

REPUBLIC OF SOUTH AFRICA

ELECTRONIC DEEDS REGISTRATION SYSTEMS BILL

(As introduced in the National Assembly as a section 75 Bill; Bill published in Government Gazette No. 40686 of 2017)(The English text is the official text of the Bill)

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B – 2016]

040816nim

BILL

To provide for electronic deeds registration, having regard to legislation regulating electronic communication and transactions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF SECTIONS

Sections

CHAPTER 1

INTERPRETATION

1. Definitions

CHAPTER 2**ELECTRONIC DEEDS REGISTRATION SYSTEM**

2. Development, establishment and maintenance of the Electronic Deeds Registration System

CHAPTER 3**GENERAL PROVISIONS**

3. Validity of deeds and documents
4. Authorised users

CHAPTER 4

5. Regulations
6. Transitional provisions
7. Short title and commencement of Act

CHAPTER 1

INTERPRETATION

Definitions

1. In this Act, unless the context indicates otherwise—

"authorised user" means a person that has been registered as an authorised user as contemplated in section 4 and **"user"** has a corresponding meaning;

"Chief Registrar" means the Chief Registrar of Deeds appointed in terms of section 2 of the Deeds Registries Act;

"conveyancer" means a conveyancer as defined in section 102 of the Deeds Registries Act;

"deed or document", for the purpose of any act of registration, execution or filing in terms of the Deeds Registries Act and Sectional Titles Act or any other law, means a deed or document in the form of a data message as defined in the Electronic Communications and Transactions Act, 2002, generated, submitted, received or stored by electronic means in the electronic deeds registration system, and includes scanned images of a deed or document;

"Deeds Registries Act" means the Deeds Registries Act, 1937 (Act No. 47 of 1937), as amended from time to time;

"deeds registry" means a deeds registry as defined in section 102 of the Deeds Registries Act;

"Electronic Communications and Transactions Act, 2002" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), as amended from time to time;

"electronic deeds registration system" means the system as provided for in section 2;

"executed" means executed in a deeds registry;

"Minister" means the Minister of Rural Development and Land Reform;

"prescribe" means prescribe by regulations;

"registered" means registered in a deeds registry and includes registration;

"Registrar" means the Registrar of Deeds appointed in terms of section 2 of the Deeds Registries Act;

"regulation" means a regulation made under section 5;

"Sectional Titles Act", means the Sectional Titles Act, 1985 (Act No. 95 of 1986), as amended from time to time; and

"signature" in respect of any act performed in terms of the Deeds Registries Act and Sectional Titles Act, by a conveyancer, statutory officer or registrar in attesting his or her signature to a deed or document or a scanned image of a deed or document, means an advanced electronic signature as defined in section 1 of the Electronic Communications and Transactions Act, 2002.

CHAPTER 2

ELECTRONIC DEEDS REGISTRATION SYSTEM

Development, establishment and maintenance of Electronic Deeds Registration System

2. (1) The Chief Registrar of Deeds must, subject to the Electronic Communications and Transactions Act, 2002, develop, establish and maintain the electronic deeds registration system using information and communications technologies for the preparation, lodgment, registration, execution and storing of deeds and documents registrable in terms of this Act or any other related law.

(2) The Minister may prescribe—

- (a) the functional requirements of the electronic deeds registration system;
- (b) the technical specifications for the electronic deeds registration system;
- (c) the specifications for the interface between the electronic deeds registration system and any party interfacing in the system which will be authorised to access the electronic deeds registration system; and
- (d) the standards governing the information security of the electronic deeds registration system.

(3) The Minister may prescribe procedures and standards—

- (a) governing the operation of the electronic deeds registration system;
- (b) for the processing of deeds and documents using the electronic deeds registration system; and

(c) for the retention and subsequent production of deeds and documents, or any other electronic records, which may be pertinent to the registration of rights in the deeds registry or that may be required for the administrative or legal proceedings.

(4) The Chief Registrar of Deeds may issue practice and procedure directives that must be complied with by users interacting with the electronic deeds registration system, including but not limited to, information security standards that must be complied with in the processing of deeds and documents prior to and during the communication of the deeds and documents, and any other electronic information necessary for the processing of deeds and documents lodged in the electronic deeds registration system.

CHAPTER 3

GENERAL PROVISIONS

Validity of deeds and documents

3. Subject to section 14 of the Electronic Communications and Transactions Act, 2002, a deed or document generated, registered and executed electronically and any other registered or executed deed or document scanned or otherwise incorporated into the electronic deeds registration system by electronic means is for all purposes deemed to be the only original and valid record: Provided that any registered deed or document in existence at the deeds registries on the date of the coming into operation

of this Act, is deemed to be the original and valid deed or document until it is incorporated into the electronic deeds registration system in terms of this Act.

Authorised users

4. Any user of the electronic deeds registration system must be authorised and registered in the manner and under the conditions as may be prescribed.

CHAPTER 4

Regulations

5. (1) The Minister may, on the recommendation of the Regulations Boards referred to in section 9 of the Deeds Registries Act and section 54 of the Sectional Titles Act, make regulations relating to—

- (a) the procedures for the electronic lodgement of deeds or documents;
- (b) the requirements for electronic signatures;
- (c) the procedures for electronic record storing by deeds registries;
- (d) the manner of identification of the person who prepares, executes, lodges, registers or stores any deed or document required or permitted to be prepared, executed, lodged, registered or stored in any deeds registry;
- (e) the manner in which electronic payment of fees may be introduced;

- (f) the procedure and manner for accessing the electronic deeds registration system for information purposes only;
- (g) the manner and conditions for the authorisation and registration of any user of the electronic deeds registration system; and
- (h) any matter that may be prescribed in terms of this Act.

(2) Different regulations may be made in respect of the different deeds registries as regards to the specific matters to be dealt with in terms of this Act.

Transitional provisions

6. (1) This Act does not affect the validity of any registrations effected prior to the coming into operation thereof.

(2) The Registrar must continue with the registration, execution and filing of deeds and documents as prescribed by the Deeds Registries Act and the Sectional Titles Act until the electronic deeds registration system and related provisions or regulations are in place, where after the registration procedures in terms of the Deeds Registries Act and the Sectional Titles Act will be discontinued in respect of all deeds, documents or deeds registries.

Short title and commencement of Act

7. (1) This Act is called the Electronic Deeds Registration Systems Act, 2016, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

(2) The President may set different dates for the coming into operation of the different provisions of this Act.

(3) The President may set different dates for the coming into operation of any or certain of the provisions of this Act for the different deeds registries.

200816nim

MEMORANDUM ON OBJECTS OF ELECTRONIC DEEDS REGISTRATION SYSTEMS BILL, 2016**1. BACKGROUND**

1.1 Security of title in South Africa is not explicitly guaranteed by statute, but flows from the unique deeds registration system which is based on specific responsibilities assigned by the Deeds Registries Act, 1937 (Act No. 47 of 1937) ("the Act"), to both the conveyancer (who prepares and lodges deeds and documents) and the Registrar of Deeds whose registration function is calculated to afford security of title.

1.2 A computer system known as the Deeds Registration System is in place for the purpose of maintaining the electronic land register. Apart from this electronic process, the preparation and lodgement by the conveyancer, as well as the processing of deeds and documents by the Registrar of Deeds, take place manually. With the advent of the Internet, e-commerce and global computerisation, there has been an increased need for electronic service delivery and a number of new challenges are now facing the Deeds Registries, for example, the inability of the present registration infrastructure and resources to accommodate the increase in volume in respect of an anticipated 20 million land parcels of the government's land reform measures; the need to link with the electronic Cadastral Information System in order to improve efficiency and accuracy of South Africa's land information management; the demand for decentralisation of services in order to effect delivery at point of need; the necessity for consolidating and rationalising diversified registration procedures created through legislation by previous political dispensation; and the need to provide registration capability for other forms of land tenure that the government may introduce in future.

1.3 To meet the above-mentioned challenges, the Office of the Chief Registrar of Deeds embarked on a project for the implementation of e-Commerce principles in order to facilitate an electronic deeds registration system ("e-DRS"). The e-DRS will provide for, amongst other things, the registration of large volumes of deeds effectively; improved turn-around times for providing registered deeds and documents to clients; provide country wide access to deeds registration services; enhanced accuracy of examination and registration; availability of information to the public; and security features including confidentiality, non-repudiation, integrity and availability.

1.4 The Electronic Deeds Registration Systems Bill, 2016 ("the Bill") has been drafted to provide legislation that is required for the development of an electronic deeds registration system.

2 CURRENT POSITION

2.1 The Deeds Registries Act, 1937 (Act No. 47 of 1937), and the Sectional Titles Act, 1986 (Act No. 95 of 1986) provides for registration processes to take place manually. However, a need exists for a fully electronic deeds registration system to provide, amongst other things, for a fast process for the registration of ownership of land.

2.2 The e-DRS aims to provide for the effective registration of large volumes of deeds and to enhance the accuracy of the processes relating to the examination and registration of deeds.

3. OBJECTS OF BILL

The main objectives of the Bill is to—

- (a) facilitate the development of an electronic deeds registration system in order to effect the registration of large volumes of deeds as necessitated by Government's land reform initiatives; and
- (b) expedite the registration of deeds by decreasing the time required for the deeds registration process.

4. SUMMARY OF BILL

The Bill is divided into four chapters, as follows:

Chapter 1 provides for definitions.

Chapter 2 provides for the development, establishment and maintenance of the Electronic Deeds Registration System.

Chapter 3 provides provisions relating to the validity of deeds and documents. Chapter 3 also provides for the authorisation of users of the electronic deeds registration system in so far such users must be registered in the manner and under the conditions as may be prescribed by regulation.

Chapter 4 provides for the Minister to make regulations on recommendation by the Regulation Boards established in terms of the Deeds Registries Act, 1937 (Act 47 of 1937) and the Sectional Titles Act, 1986 (Act 95 of 1986). Chapter 4 also provides for

Transitional Provisions relating to the continuation, by a Registrar of Deeds, of the registration, execution and filing of deeds and documents in a deeds registry, as well as the Short Title and Commencement of the Act.

5. DEPARTMENTS / BODIES CONSULTED

5.1 The following bodies were consulted:

- The Deeds Registries Regulations Board;
- Registrars of Deeds and
- The Law Society of South Africa.

5.2 A more comprehensive consultation process will be held after the Bill has been approved by Cabinet for purposes of publication for public comment.

5.3 After the formal consultation process the Bill will be reviewed and re-submitted to Cabinet for approval for introduction to Parliament.

6. FINANCIAL IMPLICATIONS FOR STATE

The project relating to the implementation of the e-DRS has already commenced and expenditure relating thereto is financed by the Deeds Registries Trading Account. The main source of funding this Account is the fees that are charged by the various deeds registries for the registration of deeds and the sale of deeds registration information, as provided for in regulation 84 of the Deeds Registries Act, 1937.

7. CONSTITUTIONAL IMPLICATIONS

None.

8. COMMUNICATION IMPLICATIONS

To be undertaken by the Department of Rural Development and Land Reform.

9. PARLIAMENTARY PROCEDURE

9.1. The Department of Rural Development and Land Reform and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, as the Bill contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

9.2. The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.