

Nru. 131

22. 5. 2020

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Ligi mressaq mill-Onorevoli Edward Zammit Lewis, M.P., Ministru għall-Ġustizzja, l-Ugwaljanza u l-Governanza u moqri għall-Ewwel darba fis-Seduta tas-27 ta' April 2020.

A BILL introduced by the Honourable Edward Zammit Lewis, M.P., Minister for Justice, Equality and Governance, and read the First time at the Sitting of the 27th April 2020.

ATT biex jemenda l-Att dwar il-Professjoni Nutarili u Arkivji Nutarili, Kap. 55.

AN ACT to amend the Notarial Profession and Notarial Archives Act, Cap. 55.

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA
Clerk of the House of Representatives

ABBOZZ TA' LIĠI
msejjah

ATT biex jemenda l-Att dwar il-Professjoni Nutarili u Arkivji Nutarili, Kap. 55.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'liġi dan li ġej:

1. It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2020 li jemenda l-Att dwar il-Professjoni Nutarili u Arkivji Nutarili, u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Att dwar il-Professjoni Nutarili u Arkivji Nutarili, minn hawn 'il quddiem imsejjah "l-Att prinċipali".

Titolu fil-qosor.

Kap. 55.

2. Minnufih wara s-subartikolu (4) tal-artikolu 2 tal-Att prinċipali, għandu jiżdied is-subartikolu ġdid li ġej:

Emenda tal-artikolu 2 tal-Att prinċipali.

"(5) In-Nutara għandhom is-setgħa li jagħtu pariri fuq kull wieħed mill-funzjonijiet u l-poteri vestiti fihom skont id-dispożizzjonijiet ta' dan l-artikolu, u fuq kwalunkwe materja jew kompetenza attribwita lilhom, sew jekk esklussivament jew xort'oħra, taħt kwalunkwe liġi jew regolament, u b'mod ġenerali, fuq kwalunkwe haġa relatata mal-qadi tajjeb tal-obbligazzjonijiet jew l-ingaġġ tagħhom, u dan minkejja kwalunkwe haġa li tista' tkun stipulata taħt kwalunkwe liġi oħra."

3. Is-subartikolu (2) tal-artikolu 3 tal-Att prinċipali, għandu jiġi emendat kif ġej:

Emenda tal-artikolu 3 tal-Att prinċipali.

(a) minnufih wara l-kliem "Nutar Pubbliku mal-Awtorità tal-Artijiet", kull fejn jirrikorru, għandhom jiżdiedu l-kliem "jew Nutar Pubbliku mal-Awtorità tad-Djar, taħt id-dispożizzjonijiet tal-artikolu 22(5), jew Nutar Pubbliku ma' kwalunkwe Awtorità jew Aġenzija Governattiva oħra,"; u

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(b) il-kliem "Direttur jew Assistent Direttur tar-Registru tal-Artijiet", kull fejn jirrikorri, għandhom jiġu sostitwiti bil-kliem "Registratur tal-Artijiet jew Assistent Registratur tal-Artijiet".

Emenda tal-artikolu 8 tal-Att prinċipali.

4. Fis-subartikolu (1) tal-artikolu 8 tal-Att prinċipali, minnufih wara l-kliem "kull sena", għandhom jiżdiedu l-kliem "jew fi kwalunkwe data oħra matul dik is-sena li l-Bord imsemmi fl-artikolu 7 jista', wara d-debita deliberazzjoni, jikkunsidra neċessarju li jistabbilixxi".

Emenda tal-artikolu 11 tal-Att prinċipali.

5. L-artikolu 11 tal-Att prinċipali, għandu jiġi emendat kif ġej:

(a) is-subartikolu (1) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(1) In-nutar jista' fid-diskrezzjoni tiegħu u mingħajr ġustifikazzjoni, jirrifjuta li jagħti s-servizzi tiegħu jew jitermina kwalunkwe ingaġġ għas-servizzi tiegħu u ma jkunx meħtieġ li jikkunsidra l-effett jew konsegwenza ta' tali rifjut."

(b) is-subartikolu (2) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(2) Mingħajr preġudizzju għall-ġeneralità tas-subartikolu preċedenti, in-nutar ma jkunx obligat li jagħti s-servizzi tiegħu jew li jiffinalizza xi ingaġġ, jekk wara li jkun aċċetta l-ingaġġ:

(a) il-partijiet jonqsu milli jiddepożitaw miegħu l-ammont ta' dazji, taxxi, drittijiet u spejjeż in-konnessjoni ma' kwalunkwe servizz jew att, jew fil-mument tal-pubblikazzjoni tal-att jew mal-eżekuzzjoni tas-servizz mitlub; jew

(b) jekk is-servizzi tiegħu huma meħtieġa f'festa pubblika jew bejn id-9.00 ta' filgħaxija ta' jum u t-8.00 ta' filgħodu tal-jum sussegwenti."

(c) is-subartikolu (3) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(3) Id-dispożizzjonijiet tas-subartikolu (1) u (2) tiegħu, ma għandhomx japplikaw fil-każ ta' testment u d-dispożizzjoni tal-paragrafu (b) tas-subartikolu (2) ma għandhiex tapplika fil-każ ta' protest marittimu."

6. L-artikolu 14 tal-Att prinċipali, għandu jiġi emendat kif ġej:

Emenda tal-artikolu 14 tal-Att prinċipali.

(a) fis-subartikolu (1) tiegħu:

(i) il-kliem "In-nutar -", għandhom jiġu sostitwiti bil-kliem "Nutar għandu jieqaf milli jeżerċita l-funzjonijiet tiegħu -"

(ii) il-paragrafu (a) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(a) jekk jaċċetta impjieg mal-Gvern, jew jimpjega ruħu *full-time*, jew jeżerċita professjoni, jew jieħu kwalunkwe kariga inkompatibbli mal-professjoni ta' nutar:

Iżda nutar li jaċċetta impjieg biex jagħmilha ta' Nutar Prinċipali tal-Gvern jew Nutar tal-Gvern jew Nutar impjegat ma' kwalunkwe Ministeru jew Dipartiment tal-Gvern jew Nutar Pubbliku mal-Awtorità tal-Artijiet jew Nutar Pubbliku mal-Awtorità tad-Djar, taħt id-dispożizzjonijiet tal-artikolu 22(5), jew Nutar Pubbliku ma' xi Awtorità jew Aġenzija tal-Gvern, għal perjodu kontinwu ta' mhux iżjed minn tliet xhur, jista' jissokta bil-funzjonijiet tiegħu bħala Nutar Pubbliku.";

(iii) il-paragrafu (b) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(b) jekk huwa jkun permanentement nieqes minn Malta għal perjodu kontinwu li jaqbeż hames snin jew jonqos milli jippubblika xi att għall-perjodu ta' seba' snin konsekuttivi ta' qabel is-sena bażi kurrenti tar-reviżjoni, li għandu jiġi aċċertat kull sena, mis-sena bażi tar-reviżjoni 2020. L-Uffiċjal Revizur assenjat għandu jaċċerta ruħu minn dan il-fatt matul il-perjodu tar-reviżjoni, u għandu fuq rikjesta, jingħata kull informazzjoni rilevanti min-nutar innifsu jew mill-Uffiċċju tan-Nutar tal-Gvern jew mill-Kunsill Nutarili. L-Uffiċjal Revizur għandu, b'rikors, jirrapporta l-każ lill-Qorti tar-Revizjoni tal-Atti Nutarili u l-Qorti għandha, jekk tkun sodisfatta li l-fatti jissussistu, tagħti digriet li dak in-nutar waqaf milli jeżerċita l-funzjonijiet tiegħu u għandha tordna lin-nutar biex jillega u jikkonsenja kull att oriġinali li

jkun għadu fil-pussess tiegħu lill-Uffiċjal Revizur, fi żmien li jkun stabbilit fid-digriet tagħha, u fin-nuqqas, il-penali taħt l-artikolu 94A(18)(a) għandhom japplikaw *mutatis mutandis*, u l-istess Qorti għandha taħtar Nutar Konservatur, fejn jidrilha li jkun meħtieġ. Il-Qorti għandha tordna li dak id-digriet ikun notifikat lin-nutar, fl-indirizz registrat mal-Kunsill Nutarili jew, jekk ikun jgħix barra minn Malta, permezz ta' posta elettronika fl-aħhar indirizz elettroniku registrat mal-Kunsill Nutarili, u lill-Avukat tal-Istat, in-Nutar Prinċipali tal-Gvern, u l-President tal-Kunsill Nutarili, u l-imsemmi digriet għandu jkun pubblikat fil-Gazzetta. Sussegwentement għal din il-pubblikazzjoni, in-Nutar Prinċipali tal-Gvern għandu jniżżel l-isem ta' dak in-nutar fil-lista bl-ismijiet tan-nutara li ma jkunux qed jeżerċitaw il-funzjonijiet tagħhom, liema lista għandha tinżamm min-Nutar Prinċipali tal-Gvern u tkun publikata bl-istess mod tal-lista taħt l-artikolu 4.";

(iv) fil-paragrafu (ċ) tiegħu, il-kliem "permanentement jitlef il-*warrant* tiegħu ta' nutar", għandhom jiġu mhassra;

(v) fil-paragrafu (d) tiegħu, il-kliem "permanentement jitlef il-*warrant* tiegħu ta' nutar", għandhom jiġu mhassra;

(vi) fil-paragrafu (e) tiegħu, il-kliem "jitlef għal dejjem il-*warrant* tiegħu ta' nutar", għandhom jiġu mhassra;

(vii) fil-paragrafu (f) tiegħu, il-kliem "jitlef għal dejjem il-*warrant* tiegħu ta' nutar", għandhom jiġu mhassra;

(viii) fil-paragrafu (g) tiegħu, il-kliem "jitlef għal dejjem il-*warrant* tiegħu ta' nutar", għandhom jiġu mhassra;

(ix) fil-paragrafu (h) tiegħu, il-kliem "jiegħaf milli jeżerċita l-funzjonijiet tiegħu", għandhom jiġu mhassra u l-kliem "jiegħu l-*warrant* tiegħu", għandhom jiġu sostitwiti bil-kliem "ikun rijabilitat";

(b) fis-subartikolu (2) tiegħu, il-kliem "hekk kif jagħmel

l-eżami ta' kwalifika msemmi fl-artikolu 6(1)(f).", għandhom jiġu sostitwiti bil-kliem "fuq il-parir tal-Bord imsemmi fl-artikolu 7 li għandu jaċċerta li n-nutar huwa adegwatament profiċjenti, aġġornat u kwalifikat biex jerga' jibda jeżerċita l-fakultajiet u l-funzjonijiet kollha ta' Nutar Pubbliku.";

(ċ) is-subartikolu (3) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(3) In-nutar li jaċċetta l-kariga ta' Nutar Principali tal-Gvern, Nutar tal-Gvern, Nutar impjegat *full-time* ma' Ministeru jew Dipartiment jew Awtorità tal-Gvern, Nutar Pubbliku mal-Awtorità tal-Artijiet, il-kariga ta' Direttur jew Assistent Direttur tar-Registru Pubbliku jew Registratur tal-Artijiet jew Assistent Registratur tal-Artijiet, jew nutar li huwa impjegat *full-time* ma' bank kummerċjali tas-self, jew istituzzjoni jew entità finanzjarja simili, jew ma' xi aġenzija tal-Gvern, jew kumpannija b'responsabbiltà limitata, jew kwalunkwe entità oħra, fejn il-Gvern ta' Malta huwa jew is-sid benefiċjarju jew għandu fiha interess li jikkontrolla, jew fi kwalunkwe każ ieħor fejn xi nutar jibqa' jwettaq, fl-eżerċizzju regolari tal-professjoni jew impjieg tiegħu, xi wieħed mill-fakultajiet u funzjonijiet elenkati fl-artikolu 2, ma għandux matul dik il-kariga jew dak l-impjieg, jieqaf mill-eżerċizzju tal-funzjonijiet ta' nutar:

Iżda kwalunkwe nutar li jaqa' taħt dan is-subartikolu ma jkunx jista' jipprattika bħala nutar ħlief fil-kapaċità kif jissemma f'dan is-subartikolu, u għalhekk ma għandux, matul iż-żamma ta' dik il-kariga, jieqaf milli jeżerċita l-funzjonijiet ta' nutar, iżda biss safejn dawk il-funzjonijiet ikunu relatati mal-eżekuzzjoni jew il-konservazzjoni ta' atti, li fihom il-Gvern jew xi korp ġuridiku imwaqqaf bil-liġi huwa parti, u l-ħruġ ta' kopji u estratti minn dawn l-atti.";

(d) minnufih wara s-subartikolu (3) tiegħu, għandhom jiżdiedu s-subartikoli ġodda li ġejjin:

"(4) F'kull każ fejn nutar jieqaf milli jeżerċita l-funzjonijiet tiegħu taħt dan is-subartikolu, il-Qorti għandha tiddekreta li dak in-nutar waqaf milli jeżerċita l-funzjonijiet tiegħu u għandha tordna lin-nutar biex jillega u jikkonsenja kwalunkwe atti oriġinali li jkunu għadhom fil-pussess tiegħu lill-Uffiċjal Revizur assenjat lilu għas-sena kurrenti ta' revizjoni, fi żmien li jkun stabbilit fid-digriet

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tagħha, u fin-nuqqas, il-penali taht l-artikolu 94A(18)(a) japplikaw *mutatis mutandis*. Il-Qorti għandha wkoll tahtar Nutar Konservatur. Il-Qorti għandha tordna li dak id-digriet ikun notifikat lin-nutar, lill-Avukat tal-Istat, lin-Nutar Prinċipali tal-Gvern u lill-President tal-Kunsill Nutarili u l-imsemmi digriet għandu jkun ippubblikat fil-Gazzetta tal-Gvern bil-mod stabbilit fil-paragrafu (b).

(5) Sussegwentement għal din il-pubblikazzjoni, in-Nutar Prinċipali tal-Gvern għandu jniżżel l-isem ta' dak in-nutar fil-lista tal-ismijiet tan-nutara li ma jkunux qed jeżerċitaw il-funzjoni tagħhom, liema lista għandha tinzamm min-Nutar Prinċipali tal-Gvern u tkun pubblikata bl-istess mod tal-lista taht l-artikolu 4."

Emenda tal-artikolu 152 tal-Att prinċipali.

7. Is-subartikolu (1) tal-artikolu 152 tal-Att prinċipali, għandu jiġi emendat kif ġej:

(a) fil-paragrafu (ċ) tiegħu, minnufih wara l-kliem "permezz ta' *microfilming*", għandhom jiżdiedu l-kliem "u bi kwalunkwe forma oħra ta' digitalizzazzjoni"; u

(b) fil-paragrafu (d) tiegħu, minnufih wara l-kliem "permezz ta' *microfilming* għandhom jiżdiedu l-kliem "u bi kwalunkwe forma oħra ta' digitalizzazzjoni".

Għanijiet u Raġunijiet

L-għanijiet u r-raġunijiet ta' dan l-Abbozz ta' Liġi huma sabiex tiġi ċċarata l-pożizzjoni skont il-liġi fir-rigward ta' minn min, u ċ-ċirkostanzi li fihom il-funzjonijiet ta' nutar jistgħu jiġu eżerċitati, u wkoll sabiex jiġu ċċarati ċ-ċirkostanzi meta nutara jistgħu jirrifjutaw jew xort'oħra li jagħtu s-servizzi tagħhom. L-Abbozz ta' Liġi għandu jaċċerta wkoll bażi soda legali għad-digitalizzazzjoni tal-volumi kollha tal-atti miżmuma fl-Arkivji Nutarili.

**A BILL
entitled**

AN ACT to amend the Notarial Profession and Notarial Archives Act, Cap. 55.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by authority of the same, as follows:-

1. The short title of this Act is the Notarial Profession and Notarial Archives (Amendment) Act, 2020, and this Act shall be read and construed as one with the Notarial Profession and Notarial Archives Act, hereinafter referred to as "the principal Act".

Short title.
Cap. 55.

2. Immediately after sub-article (4) of article 2 of the principal Act, there shall be added the following new sub-article:

Amendment of
article 2 of the
principal Act.

"(5) Notaries are empowered to give advice on any of the functions and powers vested in them in terms of the provision of this article, and on any matter or competence attributed to them, whether exclusively or otherwise, under any law or regulation, and in general, on anything relating to the proper discharge of their obligations or engagement, and this notwithstanding anything that may be stipulated under any other law."

3. Sub-article (2) of article 3 of the principal Act, shall be amended as follows:

Amendment of
article 3 of the
principal Act.

(a) immediately after the words "Notary Public with the Lands Authority," wherever they occur, there shall be added the words "or Notary Public with the Housing Authority, under the provisions of article 22(5), or Notary Public with any other Government Authority or Agency,"; and

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(b) the words "Director or Assistant Director of the Land Registry", wherever they occur, shall be substituted by the words "Land Registrar or Assistant Land Registrar".

Amendment of article 8 of the principal Act.

4. In sub-article (1) of article 8 of the principal Act, immediately after the words "each year", there shall be added the words "or at such other date during that year as the Board referred to in article 7 may, after due deliberation, deem necessary to establish".

Amendment of article 11 of the principal Act.

5. Article 11 of the principal Act, shall be amended as follows:

(a) sub-article (1) thereof, shall be substituted by the following:

"(1) The notary may refuse his services or terminate any engagement for his services at his discretion without justification, and will not be required to consider the effect or consequence of such refusal.";

(b) sub-article (2) thereof, shall be substituted by the following:

"(2) Without prejudice to the generality of the foregoing sub-article, the notary shall not be bound to give his services or to finalise any engagement, if subsequent to the acceptance of the engagement:

(a) the parties fail to deposit with him the amount of duties, taxes, fees and expenses in respect of any service or deed, either at the moment of publication of the deed or on the execution of the service requested; or

(b) if his services are required on a public holiday or between 9.00 p.m. of one day and 8.00 a.m. of the following day.";

(c) sub-article (3) thereof, shall be substituted by the following:

"(3) The provisions of sub-article (1) and (2) thereof, shall not apply in the case of a will and the provision of paragraph (b) of sub-article (2) shall not apply in the case of a sea protest.".

Amendment of article 14 of the principal Act.

6. Article 14 of the principal Act, shall be amended as follows:

(a) in sub-article (1) thereof:

(i) the words "A notary -", shall be substituted by the words "A notary shall cease from exercising his functions:"

(ii) paragraph (a) thereof, shall be substituted by the following:

"(a) if he accepts a government employment, or is in full-time employment, or else if he exercises a profession or assumes any office incompatible with the office of notary:

Provided that a notary who accepts an appointment to act as Chief Notary to Government or Notary to Government or Notary employed with any Government Ministry or Department or Notary Public with the Lands Authority or Notary Public with the Housing Authority, under the provisions of article 22(5), or Notary Public with any other Government Authority or Agency, for a continuous period not exceeding three months, may continue to exercise his functions as a Notary Public.";

(iii) paragraph (b) thereof, shall be substituted by the following:

"(b) if he is permanently absent from Malta for a continuous period exceeding five years or fails to publish any act for a period of seven consecutive years preceding the current basis year of review, to be ascertained annually, from the basis year of review 2020. The assigned Review Officer shall ascertain this fact during the period of review, and shall upon request, be given any relevant information by the notary himself or the Office of the Notary to Government or the Notarial Council. The review officer, shall, by application, report the matter to the Court of Revision of Notarial Acts and the Court shall, if satisfied that the facts subsist, decree that the said notary has ceased to exercise his functions and shall order the notary to bind and consign any original acts still in his possession to the Review Officer within a time so established in its decree, failing which the penalties under article 94A(18)(a) shall apply *mutatis mutandis*, and the said Court shall appoint a Notary Keeper, where it deems expedient to do so. The Court shall cause the said decree to be

served on the notary, at the address registered with the Notarial Council, or if residing abroad, by electronic mail to the last electronic address registered with the Notarial Council, on the State Advocate, the Chief Notary to Government and the President of the Notarial Council, and the mentioned decree shall be published in the Gazette. Subsequent to this publication, the Chief Notary to Government shall cause the name of the said notary to be listed with the names of notaries not exercising their functions, which list shall be kept by the Chief Notary to Government and published in the same manner as the list under article 4.";

(iv) in paragraph (c) thereof, the words "permanently loses his warrant as Notary", shall be deleted;

(v) in paragraph (d) thereof, the words "permanently loses his warrant as Notary", shall be deleted;

(vi) in paragraph (e) thereof, the words "permanently loses his warrant as Notary", shall be deleted;

(vii) in paragraph (f) thereof, the words "permanently loses his warrant as Notary", shall be deleted;

(viii) in paragraph (g) thereof, the words "shall cease from exercising his functions", shall be deleted.;

(ix) in paragraph (h) thereof, the words "cease from exercising his functions", shall be deleted and the words "assume his warrant", shall be substituted by the words "be rehabilitated";

(b) in sub-article (2) thereof, the words "upon sitting for the qualifying examination referred to in article 6(1)(f).", shall be substituted by the words "upon the advice of the Board referred to in article 7 which shall ascertain that the notary is adequately proficient, up-to-date and qualified to resume the exercise of all the powers and functions of a Notary Public.";

(c) sub-article (3) thereof, shall be substituted by the following:

"(3) The notary who accepts the office of Chief Notary to Government, Notary to Government, Notary in full-time employment with a Government Ministry or Department or Authority, Notary Public with the Lands Authority, the office of Director or Assistant Director of the Public Registry or Land Registrar or Assistant Land Registrar, or a notary who is in full-time employment with a commercial lending bank or similar financial institution or entity, or with any Government agency or limited liability company or any other entity, where the Government of Malta is either the beneficial owner or has a controlling interest therein, or in any other case where any notary continues to carry out, in the regular exercise of his office or employment, any one of the powers and functions listed in article 2, shall not during the tenure of such office or employment, cease from the exercise of the functions of notary:

Provided that, any notary falling within the scope of this sub-article may not practise as a notary except in the capacity as stated in this sub-article, and shall not therefore, during the tenure of such office, cease from the exercise of the functions of notary, but only in so far as such functions relate to the execution and custody of deeds to which the Government or any corporate body established by law is a party, and the issue of copies or extracts from such deeds.";

(d) immediately after sub-article (3) thereof, there shall be added the following new sub-articles:

"(4) In any case where a notary ceases to exercise his functions in terms of this sub-article, the Court shall decree that the said notary has ceased to exercise his functions and shall order the notary to bind and consign any original acts still in his possession to the Review Officer assigned to him for the current year of review, within a time so established in its decree, failing which, the penalties under article 94A(18)(a) shall apply *mutatis mutandis*. The Court shall also appoint a Notary Keeper. The Court shall cause the said decree to be served on the notary, on the State Advocate, the Chief Notary to Government and the President of the Notarial Council and the said decree shall be published in the Government Gazette in the manner established in paragraph (b).

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(5) Subsequently to this publication, the Chief Notary to Government shall cause the name of the said notary to be listed with the names of notaries not exercising their function, which list shall be kept by the Chief Notary to Government and published in the same manner as the list under article 4."

Amendment of
article 152 of
the principal
Act.

7. Sub-article (1) of article 152 of the principal Act, shall be amended as follows:

(a) in paragraph (c) thereof, immediately after the words "by microfilming", there shall be added the words "and by any other form of digitisation";

(b) in paragraph (d) thereof, immediately after the words "by microfilming", there shall be added the words "and by any other form of digitisation".

Objects and Reasons

The objects and reasons of this Bill are to clarify the position at law as regards by whom, and the circumstances in which the functions of a notary may be exercised, and also to clarify the circumstances when notaries may decline or otherwise to render their services. The Bill shall also ensure a sound legal basis for the digitisation of all volumes of deeds housed at the Notarial Archives.
