

CHAPTER 117

THE REGISTRATION OF DOCUMENTS ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 117

THE REGISTRATION OF DOCUMENTS ACT

An Act relating to the registration of documents.

[1st January, 1924]

R.L. Cap. 334

Ords. Nos.

14 of 1923

16 of 1926

11 of 1932

38 of 1939

33 of 1941

43 of 1955

3 of 1959

22 of 1960

Act No.

55 of 1963

G.Ns. Nos.

478 of 1962

116 of 1965

PRELIMINARY PROVISIONS (ss 1-7)

[PCh117s1]1. Short title

This Act may be cited as the Registration of Documents Act.

[PCh117s2]2. Interpretation Ord. No. 8 of 1921

In this Act, unless the context otherwise requires—

"authorised person" means a person or class of persons authorised by the Minister under the provisions of section 12;

"land" includes land, buildings, rights of way, lights, ferries, fisheries, and benefits to arise out of land or things embedded or rooted in the earth, or attached to what is so

embedded for the permanent beneficial enjoyment of that to which it is so attached, or permanently fastened to anything so embedded, for the permanent beneficial enjoyment of that to which it is so attached, or permanently fastened to anything so embedded, rooted, or attached, and includes mines and minerals, and mineral oil as defined by the Mining (Mineral Oil) Act and standing trees and timber and growing crops and grass;

"Minister" means the minister responsible for lands;

"native" means a member of an African race, and includes an Arab, a Swahili, and a Somali;

"Ordinance of 1921" means the Registration of Documents Ordinance, 1921;

"prescribed" means prescribed by rules under this Act.

[PCh117s3]3. Establishment of registry Ord. No. 33 of 1941 Sch.

(1) There shall be established at Dar es Salaam a registry of documents (in this referred to as "the registry") for the purpose of registering documents in accordance with the provisions of this Act.

(2) For conducting the business of the registry the Minister may, by notice published in the Gazette, appoint a registrar of documents and may from time to time similarly appoint as many assistant registrars of documents (in this Act referred to as the "registrar" and "assistant registrar" respectively) as he thinks fit.

(3) Subject to the directions of the registrar, an assistant registrar shall have all the powers and perform all the duties and be subject to all the obligations of the registrar.

[PCh117s4]4. Registers to be kept Ords. Nos. 33 of 1941 Sch.; 43 of 1955 s. 3

The following registers shall be kept in the registry—

- (a) a register of documents of which the registration is compulsory;
- (b) a register of documents of which the registration is optional; and
- (c) a presentation book as hereinafter provided.

[PCh117s5]5. Transfer of documents relating to land to the registry

Subject to the directions and supervision of the registrar, and to such exceptions as he may prescribe, all copies and duplicates of documents relating to land executed before the first day of April, 1921, and registered or recorded in any German public register of documents or in any of the Government political officers, and every register of documents of which the registration was compulsory under the Ordinance of 1921 kept at a district registry under that Ordinance shall be sent to and preserved at the registry.

[PCh117s6]6. Continuance of existing registries and registers

Subject as aforesaid, the registries and registers established under the Ordinance of 1921 shall be continued as if and registers they had been established under this Act.

[PCh117s7]7. Transfer of documents and registers to the registry Ord. No. 33 of 1941 Sch.

Subject as aforesaid, all documents registered and all registers kept at the principal registry or at a district registry prior to the first day of April, 1942 1, shall be delivered to the registrar and kept in his custody at the registry. Until such delivery the provisions of sections 37 and 38 shall continue to apply to such documents and registers and the fees prescribed in the Schedule hereto for searches, inspection, copies of documents and plans shall continue to apply to such documents and registers:

Provided that for the purposes of this section the reference to "the registrar" in section 38 shall be construed as a reference to the officer who for the time being has custody of the documents and registers mentioned in this section.

COMPULSORY REGISTRATION (ss 8-10)

[PCh117s8]8. Documents of which registration is compulsory R.L. Cap. 334 s. 113(3); Ord. No. 22 of 1960; Act No. 55 of 1963

(1) The registration of the following documents if executed made after the commencement of this Act is compulsory—

(a) non-testamentary documents which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest;

(b) non-testamentary documents which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest.

(2) Nothing in clauses (a) and (b) of subsection (1) applies to—

(a) any composition deed;

(b) any order of court not being a decree;

(c) any document relating to shares in a registered company notwithstanding that the assets of the company consist in whole or in part of land;

(d) any debenture issued by any such company and not creating, declaring, assigning, limiting, or extinguishing any right, title, or interest to or in land except in so far as it entitles the holder to the security afforded by a registered document whereby the

company has mortgaged, charged, conveyed, or otherwise transferred the whole or part of its land or any interest therein to or in favour of trustees upon trust for the benefit of the holders of such debenture;

(e) any endorsement upon or transfer of any debenture issued by any such company;

(f) any document not itself creating, declaring, assigning, limiting, or extinguishing any right, title, or interest to or in land, but merely creating a right to obtain another document which will when executed create, declare, assign, limit, or extinguish any such right, title, or interest;

(g) any endorsement on a mortgage deed or charge acknowledging the payment of the whole or any part of the money secured thereby and any other receipt for payment of money due under a mortgage or charge when the endorsement or receipt does not purport or operate to extinguish the mortgage or charge;

(h) any document evidencing the grant of a lease, or a right of occupancy, for a term of five years or less or from year to year or for periods of less than a year, whether or not the grant includes an initial fixed term, unless such initial fixed term exceeds four years, any document if the only interest in land dealt with thereby is derived from such a grant, or is an interest in standing trees or timber or growing crops or grass, where such trees timber or growing crops or grass are to be removed within one year from the date of the document;

(i) any document when the only interest in land dealt with thereby is an interest in fixtures or growing crops registered as a bill of sale;

(j) a mining lease or mineral oil mining lease granted under the Mining Act, or the right to work the same, and such lease or document is registered pursuant to the Mining Act *, or any regulations made or to be made under any of the said Ordinances;

(k) any document if the only interest in land dealt with thereby relates to land registered under the Land Registration Act *;

(l) a water right within the meaning of the Water Act *;

(m) a document disposing, or evidencing the disposition, of land in accordance with customary law if the law applicable to the disposition is customary law and the land is subject neither to a Government lease nor a right of occupancy granted under the Land Act.

[PCh117s9]9. Unregistered document affecting land invalid

No document of which the registration is compulsory shall be effectual to pass any land or any interest therein or render such land liable as security for the payment of money, or be received as evidence of any dealing affecting such land unless and until it has been registered.

[PCh117s10]10. Priority determined by registration not by execution Ord. No. 3 of 1959

Documents of which the registration is compulsory shall, as between themselves, be entitled to priority in the order in which they are registered and not in the order in which they are executed or dated *:

Provided that an easement registered in the Water Grants record maintained under the Water Act * between the first day of October, 1954, and the date upon which the

Water Act came into operation shall in so far as such easement affects land other than land registered under the Land Registration Act *, be deemed to have been registered during that period under the provisions of section 8 of this Act.

OPTIONAL REGISTRATION (s 11)

[PCh117s11]11. Optional registration of other documents

Any document of which the registration is not compulsory, whether executed before or after the commencement of this Act, may be registered at the option of the holder. Provided that the registrar may refuse to register any such document for reasons to be stated by him in writing. Such refusal shall be subject to appeal in manner hereinafter mentioned.

PROOF OF EXECUTION AND PRESENTATION FOR REGISTRATION (ss 12-17)

[PCh117s12]12. Proof of documents Ord. No. 43 of 1955 s. 6; G.N. No. 478 of 1962

(1) The Registrar may, by notice published in the Gazette, authorise any persons or class of persons to attest the execution of documents under the provisions of this Act.

(2) No document of which registration is compulsory shall be registered unless—

(a) in the case of a document executed or made on or after the first day of May, 1956, 2 the execution by each person executing the document is proved by attention in the prescribed manner by an authorised person; and

(b) in the case of documents executed or made before the first day of May, 1956, 3 the execution by each person executing the document is proved in the manner provided by this Act before that date for documents of which registration is compulsory.

(3) Where the execution by any person of a document duly registered under this Act purports to have been proved in the manner provided for by this section, such document shall in all proceedings be presumed to be duly executed by that person unless the contrary is proved.

[PCh117s13]13. Registration of orders granting roads of access Ords. Nos. 38 of 1938 s. 2; 43 of 1955 s. 7; 38 of 1939 s. 3

(1) Notwithstanding the provisions of section 12 and of any other law for the time being in force any order made under the provisions of the law relating to highways granting rights to roads of access shall for the purposes of registration be sufficiently proved if it bears the signature of the person authorised by law to grant the same.

(2) For the registering of an order of a fee of five shillings shall be payable.

(3) Any order made before the 30th day of December, 1939 4 under the provisions of the Highways Act * may be registered with three months from that date without payment of any additional fee and thereupon shall be deemed to have been registered within three months from its execution.

[PCh117s14]14. Presentation in person or by agent

Every document presented for registration shall be presented by one of the parties executing or claiming an interest under it or by his attorney duly appointed or by an advocate of the High Court, or, if such party is a minor or of unsound mind, by the guardian, next friend, or other person appointed by the court to act on behalf of such minor or person of unsound mind in the matter, or by the duly appointed attorney of such guardian, next friend, or other person, or by an advocate of the High Court.

[PCh117s15]15. Presentation by post Ord. No. 11 of 1932 s. 4

A document may be presented for registration through the post or under cover if it is accompanied by the appropriate fee and by a letter requesting registration signed by a person who has power to present the document for registration.

[PCh117s16]16. Identity of person requesting registration

The registrar may, if he thinks fit, take steps to satisfy himself as to the identity of the person presenting a document for registration, and of his right to present the document for registration.

[PCh117s17]17. Power to summon witnesses Ord. No. 33 of 1941 Sch.

If the registrar considers that the testimony of any person is necessary to establish the authenticity of any document presented for registration or the identity of the person presenting a document for registration or his right to present it for registration, the registrar may in his discretion call upon the court of the Resident Magistrate in Dar es Salaam to issue a summons requiring him to appear at the registry either in person or by duly authorised agent as in the summons may be mentioned and at a time named therein, and may examine the person so summoned on oath which the registrar is hereby authorised to administer.

METHOD OF REGISTRATION (ss 18-24)

[PCh117s18]18. Presentation book Ords. Nos. 33 of 1941 Sch.; 43 of 1955 s. 8

(1) The registrar shall keep a book to be called the "presentation book" in which shall be entered a short description of every document presented for registration with the day and hour and, if required by the person presenting the document, the minute of

presentation, and for the purpose of priority the time of presentation shall be taken as the time of registration. The registrar in entering memorials upon the documents embodied in the register and endorsing a memorial upon a document to be registered shall take the time from the presentation book as the time of registration.

(2) Documents sent by post or under cover and received during the hours of business shall be deemed to be received simultaneously immediately before the closing of the office for that day and those received between the time of closing and the next opening of the office for business shall be deemed to be received simultaneously immediately after such opening.

[PCh117s19]19. Duplicates to be registered

(1) Registration shall consist in the filing in the appropriate register of a duplicate or copy of the document presented for registration. Every duplicate or copy filed shall bear the number of the volume and folio in which the same is registered, the hour and date of registration, and also a certificate signed by the registrar that such duplicate or copy has been compared and verified with the original.

(2) A duplicate or copy of the document to be filed in the register shall be provided by the person presenting the document for registration.

(3) Such duplicate or copy may be printed, written, or typewritten:

Provided that the registrar may refuse to accept any duplicate or copy that is made on paper which, in his opinion is of a size unsuitable for filing or of insufficient substance to be durable, and may refuse to accept any typewritten duplicate or copy which, in his opinion, is typed by any method that does not produce a permanent impression.

(4) The registrar shall file all such duplicates or copies in the appropriate register in the order in which they are received by him, and shall number those filed in each register consecutively.

[PCh117s20]20. Maps and plans

Where a map or plan is comprised in or annexed to a document, a true copy of such map or plan must accompany the document when brought for registration and shall be filed in the register.

[PCh117s21]21. Memorial of registration

A memorial signed by the registrar shall be endorsed on the original of every document registered recording the hour and date at which it was presented for registration together with a note of the volume and folio of the register where it is registered, and such memorial shall be prima facie evidence of the due registration of the document.

[PCh117s22]22. Registration no guarantee of title Ord. No. 33 of 1941 Sch.

Where the document registered relates to land, the registrar shall cause to be endorsed on the original the words "registration implies no guarantee or admission of title by the Government."

[PCh117s23]23. Power of registrar to correct errors and omissions

Where any person alleges that any error or omission has been made in a register or that any entry or omission therein has been procured by mistake, the registrar shall, if he considers such allegation satisfactorily proved, correct such error, omission, or entry as aforesaid.

[PCh117s24]24. Registration not to cure defect or confer validity

Registration shall not cure any defect in any document registered or confer upon it any effect or validity which it would not otherwise have had except in so far as provided in this Act.

REFUSAL OF REGISTRATION (ss 25-31)

[PCh117s25]25. Power to refuse to register document executed by native

Where any party to a document presented for registration is a native, the registrar may, if he thinks fit, notwithstanding that the execution of the document by the native has been proved in by native manner provided by this Act, take such steps as he may consider necessary to ascertain whether the native understood the effect of the document before he executed it, and may refuse to register any such document the effect of which was not, in his opinion, understood by any native party thereto, or the terms of which, as respects any native, appear to be harsh and unconscionable.

[PCh117s26]26. Documents in foreign language

(1) The registrar may refuse to register any document not in the English language unless it is accompanied by a true English translation which shall be filed with the document.

(2) The registrar may require the accuracy of the translation and of the copy or duplicate of the original document supplied for registration to be certified or verified to his satisfaction.

[PCh117s27]27. Documents containing interlineations, blanks, erasures or alterations

The registrar may refuse to accept for registration any document in which any interlineation, blank, erasure, or alteration appears unless the persons executing the document affix their signatures or initials to such interlineation, blank, erasure, or alteration.

[PCh117s28]28. Description of land

The registrar may refuse to register a document relating to land unless it contains a description of such land sufficient for its proper identification, or a reference to some other registered document containing such a description.

[PCh117s29]29. Registrar to refuse to register certain documents

The registrar shall not register any document liable to stamp duty unless it is duly stamped, or any disposition of land by a native in favour of a non-native unless it has been approved.

[PCh117s30]30. Reasons for refusal to be recorded on request Ord. No. 43 of 1955 s. 9

Where the registrar refuses to register a document, he shall, if so requested by any party to such document, record his reasons for such refusal in writing and shall without payment or unnecessary delay give such party a copy of the reasons so recorded.

[PCh117s31]31. Appeal Ords. Nos. 33 of 1941 Sch.; 43 of 1955 s. 10

Where the registrar refuses to register a document presented to him, any person aggrieved by such refusal may within thirty days from the date of refusal institute in the High Court a suit for a decree directing the document to be registered in the appropriate

register, and notwithstanding anything contained in this Act the document shall be receivable as evidence in such suit.

CAVEATS (ss 32-35)

[PCh117s32]32. Power to lodge caveat Ord. No. 43 of 1955 s. 11

(1) Any person may by lodging with the register a caveat in the prescribed form and paying the prescribed fee require to be served with notice of the presentation for registration in the registry of any document executed by any person named in the caveat.

(2) A caveat shall be effective only for one year from its date, and only for such number of documents as are covered by the fee paid.

(3) The notice to be given to the person lodging the caveat shall be in the prescribed form and shall be sufficiently served if it is sent by post to the address mentioned in the caveat.

(4) It shall be the duty of the registrar to keep a list, which shall be open to inspection by the public without charge, showing the name of every person with respect to whom a caveat has been lodged and is subsisting and the name and address of the person who lodged the caveat, and to make every endeavour to comply with a caveat. But neither the registrar nor the Government shall be under any liability for failure or neglect to give the notice required by a caveat or for any error or omission in the notice.

[PCh117s33]33. Notice of claims of caveator

Every part to an instrument of which the registration is compulsory executed by a person with respect to whom a caveat has been lodged and is subsisting and whose name

appears in the list required by this Act to be kept shall be affected with notice of the claim by the person lodging the caveat.

[PCh117s34]34. Withdrawal of caveats

(1) A caveat may be withdrawn by the person who lodged it.

(2) The registrar shall, on the application of the person against whom a caveat has been lodged, remove the caveat if he is satisfied that the caveat is unnecessary or that the claim of the person lodging the caveat cannot be sustained.

(3) Any person aggrieved by a decision of the registrar under this section may within thirty days from the date of the decision institute a suit in the High Court praying for the reversal or variation of such decision.

[PCh117s35]35. Damages for unreasonable caveat

Any person injured by reason of the lodgment of a caveat without reasonable cause may recover compensation from the person who lodged it.

INDEXES AND SEARCHES (ss 36-38)

[PCh117s36]36. Indexes Ord. No. 33 1941 Sch.

There shall be kept at the registry indexes of all registered documents in such form and containing such particulars as the registrar may direct.

[PCh117s37]37. Registers may be searched

Subject to payment of the prescribed fees, all registers may be searched and examined by any applicant during the usual office hours and certified copies of any entry or document may be obtained if required, but no document filed in the register shall be permitted to be taken therefrom, and no applicant shall be permitted to copy any

document or to take any note or memorandum relating thereto except the registered number and the date of registration and an extract from or note of the effect of the document, but so that such extract or not shall not exceed sixty words in length.

[PCh117s38]38. Certified copy of registered document admissible in evidence

A copy certified under the hand of the registrar to be a true copy of any document registered under this Act shall be prima facie evidence of the contents of such document for all purposes subject to all just and lawful exceptions.

DOCUMENTS EXECUTED BEFORE COMMENCEMENT OF ORDINANCE (ss 39-42)

[PCh117s39]39. Documents executed on or after 1st April, 1921, but before commencement of Ordinance

(1) Subject to the provisions of this section, this Act applies to documents executed or made on or after the first day of April, 1921, but before the commencement of this Act manner as it applies to documents executed after such commencement.

(2) The registration of a decree or award made before the commencement of this Act is not compulsory.

(3) The registration of a document executed before the commencement of this Act is not compulsory if the only interest dealt with thereby is a lease of land for a year or less or an interest in minerals, mining rights, timber, growing crops, or grass.

(4) It shall be sufficient proof of the execution of a document executed before the commencement of this Act of which the registration is compulsory if every signature thereto is attested by one of the following persons—

(a) within the Territory—

any European officer in the service of the Government of the Territory or a bank manager;

(b) without the Territory—

a notary public; the mayor or recorder or other chief officer of any city or municipal corporation within the United Kingdom or Eire the officer administering the Government of or the judge of any court of record in any British possession or protectorate; the British consular officer at any foreign place; the police magistrate, resident magistrate, or special magistrate in any British possession or protectorate; the manager or accountant of any branch of any bank incorporated under the law of the United Kingdom or Eire; and another person authorised in that behalf by the Governor:

Provided that where an official holding a seal of office attests any such document his signature must be authenticated by his official seal.

(5) When the signature by any person of a duly registered document executed before the commencement of this Act purports to have been attested in manner provided by this section, such document shall in all proceedings be presumed to have been duly executed by that person unless the contrary is proved.

[PCh117s40]40. Registration of documents executed before 1st April, 1921

(1) If any document executed after the occupation of the Territory by the Allied and Associated Powers but before the first day of April, 1921, the registration of which had it been executed after the day aforesaid but before the commencement of this Ordinance would have been compulsory has not been registered under the Ordinance of

1921, or, before the commencement of that Ordinance, in a registry established by German law or at a political office of the Government, such document shall, before the expiration of twelve months from the commencement of this Act, be registered under this Act and, if it is not so registered, shall, as regards any land affected thereby, become void and of no effect.

(2) No proof of the execution of a document to which this section applies shall be required.

[PCh117s41]41. Documents already registered Ord. No. 11 of 1932 s. 2(2)

(1) All documents executed before the first day of April, 1921, and registered or recorded in any German public register of documents in Mainland Tanzania or in any of the Government offices, and all documents registered under the Act Ordinance of 1921 shall be deemed to have been registered under this Act.

(2) Notwithstanding anything contained in this Act any document relating to land not the subject of a grant or lease from the former German Government or this Government but in respect of which there is an entry in any land register or Grundbuch established under German law which was, prior to the 13th day of May, 1932 5, registered in the principal registry shall be deemed to have been duly registered within the meaning of this Act.

[PCh117s42]42. Priority of documents executed 1st April, 1921, not determined by registration

The provisions of this Act as to the determination of priority by the date of registration do not apply to documents before executed before the first day of April, 1921.

SUPPLEMENTAL (ss 43-48)

[PCh117s43]43. Power for High Court to cancel registration

Where it is shown to the satisfaction of the High Court that any registered instrument is a forgery, or has been registered without due authority or in contravention of any provision of this Act or the Ordinance of 1921 if applicable, or where any registered instrument is rectified or set aside by a competent court, the High Court may order the registered duplicate or copy to be removed from the register or to be rectified in such manner as the circumstances may require, and may order the original instrument to be brought into court and the memorial of registration to be cancelled or altered.

[PCh117s44]44. Indemnity of registrars and assistant registrars

Neither the registrar nor any assistant registrar shall be liable to any suit, claim, or demand by reason of anything in good faith done or refused in his official capacity.

[PCh117s45]45. Defect in appointment or procedure

Nothing done in good faith pursuant to this Act or the Act of 1921 by the registrar or any assistant registrar shall be deemed invalid merely by reason of any defect in his appointment or procedure.

[PCh117s46]46. Fees

The fees specified in the Schedule hereto shall be payable for the matters to which they relate, but may be altered or added to the matters to which they relate, but may be altered or added to by rule made under the next succeeding section.

[PCh117s47]47. Power for Minister to make rules

The Minister may make rules as to any matter which may or is to be prescribed, and generally for carrying this Act into effect.

[PCh117s48]48. Repeals

[Repeals the Ordinance of 1921.]

SCHEDULE

FEES

THE REGISTRATION OF DOCUMENTS (AMENDMENT OF SCHEDULE) RULES

(Section 47)

G.Ns. Nos

113 of 1923

59 of 1930

159 of 1932

43 of 1953

148 of 1954

91 of 1956

116 1965

1. These Rules may be cited as the registration of Documents (Amendment of Schedule) Rules.

2. The part of the Schedule to the Registration of Documents Ordinance prescribing fees, as amended from time to time, is hereby further amended by deleting items 1, 2, 4, 5, 6 and 7 thereof and substituting therefor the following new items—

"1. (a) For the registration of a transfer, conveyance or assignment (other than that of trust property from a trustee to a trustee or from a trustee to a beneficiary or a transfer incidental to the reconstruction of a company or the amalgamation of two or more companies) of an interest in land or for the registration of a lease—

Shs.

Where the consideration or value does not exceed Shs. 500/-

5/-

Where the consideration or value exceeds Shs. 500/- but not Shs.

1,000/- 10/-

Where the consideration or value exceeds Shs. 1,000/- but not Shs.

2,000/- 20/-

Where the consideration or value exceeds Shs. 2,000/- but not Shs.

5,000/- 30/-

Where the consideration or value exceeds Shs. 5,000/- but not Shs.

10,000/= 40/=

Where the consideration or value exceeds Shs. 10,000/- but not

Shs. 20,000/- 50/-

Where the consideration or value exceeds Shs. 20,000/- 60/-

(b) For the registration of any mortgage or charge of an interest in land—

Where the amount or value secured does not exceed Shs. 10,000/-
30/-

Where the amount or value secured exceeds Shs. 10,000/= but not
Shs. 20,000/- 40/-

Where the amount or value secured exceeds Shs. 20,000/- but not
Shs. 30,000/= 50/-

Where the amount or value secured exceeds Shs. 30,000/= 60/-

2. (a) For registering any other document not herein otherwise expressly
provided for— 35/-

(b) For registering any document of which the registration is not
compulsory— 30/-

3. For a general search— 30/-

4. For inspection of a particular document—

(a) where registration reference is supplied by applicant

(b) where it is not 5/-

15/-

5. For uncertified copy of any document in the custody of the Registrar, or of any extract therefrom or of any plan— 5/-

6. For certifying copy of any document or extract therefrom or copy of any plan 10/-

7. For certified translations into English of German documents—

where the documents contains 100 words or part thereof

in any other case, for every 100 words or part thereof 20/-

10/-

No fee shall be charged for registering a document or supplying a copy of a document or plan at the request of the Government.

No fee shall be payable for a general search or an inspection of a particular document where the search or inspection is made by a Government official for the purposes of Government business.