointed tutor testamentary would, previously to the 5th July, 1907, have been incapable of holding the office of tutor testamentary.

84 Removal *ipso facto* of insolvent tutors and curators

Every tutor, either testamentary or dative, and every curator, either nominate or dative, whose estate is placed under sequestration as insolvent, shall cease to exercise or hold, and shall thereupon be deemed to have been removed and shall *ipso facto* be removed from, his office as tutor or curator aforesaid so soon as the final order for

such sequestration has been made, but the removal of such tutor or curator shall not relieve him from any liability or responsibility attaching to him at the time of his removal.

85 Removal and suspension for cause of executors, tutors and curators

(1) Every executor, tutor or curator shall be liable to be suspended or removed from his office by order of the High Court or any judge thereof if the High Court or judge is satisfied on motion that, by reason of absence from Zimbabwe, other avocations, failing health or other sufficient cause, the interests of the estate under his care would be furthered by such suspension or removal.

(2) In every case of suspension the High Court or judge may substitute some fit and proper person to act during the suspension of such executor, tutor or curator in his place, subject to such conditions as to the giving of security and the conduct and administration of the estate as the High Court or judge may deem it just to impose. *Duties of Tutors and Curators*

86 Inventory by tutors and curators

(1) All tutors, either testamentary or dative, and all curators, either nominate or dative, shall, within thirty days after entering upon the administration of their office, make or cause to be made and shall subscribe an inventory of all property, goods or effects, movable and immovable, forming part of the estates or belonging to the estates or persons under their guardianship.

(2) Every such tutor or curator shall thereafter, from time to time, and so soon as any such property, goods or effects as aforesaid come into his possession, or to his knowledge, make in like manner and form as aforesaid an additional inventory thereof.

(3) Every such tutor or curator shall respectively forthwith transmit all such inventories to the Master.

87 Penalties for failure to make and transmit inventory

Every tutor or curator who fails to make up and transmit any such inventory in manner aforesaid, and who has no lawful and sufficient excuse for such failure, shall by reason thereof, and in addition to every other liability, consequence and penalty which he thereby by law subjects himself to and incurs, be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

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

88 Penalty for making false inventory

If any tutor or curator, required and directed under and by virtue of section *eighty-six* to make, or cause to be made, an inventory of any estate, goods or effects, wilfully makes a false inventory thereof, he 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.

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

89 Duties and liabilities of tutors and curators after confirmation

(1) When letters of confirmation have been granted to any tutor, either testamentary or dative, or to any curator, either nominate or dative, every such tutor shall, in all respects and for all intents and purposes, and every such curator shall, in so far as relates to the particular estate or property which has been placed under his guardianship, have every power, right and privilege, and shall do and cause to be done, every act, matter and thing touching and concerning the making of an inventory, administration and management of the estate or property under his guardianship, and every such tutor or curator and his estate shall, in respect and by reason of every act, matter or thing done or omitted to be done by him, incur and be subject to every liability, obligation and penalty which by any law in force prior to the 5th July, 1907, any tutor testamentary would then respectively have had or have been directed or required to do, and which he and his estate would then in respect and by reason of any such act, matter or thing done or omitted to be done by him, have incurred or been subject to.

(2) Nothing in this section contained shall give any curator, either nominate or dative, any power or authority as to the maintenance, education or custody of the person of any minor, except in so far as the same may have been specially given and committed to him by the decree or order of the High Court or any judge thereof.

(3) Every tutor testamentary and curator nominate shall, in the discharge of their office and in the administration of the estate and property respectively under their guardianship, conform to and obey every lawful direction touching and concerning the same which has been given by the person by whom such tutor or curator has been appointed in the will or deed by which such appointment was made or in any other writing duly executed by such person.

90 Prohibition of re-marriage of surviving parent until minors' shares have been secured

(1) Whenever any person who is a widower or widow and the parent of a minor child entitled to claim from such person any inheritance from the estate of such person's deceased spouse, intends to marry again, such person

shall, whether the marriage is by special licence or after publication of banns, obtain a certificate from and under the hand of the Master to the following effect—

- (a) if the estate of the deceased spouse or the joint estate of the deceased spouse and the surviving parent is of the value of two hundred dollars and upwards, a certificate that the amount of inheritance due to such minor child aforesaid from and out of the estate aforesaid has been paid into the Guardian's Fund or otherwise secured;
- (b) if any such estate is in value under two hundred dollars, a certificate stating such fact.

(2) Every such certificate shall be delivered to the marriage officer or minister of religion before whom such marriage is intended to be solemnized.

(3) Any such person as is mentioned in subsection (1) who marries again without obtaining such certificate as is required by such subsection shall forfeit, at the instance of the Master or of such child aforesaid when he or she attains the age of eighteen years, a sum equal to one-fourth of such person's share in the joint estate of such person and the deceased spouse aforesaid for the benefit of any such child, and shall, in addition, 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 amended by section 4 of Act 22 of 2001.]

(4) Any marriage officer or minister of religion who solemnizes any such marriage as is in this section mentioned, unless there has been first delivered to him a certificate as therein mentioned, shall, in addition to any other liability, be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

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

91 Prohibition of alienation of immovable property by tutor or curator

No tutor, either testamentary or dative, and no curator, either nominate or dative, or curator *bonis* shall sell, alienate or mortgage any immovable property belonging to any minor or forming part of any estate under the guardianship of such tutor or curator, unless the High Court or any judge thereof has authorized such sale, alienation or mortgage or unless the person by whom any such tutor testamentary or curator nominate has been appointed has directed such sale, alienation or mortgage to be made.

[Section amended by section 4 of Act 12 of 1997.]

92 Payment of moneys to Master

(1) Every tutor dative and every curator dative or curator *bonis* shall forthwith pay over to the Master all moneys belonging to the person or estate under his guardianship so soon as the same are received by or come into the possession of such tutor or curator except in so far as the same may be required for the instant payment of debts due by such estate or for the immediate maintenance of such person.

(2) If any such tutor or curator, without any lawful and sufficient excuse, retains and fails to pay over to the Master any such moneys as it is in subsection (1) directed shall be paid over to the Master, every such tutor or curator shall be liable to pay to and for the benefit of the person or estate to whom or which such money belongs interest on the same at the rate of twelve *per centum* per annum for the whole period during which such money is so improperly retained and is not paid over to the Master.

(3) Such tutor or curator shall be liable to be removed from his office of tutor or curator by the decree of any competent court if it appears expedient to such court so to do.

(4) Whenever it comes to the knowledge of the Master that any such money has been so retained and not paid over to him by any such tutor or curator, he may forthwith institute an action against such tutor or curator in order to recover payment thereof and of the above-mentioned penal interest due thereon.

93 Further payment of moneys to Master

Any tutor testamentary or curator nominate to whom it seems expedient so to do, except where the person by whom such tutor or curator has been appointed has directed that the same shall not be done, may pay over to the Master any money belonging to the person or estate under the guardianship of such tutor or curator and which by law such tutor or curator might lend out at interest.

94 Accounts of administration by tutors and curators

(1) Every tutor, either testamentary or dative, and every curator, either nominate or dative, and every curator *bonis* shall, on or before the 15th February in every year, lodge with the Master a just, true and exact account of his administration of the estate or property under his guardianship, up to the 31st December preceding, and also a duplicate or otherwise a fair and true copy of such account.

(2) If any such tutor or curator fails to lodge such account in manner aforesaid and has no lawful and sufficient excuse for such failure, it shall be competent for the Master to disallow the whole or any portion of the fees which

such tutor or curator might otherwise have been entitled to receive in respect of his administration of such estate during the year preceding the said 31st December.

(3) The survivor of two spouses whom the predeceasing spouse has by will or other lawful instrument appointed the tutor of his or her minor children, and the administrator of the joint estate of such spouses during the minority of such children, shall not in any case be required to lodge any such annual account in manner aforesaid, anything to the contrary in this section contained notwithstanding.

95 Summons by Master

The Master may summon any tutor, whether testamentary or dative, and any curator, whether nominate or dative, and any curator *bonis* to show cause why any account which under section *ninety-four* ought to have been lodged with the Master has not been lodged, and section *fifty-three* to *fifty-five* shall apply, *mutatis mutandis*, to all proceedings taken by the Master in pursuance of this section.

96 Compensation of tutors and curators

Every tutor, either testamentary or dative, and every curator, either nominate or dative, shall, in respect of his administration and management of any estate, be entitled to claim, retain and receive out of the assets of such estate a reasonable compensation for his care and diligence in the said administration, to be assessed and taxed by the Master, subject to the review of the High Court or any judge thereof, upon the petition of any such tutor or curator or of any person having an interest in the said estate.

[Section amended by section 4 of Act 12 of 1997.]

The Guardian's Fund

97 The Guardian's Fund

(1) The Guardian's Fund heretofore established under the operation of Ordinance No. 105 of the Cape of Good Hope shall be continued under and subject to this Act.

(2) All moneys received by the Master under section *fifty-one*, *sixty-one*, *eighty*, *ninety-two* and *ninety-three* or otherwise shall form and become part of the said Guardian's Fund and due and proper accounts shall be opened in respect thereto.

98 Interest on moneys of minors and mentally disordered or defective persons

(1) Interest shall be allowed on every sum of money so received by the Master for account of any minor or mentally disordered or defective person or any person who has been declared by the High Court to be incapable of managing his own affairs from and including the date of receipt of such money and until and including the day preceding the date on which such person becomes entitled by law to draw the capital, and no longer:

Provided that, on the 1st April in each year, the interest that has become due on any moneys as aforesaid shall be added to the capital in the books of the Guardian's Fund, and in case such interest is not drawn by the person entitled thereto previous to the 1st April following or the date on which he or his estate becomes entitled by law to draw the capital, interest shall be allowed on the accumulated sum.

[Subsection amended by section 4 of Act 12 of 1997.]

(2) Interest on all moneys paid into the Guardian's Fund in terms of section 5 of the Deceased Estates Succession Act [*Chapter 51 of 1939*] shall also be allowed from and including the date of receipt of such moneys and until and including the date of the death of the surviving spouse.

(3) For the purposes of this section interest shall be allowed at such rate, being not less than three *per centum* per annum, as the Minister may from time to time determine, and in so determining the Minister may allow different rates in different cases.

99 Master to control moneys in hands of agents for person whose whereabouts are unknown

(1) Every person, other than a deposit-receiving institution referred to in section *one hundred*, carrying on business within Zimbabwe shall in January in each year prepare as hereinafter provided a detailed statement of all moneys amounting to one hundred dollars and upwards which were in his hands or in the hands of an agent on his behalf within Zimbabwe on the 31st December last past, which were not his property or subject to any valid lien and which have remained unclaimed for a period of five years or more by the rightful owner.

(2) That statement shall as far as practicable set forth the full name and last known address of each of the owners aforesaid and shall be signed by the person carrying on business as aforesaid or some responsible person on his behalf, and shall be supported by an affidavit in the form contained in the Third Schedule.

(3) Such statement and supporting affidavit shall, not later than the 31st January in each year, be forwarded to the Master, together with all moneys detailed therein; and all such moneys shall be held by the Master in the Guardian's Fund for account of the rightful owners.

(4) The Master may, by notice, call upon any person so carrying on business to prepare such statement and affidavit and to file the same within a period of one month from the date of such notice; and if such person, when

so called upon, fails to comply with the requirements of such notice, the Master shall have the right of examination of all books and records of such person, either himself or by any person duly appointed by him.

(5) If any person fails to furnish the statement and affidavit mentioned in this section or to pay into the Guardian's Fund any moneys which under this section ought so to be paid, as and when the same ought respectively to be furnished or paid, then every person having the custody or control of such moneys or, in the case of an association of persons other than a partnership, the secretary and every director thereof within Zimbabwe or, in the case of a partnership, every member thereof within Zimbabwe, 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 amended by section 4 of Act 22 of 2001.]

100 Deposit-receiving institutions

(1) In this section—
“deposit-receiving institution” means—

- (a) the Post Office Savings Bank; or
- (b) any commercial bank, accepting house, discount house or finance house registered under the Banking Act [*Chapter 24:20*];

[Definition amended by section 82 of Act 9 of 1999.]

- (c) any building society registered under the Building Societies Act [*Chapter 24:02*].

(2) Every deposit-receiving institution shall, during January of each year, cause to be drawn up a list of all amounts of one hundred dollars or more which that deposit-receiving institution has held for the account of depositors as at the immediately preceding 31st December and which are not subject to any valid lien or set-off and in respect of which accounts the depositor concerned has not for a period of ten years or more— (a) conducted any operations by deposit or withdrawal; or

- (b) presented the pass-book, if any, to the institution for the inclusion of interest or for verification; or (c) notified the institution that he is aware of the account.

(3) During January of each year, every deposit-receiving institution shall send to the last-known address of each depositor whose name appears on the list prepared in terms of subsection (1) a letter and shall publish in the *Gazette* a notice—

- (a) notifying the depositor of the existence of the account; and
- (b) calling on the depositor to notify the institution whether he wishes to continue the account and to send to the institution for verification any passbook he has in respect of the account; and
- (c) advising the depositor that, if he fails to reply to the letter before the 15th April of that year, the amount held in the account will be forwarded to the Master as unclaimed money.

(4) After the 15th April and before the 1st May in each year, the deposit-receiving institution shall, after deleting from the list prepared by it in terms of subsection (2) those accounts in respect of which the depositor concerned has done any of the things specified in paragraph (a), (b) or (c) of subsection (2) or replied to the letter sent in terms of subsection (3), forward to the Master—

- (a) a statement in accordance with subsection (5) indicating the accounts remaining on the list which shall be in two parts, the first dealing with accounts amounting to one hundred dollars or more but less than two hundred and fifty dollars and the second with accounts amounting to fifty dollars or more; and
- (b) the amount stated to be held in respect of each account referred to in the statement mentioned in paragraph (a);

and all such moneys shall be held by the Master in the Guardian's Fund for account of the rightful owners.

(5) The statement forwarded in terms of paragraph (a) of subsection (4) shall indicate in relation to each account—

- (a) the full names of the depositor and, if he at any time furnished any registration particulars, such particulars; and
- (b) the last-known address of the depositor; and
- (c) the amount standing to the credit of the depositor; and
- (d) any reference number relating to such account, including any past reference number.

(6) Subject to any other law, a deposit-receiving institution shall be entitled to destroy its records relating to any account referred to in a statement forwarded in terms of subsection (4) after a period of five years has elapsed from the date the money in that account was forwarded to the Master.

101 Banking of moneys in Guardian's Fund

All moneys paid to the Master under any law, for the purpose of being placed to the credit of the Guardian's Fund, shall be paid into an account with a commercial bank registered under the Banking Act [*Chapter 24:20*] and

the Master may withdraw any part of such moneys by cheques or drafts signed by himself and drawn in accordance with regulations made in terms of section *one hundred and thirty-two*.

[Section amended by section 82 of Act 9 of 1999.]

102 Payment to persons entitled to money

(1) (1) Subject to this section, the Master shall pay any sum of money standing to the credit of any person or estate in the Guardian's Fund to the person entitled by law to receive the money.

(2) Where any sum of money in the Guardian's Fund is standing to the credit of a minor, a mentally disordered or intellectually handicapped person, an absent person or to any estate, the Master may pay the tutor, curator or administrator of that minor, person or estate, as the case may be, such amount as the tutor, curator or administrator is by law authorized or required to expend in relation to the minor, person or estate concerned:

Provided that, if the Master is satisfied that the tutor, curator or administrator will invest and apply the money in the best interests of the minor, person of estate concerned, the Master may pay him the whole sum standing to the credit of the minor, person or estate concerned, subject to such conditions as the Master thinks fit to impose relating to the investment and application of the money and the submission of accounts and reports by the tutor, curator or administrator.

(3) If a tutor, curator or administrator to whom any money has been paid in terms of the proviso to subsection (2) fails to comply with any condition imposed by the Master in terms of that proviso, the Master may require him to repay the money, or the balance of it, into the Guardian's Fund and the tutor, curator or administrator shall forthwith comply with any such requirement.

[Section as amended by section 4 of Act 22 of 2001].

103 Application of moneys to education of minor

(1) In any case in which the total amount standing to the credit of any minor or mentally disordered or defective person in the Guardian's Fund does not exceed one thousand dollars, it shall be competent for the Master if, after careful inquiry, it appears to him to be for the interest of such minor or mentally disordered or defective person to do so to pay and apply the whole or any part of such amount for the maintenance, education or other benefit of such minor or mentally disordered or defective person:

Provided that nothing in this section or in section *one hundred and two* contained shall authorize the Master to disregard or act contrary to the terms of any will or other deed under which such amount has been received.

(2) In cases where the total amount exceeds one thousand dollars and it appears to be in the best interests of a minor child that moneys to his credit should be expended for the maintenance and education of the said child, the Master may through the chamber book apply to a judge in chambers, who may authorize the payment of such amounts or make such other order as he may in the circumstances deem advisable.

104 List of moneys in Guardian's Fund to be published

(1) After the 30th April in each year the Master shall cause to be drawn up—

- (a) a list of all amounts of one hundred dollars or more held by him which have become due as at the preceding 31st March to persons who by law are entitled to claim them but have failed to do so; and
- (b) a list of all amounts of one hundred dollars or more received by him in that year in accordance with section *ninety-nine* or *one hundred* or any other enactment which have not been claimed by the rightful owner.

(2) The Master shall, in accordance with subsection (3), publish a notice in the *Gazette* of every amount shown on the list referred to in paragraph (a) or (b) of subsection (1) and, in respect of every such amount of two hundred and fifty dollars or more which has not been claimed by the rightful owner, shall thereafter publish such notice for the next three succeeding years.

(3) A notice in terms of subsection (2) shall—

- (a) invite any person who claims to be entitled to any such amount to submit his claim to the Master; and
- (b) in respect of the amounts received by the Master in accordance with section *ninety-nine* or *one hundred* or any other enactment, indicate the person who forwarded the amount concerned to the Master.

(4) This section shall apply to all amounts held by the Master in the Guardian's Fund, whether received by him before, on or after the 29th December, 1978, and all advertisements in the *Gazette* made in respect of such amounts before that date shall be deemed to be notices for the purposes of subsection (2).

105 Prescription of claims to moneys in Guardian's Fund

Any claim to moneys in the Guardian's Fund whether they were paid into that Fund before, on or after the 29th December, 1978, shall be made within a period of thirty years—

- (a) in the case of any amount paid into the Guardian's Fund because it has not been claimed by the owner, from the date of payment of the amount into the Guardian's Fund;
- (b) in the case of any other moneys, from the date upon which the person concerned became entitled to claim the amount; and on the expiration of that period the debt shall be extinguished by prescription and the moneys concerned paid into the Consolidated Revenue Fund:

Provided that this section shall not preclude any claims being made before the 1st January, 1980, and no debt shall be prescribed in terms of this section before that date.

106 Investment of moneys to credit of Guardian's Fund

(1) The Master shall, from time to time and as soon as he finds opportunity to do so, invest moneys standing to the credit of the Guardian's Fund which are not required to meet the current expenditure of the Guardian's Fund in any of the following—

- (a) on mortgage of immovable property;
- (b) in Treasury bills;
- (c) on deposit with the Treasury;
- (d) in locally registered securities which are—
 - (i) issued by the State, a municipal council constituted under the Urban Councils Act [*Chapter 29:15*] or a statutory corporation established by a law in force in Zimbabwe; or (ii) guaranteed by the State;
- (e) with the Post Office Savings Bank;
- (f) with an accepting house, commercial bank, discount house or finance house registered under the Banking Act [*Chapter 24:20*];

[Paragraph amended by section 82 of Act 9 of 1999.]

- (g) in shares in or on deposit with a building society registered under the Building Societies Act [*Chapter 24:02*];
- (h) in savings certificates issued in terms of the Savings Certificates Act [*Chapter 22:12*]; (i) in any other security approved by the Minister and the Minister responsible for finance.

(2) No such investment shall be made by the Master without first consulting thereupon with two advisers, who shall be from time to time appointed for that purpose by the President, or, in the event of both or either of them refusing consent, unless he has applied to and obtained from the High Court or any judge thereof an order of such Court or judge authorizing him to make such loan.

[Subsection amended by section 4 of Act 12 of 1997.]

- (3) No loan on mortgage shall be made to or in favour of the Master or either of his said advisers.

107 Bonds to be made payable to Guardian's Fund

All bonds for money invested on mortgage shall be made payable to the Master administering the Guardian's Fund and the Master may cede and assign or demand, enforce and receive payment of any such bond and of the interest due thereon.

108 Examination of books and security of Guardian's Fund

(1) The books and securities of the Guardian's Fund shall be examined by a person, hereinafter called the examiner, appointed by the Minister.

(2) The examiner may call to his aid such persons as the Minister may approve and shall, without derogation from the generality of the duties imposed upon him by this section—

- (a) examine such books and securities at such intervals as will ensure that a continuous check is maintained upon all transactions involving the Guardian's Fund;
- (b) report to the Master any error, omission or irregularity and, if such error, omission or irregularity is not corrected to his satisfaction, report thereon to the Minister.

- (b)
- (3) There shall be paid from the Guardian's Fund—
- (a) to the examiner and any person called to his aid in terms of subsection (2) such remuneration as the Minister may determine;
- to the Consolidated Revenue Fund such charges and expenses as have been incurred on or after the 1st April, 1970, by the State or any employee of the State in the administration of the Guardian's Fund.

109 Master to prepare annual balance sheet

The Master shall, so soon after the 1st April in each year as may be convenient, prepare a balance sheet and statement of revenue and expenditure of the Guardian's Fund reflecting its assets and liabilities and revenues and expenditure under appropriate headings.

110 Master to deliver copy of balance sheet to Minister and others

The Master shall deliver a copy of the balance sheet and profit and loss account to the Minister, the Secretary of the Ministry responsible for finance and the Comptroller and Auditor-General.

111 Procedure in case of credit balance or loss

(1) The Master shall pay to the Ministry responsible for finance for the benefit of the Consolidated Revenue Fund any credit balance on the profit and loss account.

(2) The Ministry responsible for finance shall, from moneys appropriated for the purpose by Parliament, make good any loss on the profit and loss account.

112 Maintenance awards

(1) The Master shall receive into the Guardian's Fund all moneys directed to be paid therein under an award made in terms of the Deceased Persons Family Maintenance Act [*Chapter 6:03*] for the credit of any person and shall make payments from such moneys in accordance with the award.

(2) Section *ninety-eight* shall apply, *mutatis mutandis*, in relation to any moneys referred to in subsection (1).

PART V

GENERAL

113 Decision on point of law

Whenever any difference of opinion upon a question of law arises between the executor and the Master in the distribution of an estate and a minor is interested in the decision of that question, the Master and the executor may state a case in writing for determination by a judge of the High Court in chambers, and the determination of the judge shall be binding upon the Master and the executor, without prejudice to the rights of other persons interested in the distribution:

Provided that the judge may refer the matter to the High Court for argument.

114...

[Section repealed by section 4 of Act 22 of 2001.]

115 Invalidity of appointment of Master as executor, tutor or curator

If any person has by will or other deed appointed the Master in his official or private capacity to be the executor of his estate or tutor testamentary of any minor or curator nominate of any estate or property given or bequeathed by him to any minor or mentally disordered or defective person, such appointment shall be null and void; and proceedings shall be taken for the appointment of an executor dative, tutor dative or curator dative, as the case may be, just as if no such appointment of the Master had been made.

116 Supervision of executors, tutors and curators

(1) If it appears to the Master that any executor, tutor or curator is failing or neglecting to perform satisfactorily his duties or to observe all the requirements imposed upon him by law or otherwise in regard thereto, or if any complaint is made to the Master by any creditor, legatee or heir in regard thereto, the Master shall inquire into the matter and take such action thereon as he shall think expedient.

(2) For the purpose of any inquiry under subsection (1), the Master may—

- (a) require the executor, tutor or curator concerned or any other person to furnish him with such information as he may require and to produce for examination by the Master or by any person appointed by him for that purpose at a time and place specified by the Master any deeds, plans, instruments, books, accounts, stock lists or documents which the Master may specify;
- (b) serve a written notice upon the executor, tutor or curator concerned requiring him to attend at a time and place to be specified by the Master for the purpose of being examined on oath by the Master or by any person appointed by him for that purpose respecting any transactions or matters affecting the estate which such executor, tutor or curator is administering.

(c)

(3) Any executor, tutor or curator called upon to be examined in terms of this section may be represented at such inquiry by an accountant or by a legal practitioner.

(4) Any executor, tutor, curator or other person who—

(a) fails to comply with the requirements of the Master in terms of subsection (2); or

(b) fails to attend at the time and place specified by the Master in terms of subsection (2); or refuses to answer any question put to him by the Master or by any person appointed by him in terms of subsection (2) otherwise than on the grounds that the answer may tend to incriminate him;

shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Section amended by section 4 of Act 22 of 2001.

117 Master may apply for removal of executor, tutor or curator from office

(1) The Master may apply to a judge in chambers for the removal of an executor, tutor or curator from his office on the ground—

(a) that he was not qualified for appointment to such office or that his appointment was for any other reason illegal; or

(b) that he has failed to perform satisfactorily any duty or requirement imposed upon him by or in terms of any law; or

(c) that he is mentally or physically incapable of performing satisfactorily his duties; or

(d) that in his opinion such person is no longer suitable to hold such office; and the judge may, upon such application, remove the executor, tutor or curator concerned from his office or make such other order as he sees fit.

(2) Where an executor, tutor or curator has been removed from his office the Master shall revoke any letters of administration or confirmation, as the case may be, which have been granted to such person.

119 Continuing liability of executor, tutor or curator who has been removed and of surety therefor

Notwithstanding his removal from office, an executor, tutor or curator shall remain liable for his duty to account for his administration and management prior to such removal and any surety for any such executor, tutor or curator shall remain liable for his obligation in regard to such duty.

119 Master to keep register of executors, tutors, curators and sureties

The Master shall cause a register to be kept containing the names of every executor to whom letters of administration have been granted and of every surety for an executor dative, and also a register containing the names of every tutor and curator to whom any letters of confirmation have been granted and of every surety for such tutor or curator; and whenever any order for sequestration is lodged with the Master he shall cause the said registers to be examined and—

(a) if the insolvent is the executor or the surety of an executor of an estate not previously administered, distributed and finally settled, the Master shall notify the fact in the *Gazette*;

(b) if the insolvent is either a tutor or curator of any minor, mentally disordered or defective person or absent person, the Master may take steps for the appointment of a tutor or curator dative in the place of such insolvent;

(c) if the insolvent is a surety for any tutor or curator the Master may require such tutor or curator to give additional security to his satisfaction, and if such additional security is not furnished within a reasonable time the Master or any person interested may move any competent court for the removal of such tutor or curator, without in any way affecting the liability of such tutor or curator up to the time of his removal or impairing the validity of any security or releasing any surety or his estate.

120 Sale of property otherwise than by auction

If, after due inquiry, the Master is of opinion that it would be to the advantage of persons interested in the estate to sell any property belonging to such estate otherwise than by public auction he may, if the will of the deceased contains no provisions to the contrary, grant the necessary authority to the executor so to act.

121 When Master may authorize subdivision of immovable property of minors

In cases where the Master is satisfied that it has become necessary or is expedient to subdivide any immovable property in which any minor has an interest he may, after due inquiry and, if he deems fit, after inspection of the property by himself or by some suitable person appointed by him, if he is satisfied that the proposed division is a fair one, consent to such division on behalf of the minor interested and appear before the Registrar of Deeds to join in the requisite transfers of partition.

(d)

122 Disposal of minors' property

In cases where minor heirs are interested in property inherited from the estate of any deceased person the Master may apply through the chamber book to a judge in chambers for authority for the lease, mortgage, sale or other disposition of such property, and the judge may make such order as in the circumstances he considers advisable.

123 Master may invest money of minors in purchase of immovable property in Zimbabwe

(1) The Master may, in consultation with the tutor or natural guardian of any minor, consent to the investment of the whole or any portion of any moneys belonging to such minor in the purchase of immovable property in Zimbabwe to be transferred into the name of the minor.

(2) When any money has been paid into the Guardian's Fund to the credit of a minor as by law required the Master may pay out any sum requisite in respect to such purchase.

124 Records of Master's office

(1) The Master or Assistant Master, as the case may be, shall preserve all original wills, codicils, testamentary instruments, death notices, inventories and liquidation, administration and distribution accounts lodged with him under this Act, and any person may at any time during office hours inspect any such document, and, subject to subsection (2), obtain a copy thereof or an extract therefrom, on payment of the prescribed fees:

Provided that any person holding office under the State shall be and is hereby authorized, without the payment of any fee, to inspect such deed or document aforesaid or to take a copy thereof or extract therefrom, whenever it is necessary or expedient that the same should be done by any such person in the discharge of the duties of his office.

(2) The Master or the Assistant Master may—

- (a) refuse to allow an inspection referred to in subsection (1) if he considers it necessary to do so in the interests of the privacy of any person who is a beneficiary, parent, child or spouse of the deceased;
- (b) refuse to issue a copy or an extract referred to in subsection (1) where he is not satisfied that such copy or extract is required for a purpose which, in his opinion, is a lawful or proper one or for any other reason;
- (c) issue a limited number only of copies or extracts referred to in subsection (1) to any one applicant therefor.

(3) Any person who is aggrieved by a decision of the Master or the Assistant Master in terms of subsection (2) may apply to the High Court for a review of the decision and on such review the High Court may confirm, vary or set aside that decision.

125 Master to forward duplicates to magistrates

(1) The Master or Assistant Master, as the case may be, shall, as soon as may be after the expiration of each month, forward the duplicates or copies certified by him of all accounts lodged with and accepted and filed by him to the magistrates for the respective districts in which the persons to whose estates such accounts relate ordinarily resided at the time of their decease or, in any case in which any such person resided abroad, to the magistrate of Harare district.

(2) The magistrate shall file such duplicates or copies in his office and any person may at any time during office hours inspect and obtain a copy of or extract from any such duplicate or copy or any other document filed by the magistrate under the provisions of this Act, on payment of the fee which would be payable for such inspection, copy or extract.

126 Liability of Master for costs of actions by or against him

When the Master is plaintiff or defendant in any action instituted by him or against him in his official capacity, or with reference to any matter or thing placed under his guardianship, control or superintendence, or which he is required to do or cause to be done under and by virtue of this Act, and the party against whom such action has been instituted by the Master or by whom it has been instituted against the Master, has his costs in and with respect to such action adjudged to him by the court before which such action has depended, the Master may withdraw the amount of such costs from and pay the same out of the credit balance of the Guardian's Fund, unless the said court orders that the said costs shall be paid by the Master out of his private funds:

Provided that nothing in this section contained shall be deemed to limit the power of the President to authorize specially that any costs incurred or paid by the Master shall be defrayed out of the Guardian's Fund.

127 Application of Act

Every person to whom letters of administration or letters of confirmation are granted after the 5th July, 1907, for the administration of the estate of any person who has died prior to the said date, shall be subject to and conform with this Act, and shall administer the estate in accordance therewith.

128 Valuation of assets and property

(1) The Master may call upon such and so many persons as to him seem fit to value any assets and property, the valuation of which becomes necessary for the purposes of this Act.

(2) Every such person shall, in respect of every valuation made by him, be entitled to demand and receive a reasonable compensation to be assessed and taxed by the Master.

(3) Any such person who makes a valuation of assets or property in any case in which he or any person whom he represents as agent or any person to whom he is married or to whom he is related within the third degree of consanguinity or affinity, has an interest in the estate to be valued, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

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

129 Oath to be taken after valuation made

Every person who is called upon to value any assets or property in terms of section *one hundred and twentyeight* shall take an oath before any judge of the High Court, magistrate, justice of the peace or commissioner of oaths that

he has valued such assets or property according to the just, proper and true valuation thereof to the best of his skill and knowledge and shall transmit his valuation, supported by that oath, to the Master or Assistant Master, as the case may be.

130 Meetings before magistrate or other authorized official

Any meeting advertised to be held before any magistrate under this Act may, in the absence of such magistrate on leave or duty or through indisposition, be held before an official to be authorized by the Master.

131 Certified copies of duplicate original documents admissible in evidence

Whenever any duplicate original documents have, under this Act, been lodged in the office of the Assistant Master or of any magistrate, a copy or extract thereof, signed and certified as a true copy or extract thereof by the Assistant Master or magistrate, as the case may be, having custody of such document, and every such copy authenticated by the Assistant Master, a magistrate or the Master, as the case may be, as has under this Act been lodged in the office of the Assistant Master or any magistrate, shall be admissible in evidence in any court, and before any person having by law or consent of parties authority to hear, receive and examine evidence.

132 Minister may make regulations

(1) The Minister may make regulations providing for any matter which by this Act is required or permitted to be prescribed or which, in his opinion, is necessary or convenient to be prescribed for the better carrying into effect of this Act and generally for the management and good conduct of the business of the Master's office.

[Subsection as amended by section 5 of Act No. 6 of 1997.]

- (2) Regulations in terms of subsection (1) may provide for—
- (a) the custody and preservation of the records, securities and valuable effects of the Master's office;
 - (b) the payment of money into and out of the Guardian's Fund;
 - (c) the fees which shall be payable in respect of the administration of the estates of deceased persons or of estates under curatorship or tutorship;
 - (d) the fees which shall be payable in respect of any act, matter or thing done or caused to be done by the Master or in the Master's office;
 - (e) the manner in which any fees referred to in paragraph (c) or (d) shall be paid;
 - (f) the functions of executors in terms of Part IIIA and the application to such executors, subject to such modifications as may be specified, of the provisions of this Act relating to executors.

(Paragraph inserted by section 5 of Act No. 6 of 1997.)

FIRST SCHEDULE (Sections 4, 5, 8 and 52)

AREA FOR WHICH MASTER'S OFFICE IS OFFICE OF RECORD

The area lying to the north and east of the line drawn from the confluence of the Zambezi and Munyati Rivers; thence up the Munyati River to its intersection by the eastern boundary of Moreena Ranch, thence along the eastern boundaries of Moreena Ranch and Mazuri Ranch, and along the southern boundary of Mazuri Ranch to the north-eastern beacon of Pavlova, thence along the eastern boundaries of Pavlova, Twin Springs Ranch and Mvurachena to the Sebakwe River, thence up the Sebakwe River to its intersection by the north-western boundary of Central Estates, thence along the north-western, south-western and south-eastern boundaries of Central Estates to the westernmost beacon of Pela, thence along the south-western boundaries of Pela, Pansi and Ensimoen to the Ngezi River, thence down the Ngezi River to its last intersection by the eastern boundary of Gamwa Division of African Purchase Land, thence along the eastern and southern boundaries of Gamwa Division of African Purchase Land and the southern boundaries of Lelas and Umgwalate to the Musabezi River, thence down the Musabezi and Runde Rivers to the confluence of the Runde and Magwi Rivers, thence along the north-western boundary of Nuanetsi Ranch A to the Mwenezi River, thence up the Mwenezi River to its intersection by the eastern boundary of Wedza Block, thence along the eastern and southern boundaries of Wedza Block to the Bubi River, thence down the Bubi River to its confluence with the Limpopo River.

SECOND SCHEDULE (Sections 5, 23, 70 and 72)

FORMS

FORM A DEATH NOTICE

THIRD SCHEDULE (Section 99)

FORM OF AFFIDAVIT

(Under section 101 of the Administration of Estates Act [*Chapter 6:01*].

I, _____ of _____ (state capacity of deponent) make oath and say that the return of unclaimed moneys in the hands of _____ subscribed by me is to the best of my knowledge and belief a true and complete return as required by the said Act, and that during the year ending the thirty-first day of December now last past no unclaimed moneys have been transferred by or on behalf of the said _____ out of _____ Zimbabwe or placed to any suspense or other account with a view to evading the provisions of this Act, and that all amounts which ought to be included in the said return are duly included therein.

Sworn at this _____ day of, _____ 19 ____ .

Justice of the Peace.