

REPUBLIC OF SOUTH AFRICA

DEEDS REGISTRIES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75): explanatory
summary of Bill and prior notice of its introduction published in
Government Gazette No. 46788 of 25 August 2022)
(The English text is the official text of the Bill)*

(MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT)

[B 28—2022]

ISBN 978-1-4850-0825-5

No. of copies printed150

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Deeds Registries Act, 1937, so as to provide for the appointment of a registrar of deeds, deputy registrar of deeds and assistant registrar of deeds in terms of the provisions of the Public Service Act, 1994; to further regulate the qualification requirements of a registrar of deeds, deputy registrar of deeds and assistant registrar of deeds; to provide for the appointment of the chief registrar of deeds; to provide for the responsibilities and duties of the chief registrar of deeds; to provide for the recordal of land tenure rights lawfully issued by Government or any other competent authority; to further provide for the registration of waivers of preference in respect of registered real rights in favour of leases; to delete reference to the registration of copies of powers of attorney in another deeds registry; to provide for the inspection of records and the supply of information by the chief registrar of deeds; to further regulate the membership, duties, composition, voting powers and remuneration of members of the deeds registries regulations board; to provide for the Minister to make regulations in respect of this Act and the Electronic Deeds Registration Systems Act, 2019; to provide for the Minister to make regulations in respect of the collection of personal information relating to race, gender, citizenship and nationality for statistical and land audit purposes; to further regulate the registration of State land; to further regulate the issuing of certificates of registered title of undivided shares in land; to further regulate the periods for the registration of notarial bonds in more than one deeds registry; to provide for a penalty provision in respect of *mala fide* acts or omissions by a registrar or official in relation to their duties and for other persons that are part of a collusion; to provide for a penalty provision in respect of the unauthorised preparation, execution and attestation of deeds and documents; to insert a definition of ‘attorney’; to provide that an attorney, conveyancer and notary in the employ of the Department of Agriculture, Land Reform and Rural Development may perform the duties of an attorney, conveyancer and notary in respect of transactions relating to State land; to insert and amend certain definitions; to provide for the amendment of the Electronic Deeds Registration Systems Act, 2019, to the extent set out in the Schedule; and to provide for matters connected therewith.

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

Amendment of section 2 of Act 47 of 1937, as amended by section 1 of Act 43 of 1957, section 1 of Act 43 of 1962, section 1 of Act 87 of 1965, section 2 of Act 61 of 1969, section 2 of Act 3 of 1972, section 7 of Act 62 of 1973, section 2 of Act 27 of 1982, section 2 of Act 62 of 1984, section 1 of Act 14 of 1993, section 10 of Act 11 of 1996, Proclamation R9 of 31 January 1997, section 35 of Act 47 of 1997, section 1 of Act 93 of 1998, section 1 of Act 12 of 2010 and section 1 of Act 4 of 2011 5

1. Section 2 of the Deeds Registries Act, 1937 (Act No. 47 of 1937) (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the heading of the following heading: 10

“**Appointment of [chief] registrar, deputy registrar and assistant registrar of deeds**”;

(b) by the substitution for subsection (1) of the following subsection:

“(1) **[Subject to the laws governing the public service, there shall be appointed by the Minister]** The Minister shall appoint, in terms of the Public Service Act, 1994 (Proclamation 103 of 1994)— 15

[(a) a chief registrar of deeds, who shall as such be the chairman and executive officer of the deeds registries regulations board mentioned in section nine and who shall, subject to the directions of the Minister, exercise such supervision over all the deeds registries as may be necessary in order to bring about uniformity in their practice and procedure;] 20

(b) in respect of each registry, a registrar of deeds, who shall be in charge of the deeds registry in respect of which he or she has been appointed; 25

(c) for a deeds registry[, if necessary], one or more deputy registrars of deeds [or] and one or more assistant registrars of deeds[, or one or more deputy registrars of deeds and one or more assistant registrars of deeds], who shall respectively have the power, subject to the regulations, to perform any act which may lawfully be done under this Act or any other law by a registrar[.]; 30

(d) for the office of the chief registrar of deeds [, if necessary], one or more registrars of deeds, one or more deputy registrars of deeds, and one or more assistant registrars of deeds.”;

(c) by the substitution for subsection (1A) of the following subsection: 35

“(1A) Whenever **[the chief registrar of deeds or]** any registrar, deputy registrar or assistant registrar of deeds, because of absence or for any other reason, is unable to carry out the functions of that office, or whenever such office becomes vacant, the Minister may authorize any officer in a deeds registry or in the office of the chief registrar of deeds, to act in the place of such **[chief registrar,]** registrar, deputy registrar or assistant registrar during the period of such absence or incapacity, or to act in the vacant office until the vacancy is filled, as the case may be.”; 40

(d) by the substitution for subsection (1C) of the following subsection:

“(1C) The Minister may delegate any power conferred on him or her by this section, to the Director-General: Agriculture, Land Reform and Rural Development [and Land Reform] or a Deputy Director-General in the Department of Agriculture, Land Reform and Rural Development [and Land Reform].”; 45

(e) by the deletion of subsection (1D); and 50

(f) by the substitution for subsections (2) and (3) of the following subsections, respectively:

“(2) **(a)** No person shall be appointed as **[chief registrar,]** registrar[,]
of deeds or deputy registrar of deeds **[or assistant registrar of deeds]**
after the commencement of section 2 of the Deeds Registries Amend- 55
ment Act, 1984 (Act No. 62 of 1984), unless he or she has passed **[the final examination for the Diploma Iuris, or for any other diploma or]**
a degree, recognized by the Minister for the Public Service and
Administration[.];

(b) No person shall be appointed, after the commencement of section 2
of the Deeds Registries Amendment Act, 1984 (Act No. 62 of 1984), as
assistant registrar of deeds, unless he or she has passed the final
examination for the Diploma Iuris, or any other diploma or a degree, that 60

is recognized by the Minister for the Public Service and Administration to be equivalent thereto, and has proven appropriate expertise or the capacity to acquire, within a reasonable time, the ability required to perform the functions of that office, regard being had to the time available and the nature and extent of those functions and the responsibilities of that office. 5

(3) Any person holding, at the commencement of section 1 of the Deeds Registries Amendment Act, [1984] 2022[—],

[(a) **the office of chief registrar of deeds, and who on a date prior to such commencement ceased also to hold the office of registrar of deeds, shall as from that date be deemed; and** 10

(b) the office of registrar or assistant registrar or deputy registrar of deeds, shall be deemed, as from the date of such commencement, to have been appointed under this section as [**chief registrar of deeds, or as**] registrar [**or**], or assistant registrar or deputy registrar of deeds, as the case may be.”. 15

Insertion of sections 2A, 2B and 2C in Act 47 of 1937

2. The following sections are hereby inserted in the principal Act after section 2:

“Appointment of chief registrar of deeds

2A. (1) The Minister shall, in accordance with the Public Service Act, 1994 (Proclamation 103 of 1994), appoint a person who is holding, or who previously held, the position of a registrar of deeds, to be called the chief registrar of deeds. 20

(2) The chief registrar of deeds shall, subject to the directions of the Minister, exercise the powers and perform the duties conferred upon, or assigned to, the chief registrar of deeds by this Act or any other law. 25

(3) Whenever the chief registrar of deeds, because of absence or for any other reason, is unable to carry out the functions of that office, or whenever such office becomes vacant, the Minister may authorise any registrar contemplated in sections 2(1)(b) and (d), to act in the place of such chief registrar of deeds during the period of such absence or incapacity, or to act in the vacant office until the vacancy is filled, as the case may be. 30

(4) The Minister may delegate any power conferred on him or her by this section, to the Director-General: Agriculture, Land Reform and Rural Development. 35

(5) The provisions of section 2(2) apply with the necessary changes to the appointment of a chief registrar of deeds.

(6) Any person holding, at the commencement of section 2 of the Deeds Registries Amendment Act, 2022, the office of chief registrar of deeds, and who, on a date prior to such commencement ceased also to hold the office of registrar of deeds, shall as from that date, be deemed to have been appointed under this section as chief registrar of deeds. 40

Responsibilities of chief registrar of deeds

2B. (1) The chief registrar of deeds shall lead the— 45

- (a) management of Deeds Registration Corporate Support Services;
- (b) management of the Deeds Registration Information Communication Technology Services;
- (c) management of the Deeds Registration Legislation, Litigation and Training Services; 50
- (d) coordination of service delivery by all deeds registries and Chief Directorates in the Branch Deeds Registration; and
- (e) audit and risk management regarding all deeds registries and Chief Directorates in the Branch Deeds Registration and report findings to the Director-General. 55

Duties of chief registrar of deeds

2C. (1) The chief registrar of deeds shall, subject to the provisions of this Act or any other law—

- (a) act as chairperson and executive officer of—

- (i) the deeds registries regulations board referred to in section 9; and
- (ii) the sectional titles regulations board referred to in section 54 of the Sectional Titles Act, 1986 (Act No. 95 of 1986);
- (b) develop, establish and maintain the electronic deeds registration system, as contemplated in section 2 of the Electronic Deeds Registration Systems Act, and maintain the current deeds registration system until fully replaced by the electronic deeds registration system;
- (c) exercise such supervision over all the deeds registries as may be necessary to bring about uniformity in their practice and procedure: Provided that the supervision includes the issuing of practice and procedure directives;
- (d) provide opinions in respect of matters referred for a reviewing process;
- (e) be accountable for the deeds registration system;
- (f) be accountable for the deeds registration information; and
- (g) be accountable for the storing of deeds and documents as contemplated in section 2(1) of the Electronic Deeds Registration Systems Act.”.

Amendment of section 3 of Act 47 of 1937, as amended by section 14 of Act 50 of 1956, section 2 of Act 43 of 1957, section 2 of Act 43 of 1962, section 2 of Act 87 of 1965, section 1 of Act 41 of 1977, section 1 of Act 92 of 1978, section 1 of Act 44 of 1980, section 3 of Act 27 of 1982, section 28 of Act 88 of 1984, section 2 of Act 14 of 1993, section 9 of Act 122 of 1993, section 68 of Act 67 of 1995, section 1 of Act 11 of 1996, section 110 of Act 28 of 2002; section 53 of Act 24 of 2003, section 46 of Act 11 of 2004, section 1 of Act 5 of 2006 and section 2 of Act 12 of 2010

3. Section 3 of the principal Act is hereby amended—

- (a) by the insertion in subsection (1) after paragraph (c) of the following paragraphs:
 - “(c)*bis* record, in compliance with the requirements of any law, land tenure rights lawfully issued by Government or any other competent authority, and record the amendment and cancellation thereof;
 - (c)*ter* register, in compliance with the requirements of any law, the conversion of land tenure rights to another form of land tenure right, including ownership;”;
- (b) by the substitution in subsection (1) for paragraph (i) of the following paragraph:
 - “(i) register waivers of preference in respect of registered real rights in land, in favour of mortgage bonds and leases, whether registered or about to be registered;”;
- (c) by the substitution in subsection (1) for paragraph (u) of the following paragraph:
 - “(u) register powers of attorney whereby the agents named therein are authorized to act generally for the principals granting such powers, or to carry out a series of acts or transactions registrable in a deeds registry[, **and register copies of such powers registered in another deeds registry, which have been certified by the registrar thereof**], or which have been issued for the purpose of being acted upon in a deeds registry by a Master or registrar of the High Court of South Africa;”.

Amendment of section 7 of Act 47 of 1937, as amended by section 4 of Act 43 of 1957, section 3 of Act 87 of 1965 and section 3 of Act 14 of 1993

4. Section 7 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Each registrar and the chief registrar of deeds shall, on conditions prescribed and upon payment of the prescribed fees, permit any person to inspect the public registers and other public records in his or her registry,

other than the index to such registers or records, and in the case of the chief registrar of deeds, he or she may permit any person to inspect the registers on the deeds registration system, and permit any such person to make copies of those records or extracts from those registers and to obtain such other information concerning deeds or other documents registered or filed in the registry as prior to the commencement of this Act could, customarily, be made or obtained.” 5

Amendment of section 9 of Act 47 of 1937, as amended by section 3 of Act 3 of 1972, section 17 of Act 71 of 1972, section 8 of Act 62 of 1973, section 9 of Act 57 of 1975, section 4 of Act 27 of 1982, section 4 of Act 14 of 1993 and section 3 of Act 12 of 2010 10

5. Section 9 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) There shall be established a deeds registries regulations board (in this section called ‘the board’), **[with power to make regulations upon the subjects mentioned in section 10]** which shall— 15

(a) make recommendations to the Minister concerning any matter specified in section 10 of this Act and section 5 of the Electronic Deeds Registration Systems Act, in regard to which the Minister may make regulations; 20

(b) keep the operation and implementation of this Act and the Electronic Deeds Registration Systems Act, and its regulations under regular review and make recommendations to the Minister in regard to any amendments or other action which may be advisable; 25

(c) serve as a consultative body as contemplated by section 2(2) of the Electronic Deeds Registration Systems Act; and 25

(d) advise the Minister on any matter referred to it by the Minister.”;

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The board shall consist of the chief registrar of deeds as **[chairman chairperson]** and executive officer **[in terms of]** as contemplated in section **[2(1)(a)]** 2C(1)(a)(i), the Senior Financial Officer: Deeds Registration, the Chief Director Deeds Registration: Information, Communication and Technology, and **[four]** seven other members appointed by the Minister, of whom—”; 30

(c) by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs, respectively: 35

“(b) one shall be an officer of the Department of Agriculture, Land Reform and Rural Development **[and Land Reform]**; **[and]**

(c) two shall be conveyancers nominated by the **[Executive Council of the Association of Law Societies of the Republic of South Africa]** South African Legal Practice Council established in terms of section 4 of the Legal Practice Act [.]”;

(d) by the addition in subsection (2) of the following paragraphs:

“(d) one shall be a conveyancer from the Office of the State Attorney;

(e) one shall be a Senior Financial Officer of the Department of National Treasury; and 45

(f) one shall be an officer in the employ of the Banking Association of South Africa.”;

(e) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 50

“(a) A member of the board appointed by the Minister shall hold office for the period determined by the Minister, but the Minister may, if in his or her opinion there is good reason for doing so, terminate the appointment of such a member at any time before the expiration of his or her period of office.”; 55

(f) by the substitution in subsection (3A) for paragraph (c) of the following paragraph:

“(c) The provisions of **[subsection]** subsections (3), (3B) and (3C) are, with the necessary changes, applicable to the appointment of an alternate member.”; 60

- (g) by the insertion after subsection (3A) of the following subsections:
- “(3B) If a member of the board dies or vacates his or her office before the expiration of his or her period of office, the Minister may, subject to subsection (2), appoint a person to fill the vacancy for the unexpired portion of the period for which such member was appointed. 5
- (3C) A member of the board, excluding a member in the full-time service of the State, shall, while he or she is engaged in the business of the board, be paid such remuneration, travelling and subsistence allowances as the Minister, with the concurrence of the Minister of Finance, may determine.”; 10
- (h) by the substitution for subsections (4) and (5) of the following subsections, respectively:
- “(4) (a) The board shall meet at the times and places determined by the [chairman] chairperson. 15
- (b) The Minister may at any time direct the [chairman] chairperson of the board to convene a meeting of the board at a time and place specified by the Minister.
- (5) In the absence of the [chairman] chairperson of the board, the member referred to in subsection (2)(a) shall act as [chairman] chairperson.”; 20
- (i) by the substitution in subsection (6) for paragraph (a) of the following subsection:
- “(a) [Three] Subject to paragraph (c), five members of the board who have a vote on a specific matter, of whom one shall be a member appointed in terms of subsection (2)(c), shall form a quorum for a meeting of the board.”; 25
- (j) by the addition in subsection (6) of the following paragraph:
- “(c) (i) The Senior Financial Officer: Deeds Registration and the member appointed in terms of subsection (2)(e) shall only have a vote in respect of financial aspects; 30
- (ii) The members appointed in terms of subsections (2)(c) and (2)(f) shall not have a vote in respect of financial matters.”; and
- (k) by the substitution for subsections (8), (9) and (10) of the following subsections, respectively:
- “(8) [With the Minister’s approval the] The board may make [regulations] recommendations to the Minister concerning matters specified in section 10 also without holding a meeting, provided that any [regulations] recommendation so made have been agreed to by all the members of the board. 35
- (9) [No regulation] Regulations made by the [board] Minister shall [take effect unless it has been approved by the Minister and has been] be published in the *Gazette* at least one month before the date specified in the relevant notice as the date of commencement thereof. 40
- (10) The provisions of section 17 of the Interpretation Act, 1957 (Act No. 33 of 1957), shall apply *mutatis mutandis* with reference to regulations [approved] made by the Minister and published in the *Gazette* under subsection (9).” 45

Amendment of section 10 of Act 47 of 1937, as amended by section 5 of Act 43 of 1957, section 5 of Act 43 of 1962, section 4 of Act 87 of 1965, section 4 of Act 3 of 1972, section 2 of Act 92 of 1978, section 5 of Act 27 of 1982, section 3 of Act 62 of 1984, section 5 of Act 14 of 1993, section 3 of Act 170 of 1993, section 68 of Act 67 of 1995 and section 1 of Act 11 of 2000 50

6. Section 10 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 55
- “The [board established under section nine] Minister may, upon recommendation of the deeds registries regulations board, make regulations prescribing—”;

- (b) by the insertion in subsection (1) after paragraph (q) of the following paragraph:
 “(q)bis the form of applications, consents, certificates, registers and other documents which shall be used in connection with the recordal of land tenure rights lawfully issued in terms of the provisions of any law;”;
- (c) by the substitution in subsection (1) for the fullstop at the end of paragraph (s) of a semi-colon; and
- (d) by the addition of the following paragraph:
 “(t) the manner and form in which personal information relating to race, gender, citizenship and nationality of land owners in South Africa may be collected for statistical and land audit purposes only, and only for capturing such information into a register for official use by any department of state or administration in the national or provincial sphere of Government.”.

Amendment of section 18 of Act 47 of 1937, as amended by section 4 of Act 93 of 1998, section 6 of Act 3 of 1972, section 8 of Act 27 of 1982 and section 10 of Act 14 of 1993

7. Section 18 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:
 “(3) If any piece of unalienated State land has been surveyed and is represented on a diagram, the registrar concerned shall, upon written application by the Minister of Public Works or an officer of the State authorized by him or her, accompanied by the diagram of the land [in duplicate], enter particulars of the land in the appropriate registers and execute in the prescribed form and in accordance with the diagram, a certificate of registered State title thereof prepared by a conveyancer.”.

Amendment of section 34 of Act 47 of 1937, as amended by section 14 of Act 87 of 1965 and section 5 of Act 12 of 2010

8. Section 34 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
 “(1) Any person who is the joint owner of a piece of land, the whole of or shares in which is or are held by such person and others under one title deed, may, subject to the provisions of section *thirty-seven*, obtain a certificate of registered title of his or her undivided share in such land, and no transfer of a fraction only of his or her undivided share or hypothecation or lease of the whole or any fraction of his or her undivided share in the land or real right thereover, shall be registered in a deeds registry unless a certificate of registered title of such undivided share is produced to the registrar: Provided that all the joint owners so holding under one title deed may together, transfer an undivided share in the land or a fraction of the share held under such deed or hypothecate or effect the registration of a lease of the whole of such land or share or register a real right thereover without the production of such a certificate: Provided further that such a certificate shall not be necessary where a joint owner disposes of the whole of his or her share by deeds of transfer to be registered simultaneously.”.

Amendment of section 62 of Act 47 of 1937, as amended by section 2 of Act 15 of 1953, section 29 of Act 43 of 1957, section 25 of Act 43 of 1962 and section 18 of Act 14 of 1993

9. Section 62 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:
 “(5) A notarial bond which is required to be registered in more than one deeds registry shall be registered in the first registry within the period prescribed by subsection (1) of section *sixty-one*, in the second registry within an additional period of [one month] four months from the date of its registration in the first registry and in each successive registry within a further additional period of [one month] four months or within such extended period as the court may on application allow.”.

Substitution of section 99 of Act 47 of 1937

10. The following section is hereby substituted for section 99 of the principal Act:

“Exemption from liability for acts or omissions in deeds registry

99. No act or omission of any registrar or of any officer employed in a deeds registry shall render the Government or such registrar or officer liable for damage sustained by any person in consequence of such act or omission: Provided that if such act or omission is *mala fide* or if such registrar or officer has not exercised reasonable care and diligence in carrying out his or her duties in connection with such act or omission, the Government shall be liable for the damage aforesaid: Provided further that the registrar or officer guilty of such act or omission shall be liable to make good any loss or damage resulting therefrom to the Government if such act or omission was *mala fide*: Provided further that if such act or omission was *mala fide*, such registrar or officer and every person that was part of a collusion, is guilty of an offence and liable on conviction to a fine or to imprisonment or to both such fine and imprisonment.”

Insertion of section 99A in Act 47 of 1937

11. The following section is hereby inserted in the principal Act after section 99:

“Unauthorised execution or attestation of deed

99A. Any person who prepares a deed or document or who executes or attests a deed and who is not authorized in terms of this Act or any other Act to perform such functions, is guilty of an offence and liable on conviction to a fine or to imprisonment or to both such fine and imprisonment.”

Amendment of section 102 of Act 47 of 1937, as amended by section 12 of Act 3 of 1972, section 22 of Act 27 of 1982, section 9 of Act 62 of 1984, section 4 of Act 75 of 1987, section 7 of Act 3 of 1988, section 6 of Act 24 of 1989, section 32 of Act 113 of 1991, section 22 of Act 14 of 1993, section 74 of Act 120 of 1993, section 68 of Act 67 of 1995, section 9 of Act 11 of 1996, section 10 of Act 11 of 1996, Proclamation R9 of 31 January 1997, section 10 of Act 93 of 1998, section 2 of Act 9 of 2003, section 53 of Act 24 of 2003, section 46 of Act 11 of 2004, section 6 of Act 12 of 2010 and section 7 of Act 34 of 2013

12. Section 102 of the principal Act is hereby amended—

(a) by the insertion before the definition of “conveyancer” of the following definition:

“**‘attorney’** means, in relation to a document, an attorney as defined in the Legal Practice Act and includes in respect of transactions with State Land, an attorney as defined in the Legal Practice Act in the employ of the Department of Agriculture, Land Reform and Rural Development;”;

(b) by the substitution for the definition of “conveyancer” of the following definition:

“**‘conveyancer’** means, in respect of any deeds registry, a [person] conveyancer as defined in the Legal Practice Act, and practicing as such in the Republic, and includes a person admitted as an attorney in terms of the relevant Transkeian legislation and physically practicing as such within the area of the former Republic of Transkei on or before the date of commencement of Proclamation R.9 of 1997 and further includes, in respect of transactions with State Land, a conveyancer as defined in the Legal Practice Act, in the employ of the Department of Agriculture, Land Reform and Rural Development;”;

(c) by the insertion after the definition of “diagram” of the following definition:

“**‘Electronic Deeds Registration Systems Act’** means the Electronic Deeds Registration Systems Act, 2019 (Act No. 19 of 2019);”;

(d) by the insertion after the definition of ‘land’ of the following definitions:

“**‘land tenure right’** means a land tenure right created or confirmed by legislation;
‘Legal Practice Act’ means the Legal Practice Act, 2014 (Act No. 28 of 2014);”;

- (e) by the substitution for the definition of ‘Minister’ the following definition:
 “ ‘**Minister**’ means the Minister of Agriculture, Land Reform and Rural Development [**and Land Reform**];
- (f) by the substitution for the definition of ‘notary public’ the following definition: 5
 “ ‘**notary public**’ means, in relation to any deed or other document creating or conveying real rights [**of**] over land, a [person] notary as defined in the Legal Practice Act, and practising as such in the Republic[;], and includes regarding creating or conveying real rights over State land, a notary, as defined in the Legal Practice Act in the employ of the Department of Agriculture, Land Reform and Rural Development, and in relation to any document executed outside the Republic, a person practising as such in the place where the document is executed;” 10
- (g) by the insertion after the definition of ‘real right’ of the following definition: 15
 “ ‘**recorded**’ means recorded in a deeds registry;”.

Amendment of Act 19 of 2019

13. The Electronic Deeds Registration Systems Act is hereby amended to the extent set out in the Schedule.

Short title and commencement 20

- 14.** (1) This Act is called the Deeds Registries Amendment Act, 2022.
 (2) Sections 3(a), 6(b), 12(d), 12(g), and 13 come into operation on a date to be determined by the President by proclamation in the *Gazette*.
 (3) The remaining provisions of this Act come into operation on the date of publication in the *Gazette*. 25

SCHEDULE

**AMENDMENT OF ELECTRONIC DEEDS REGISTRATION SYSTEMS
ACT, 2019 (ACT No. 19 OF 2019)**
(Section 13)

No. and year of Act	Short title	Extent of repeal or amendment
Act 19 of 2019	Electronic Deeds Registration Systems Act, 2019	<p>1. The amendment of section 1—</p> <p>(a) by the substitution for the definition of ‘authorised user’ of the following definition:</p> <p style="padding-left: 40px;">“ ‘authorised user’ means a user of the electronic deeds registration and recordal system contemplated in section 4, and ‘user’ has a corresponding meaning;”;</p> <p>(b) by the substitution for the definition of ‘deed or document’ of the following definition:</p> <p style="padding-left: 40px;">“ ‘deed or document’, for the purpose of any act of registration, recordal, 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, generated, submitted, received or stored by electronic means in the electronic deeds registration and recordal system, and includes scanned images of a deed or document;”;</p> <p>(c) by the substitution for the definition of ‘electronic deeds registration system’ of the following definition:</p> <p style="padding-left: 40px;">“ ‘electronic deeds registration and recordal system’ means the electronic deeds registration and recordal system contemplated in section 2;”;</p> <p>(d) by the substitution for the definition of ‘Minister’ of the following definition:</p> <p style="padding-left: 40px;">“ ‘Minister’ means the Minister of Agriculture, Land Reform and Rural Development;”;</p> <p>(e) by the insertion after the definition of ‘prescribe’ of the following definition:</p> <p style="padding-left: 40px;">“ ‘recorded’ means recorded in a deeds registry and includes recordal;”;</p> <p style="padding-left: 40px;">and</p> <p>(f) by the substitution for the definition of ‘signature’ of the following definition:</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>“ ‘signature’ in respect of any act performed in terms of the Deeds Registries Act and Sectional Titles Act by a conveyancer, notary public, statutory officer or Registrar in attesting his or her signature to a deed or document or a scanned image of a deed or document in respect of the registration or recordal thereof, means an advanced electronic signature as defined in section 1 of the Electronic Communications and Transactions Act;”.</p> <p>2. The substitution for section 2 of the following section:</p> <p>“Development, establishment and maintenance of deeds registration and recordal system</p> <p>2. (1) The Chief Registrar of Deeds must, subject to the Electronic Communications and Transactions Act, develop, establish and maintain the electronic deeds registration and recordal system using information and communications technologies for the preparation, lodgment, registration, recordal, execution and storing of deeds and documents.</p> <p>(2) In achieving the objectives contemplated in subsection (1), the Chief Registrar of Deeds may, after consultation with the Regulations Board referred to in section 9 of the Deeds Registries Act, issue directives for—</p> <p>(a) the functional requirements of the electronic deeds registration and recordal system;</p> <p>(b) the technical specifications for the electronic deeds registration and recordal system;</p> <p>(c) the specifications for the interface between the electronic deeds registration and recordal system and any party interfacing in the system which will be authorised to access the electronic deeds registration and recordal system;</p> <p>(d) the standards governing the information security of the electronic deeds registration and recordal system;</p> <p>(e) the operation of the electronic deeds registration and recordal system;</p> <p>(f) the processing of deeds and documents using the electronic deeds registration and recordal system;</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>(g) the retention and subsequent production of deeds and documents, or any other electronic records, which may be pertinent to the registration <u>and recordal</u> of rights in the deeds registry or that may be required for the administrative or legal proceedings that must be complied with by users interacting with the electronic deeds registration and recordal system; and</p> <p>(h) any other matter specifically provided for in this Act.”.</p> <p>3. The substitution for section 3 of the following section: “Validity of deeds and documents 3. Subject to section 14 of the Electronic Communications and Transactions Act, a deed or document generated, registered, recorded and executed electronically and any other registered, <u>recorded</u> or executed deed or document <u>scanned</u> or otherwise incorporated into the electronic deeds registration <u>and recordal</u> system by electronic means is for all purposes deemed to be the only original and valid record.”.</p> <p>4. The substitution for section 4 of the following section: “Authorised users 4. Any user of the electronic deeds registration <u>and recordal</u> system authorised by the regulations must be registered in the manner and under the conditions as may be directed by the Chief Registrar of Deeds.”.</p> <p>5. The amendment of section 5—</p> <p>(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: “(c) the manner of identification of the person who prepares, executes, lodges, registers, <u>records</u> or stores any deed or <u>document</u> required or permitted to be prepared, executed, lodged, registered, recorded or stored in any deeds registry;”; and</p> <p>(b) by the substitution for paragraphs (e) and (f) of subsection (1) of the following paragraphs, respectively: “(e) the procedure and manner for accessing the electronic deeds registration <u>and recordal</u> system for information purposes only;</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>(f) the authorisation of any user of the electronic deeds registration and recordal system, as contemplated in section 4; and”.</p> <p>6. The substitution for section 6 of the following section—</p> <p>“Transitional provisions</p> <p>6. (1) This Act does not affect the validity of any registrations <u>and recordals</u> effected prior to the coming into operation thereof.</p> <p>(2) The Registrar must continue with the registration, <u>recordal</u>, execution and filing of deeds and documents as prescribed by the Deeds Registries Act and the Sectional Titles Act, until the electronic deeds registration <u>and recordal</u> system, or related provisions or regulations are in place, where after the registration, <u>recordal</u>, execution and filing 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.</p> <p>(3) A conveyancer, notary public and statutory officer must continue with the preparation and lodgement of deeds and documents as prescribed by the Deeds Registries Act and the Sectional Titles Act, until the electronic deeds registration <u>and recordal</u> system, or related provisions or regulations are in place, where after the preparation and lodgement 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: Provided that any deed or document electronically executed or registered, shall be deemed to have been executed or registered in the presence of the Registrar by the owner or by a conveyancer authorised by power of attorney to act on behalf of the owner.</p> <p>(4) Notwithstanding subsections (2) and (3), the Chief Registrar of Deeds may issue a directive for the continuation of the preparation, lodgement, registration, <u>recording</u>, execution and filing of deeds and documents manually, as prescribed by the Deeds Registries Act and the Sectional Titles Act, whereupon a conveyancer, statutory officer and notary public may either use the said manual system or the electronic deeds registration and recordal system, until such period as may be determined by the Chief Registrar.”.</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>7. The amendment of section 7—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) This Act is called the <u>Electronic Deeds Registration and Recordal Systems Act, 2019</u>, and comes into operation on a date to be fixed by the President by proclamation in the <i>Gazette</i>.”; and</p> <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The President may set different dates for the coming into operation of the different provisions of this Act or the different acts of registration and <u>recordal</u> under the Deeds Registries Act and Sectional Titles Act.”.</p> <p>8. Substitution for the long title of the Act of the following long title:</p> <p>“To provide for electronic deeds registration and recordal, having regard to legislation regulating electronic communication and transactions; and to provide for matters connected therewith.”.</p>

MEMORANDUM ON THE OBJECTS OF THE DEEDS REGISTRIES AMENDMENT BILL, 2022

1. BACKGROUND

- 1.1 The Department of Agriculture, Land Reform and Rural Development (“the Department”) drafted the Deeds Registries Amendment Bill, 2022 (“the Bill”), which proposes certain amendments to the Deeds Registries Act, 1937 (Act No. 47 of 1937) (“the Act”), in order to improve the application and implementation of the Act. The Act generally provides for the registration of deeds.
- 1.2 The Deeds Registries Regulations Board (“the Board”) met and discussed the proposed amendments in order to streamline and enhance the administration and registration of deeds. The proposed amendments are technical in nature.

2. OBJECTS OF BILL

The Bill seeks to amend the Act in order to—

- (a) provide for the appointment of a registrar of deeds, deputy registrar of deeds and assistant registrar of deeds in terms of the provisions of the Public Service Act, 1994 (Proclamation 103 of 1994) (“Public Service Act”);
- (b) further regulate the qualification requirements of a registrar of deeds, deputy registrar of deeds and assistant registrar of deeds;
- (c) provide for the appointment of the chief registrar of deeds;
- (d) provide for the responsibilities and duties of the chief registrar of deeds;
- (e) provide for the recordal of land tenure rights lawfully issued by Government or any other competent authority;
- (f) further provide for the registration of waivers of preference in respect of registered real rights in favour of leases;
- (g) delete reference to the registration of copies of powers of attorney in another deeds registry;
- (h) provide for the inspection of records and the supply of information by the chief registrar of deeds;
- (i) further regulate the membership, duties, composition, voting powers and remuneration of members of the deeds registries regulations board;
- (j) provide for the Minister to make regulations in respect of this Act and the Electronic Deeds Registration Systems Act, 2019 (“Act No. 19 of 2019”) (“Electronic Deeds Registration Act”);
- (k) provide for the Minister to make regulations in respect of the collection of personal information relating to race, gender, citizenship and nationality for statistical and land audit purposes;
- (l) further regulate the registration of State land;
- (m) further regulate the issuing of certificates of registered title of undivided shares in land;
- (n) further regulate the periods for the registration of notarial bonds in more than one deeds registry;
- (o) provide for a penalty provision in respect of *mala fide* acts or omissions by a registrar or official in relation to their duties and for other persons that are part of a collusion;
- (p) provide for a penalty provision in respect of the unauthorised preparation, execution and attestation of deeds and documents;
- (q) insert a definition of ‘attorney’, and to provide that an attorney, conveyancer and notary in the employ of the Department of Agriculture, Land Reform and Rural Development may perform the duties of an attorney, conveyancer and notary in respect of transactions relating to State land; and
- (r) to provide for the amendment of the Electronic Deeds Registration Systems Act, to the extent set out in the Schedule.

3. CLAUSE- BY- CLAUSE ANALYSIS

3.1 Clause 1

- 3.1.1 Clause 1 of the Bill seeks to amend section 2 of the Act, which deals with the appointment of the chief registrar, registrar, deputy registrar and assistant registrar of deeds. However, the heading to section 2 refers only to the appointment of the chief registrar, registrar and assistant registrar of deeds and omits reference to the appointment of the deputy registrar of deeds. The proposed amendment in clause 1(a) of the Bill aims to clarify the position.
- 3.1.2 A need has been identified to clearly indicate that the appointment of the chief registrar, registrar, deputy registrar and assistant registrar of deeds are being made in terms of the Public Service Act and to also separately deal with the appointment of the chief registrar of deeds and the proposed amendments in clauses 1(b), 1(c) and 1(f) of the Bill are aligned to this approach.
- 3.1.3 Section 2(1C) needs to be amended to substitute “Director-General: Rural Development and Land Reform” for “Director-General: Agriculture, Land Reform and Rural Development”, and to substitute “Department of Rural Development and Land Reform” for “Department of Agriculture, Land Reform and Rural Development”. The proposed amendment to section 2 (1C) as provided for in clause 1(d) of the Bill, is necessary to reflect the correct position.

3.2 Clause 2

- 3.2.1 Clause 2 of the Bill provides for the insertion of sections 2A, 2B and 2C in the Act.
- 3.2.2 The insertion of section 2A of the Act aims to provide the procedure for the appointment of the chief registrar of deeds in terms of the Public Service Act. The proposed section 2A provides for the Minister to appoint a person who is or who previously held the position of a registrar of deeds, as chief registrar of deeds. Section 2A also provides for the Minister to authorise any registrar contemplated in sections 2(1)(b) and (d) to act in the place of the chief registrar during a period of absence or incapacity, or to act in the vacant office until the vacancy is filled, as the case may be. Section 2A also makes the provisions of section 2(2) of the Act, which deals with the qualification of a registrar and deputy registrar of deeds, applicable to a chief registrar of deeds.
- 3.2.3 The insertion of section 2B of the Act intends to deal with the responsibilities of the chief registrar which includes, amongst others, leading the management of Deeds Registration Corporate Support Services, Deeds Registration Information Communication Technology Services, Deeds Registration Legislation, Litigation and Training Services, as well as audit and risk management in all deeds registries and Chief Directorates in the Branch Deeds Registration.
- 3.2.4 Clause 2 of the Bill also provides for the insertion of section 2C in the Act that deals with the duties of the chief registrar of deeds. The duties include, amongst other things, to act as chairperson and executive officer of the deeds registries regulations board and the sectional titles regulations board, to develop and maintain the electronic deeds registration system, as contemplated in section 2 of the Electronic Deeds Registration Systems Act, to exercise supervision over all the deeds registries as may be necessary to bring about uniformity in their practice and procedure, to provide opinions in respect of matters referred for a reviewing process and to be accountable for the deeds registration system and deeds registration information.

3.3 Clause 3

- 3.3.1 Clause 3 of the Bill seeks to amend section 3 of the Act, which deals with the duties of a registrar of deeds.
- 3.3.2 The Act makes provision for the registration of land and rights in land. However, there is no provision in the Act that empowers the registrar to attend to the recordal of rights in land. The insertion of sections 3(1)(c)bis is necessary to cater for the recordal, in compliance with the requirements of any law, of land tenure rights lawfully issued by Government or any other competent authority. The insertion of section 3(1)(c)ter is necessary in order to provide for the conversion, of land tenure rights to another form of land tenure right, including ownership, in compliance with the requirements of any law. Clause 3(a) of the Bill provides for the proposed insertions.
- 3.3.3 Section 3(1)(i) of the Act provides that the registrar must register waivers of preference in respect of registered real rights in land, in favour of mortgage bonds. This provision, however, does not provide for the registration of waivers of preference of registered real rights (usufruct etc.) in favour of leases. The proposed amendment to section 3(1)(i), as contained in clause 3(b) of the Bill, aims to rectify the position by including leases.
- 3.3.4 Section 3(1)(u) of the Act deals with the registration of powers of attorney. The Act currently provides for the registration of copies of powers of attorney in more than one deeds registry. However, problems are being experienced with the continued usage of powers of attorney that have been cancelled in one deeds registry, but not in the deeds registry in which its copy was registered. This creates administration problems and opens a door for fraudulent transactions to be registered. The proposed amendment to section 3(1)(u), as contained in clause 3(c) of the Bill, aims to rectify the position.

3.4 Clause 4

Section 7 of the Act deals with the inspection of records and supply of information in a deeds registry by a registrar of deeds. However, the Act is silent in respect of the supply of information by the chief registrar of deeds. The proposed amendment of section 7(1), as contained in clause 4 of the Bill, includes the chief registrar of deeds in this regard.

3.5 Clause 5

- 3.5.1 Section 9 of the Act deals with the establishment of the “deeds registries regulations board” and this board has the power to make regulations in respect of matters referred to in section 10 of the Act. The correct position, however, is that the Minister must make the regulations upon the recommendation by the board. The Act is also silent in respect of the recommendation, by the board, for the making of regulations in terms of section 5 of the Electronic Deeds Registration Systems Act. The proposed amendment of section 9(1), in clause 5(a) of the Bill, provides for this position.
- 3.5.2 There is a need to provide for further representation on the board of members with practical knowledge on financial matters as well as a member with knowledge on information, communication and technology. The reason for this is the charging of fees of office, as prescribed by Regulation 84 of the Act, and the development, establishment and maintenance of an electronic deeds registration system by the chief registrar of deeds, as contemplated in section 2 of the Electronic Deeds Registration Systems Act. The amendment of section 9(2)(a) and the insertion of section 9(2)(e), as proposed in clauses 5(b) and 5(d) of the

Bill, seeks to address this matter by providing for the appointment of the Senior Financial Officer: Deeds Registration, Chief Director Deeds Registration: Information, Communication and Technology, and a Senior Financial Officer of the Department of National Treasury, as members of the board.

- 3.5.3 Clause 5(b), (e) and (h) provide for amendments to section 9 in order to address gender issues.
- 3.5.4 There is a need to provide for further representation on the board of a member with practical knowledge on matters pertaining to the registration of land and real rights in land. The insertion of section 9(2)(d), as proposed in clause 5(d) of the Bill, seeks to address this matter by providing for the appointment of a conveyancer from the Office of the State Attorney as a member of the board.
- 3.5.5 There is also a need for further representation on the board of a member with practical knowledge in property mortgage financing. The insertion of section 9(2)(f), as proposed in clause 5(d) of the Bill, caters in this regard by providing for an officer in the employ of the Banking Association of South Africa as a member of the board.
- 3.5.6 Section 9 is silent in respect of a position where a member dies or vacates his or her office before the expiration of his or her period of office. It further does not provide for members to be paid such remuneration and travelling and subsistence allowances as the Minister, with the concurrence of the Minister of Finance, may determine. The proposed insertion of sections 9(3B) and 9(3C), as proposed in clause 5(g) of the Bill, aims to address the situation and is also in line with section 54 of the Sectional Titles Act, 1986 (“Act No. 95 of 1986”) (“Sectional Titles Act”). These provisions are also being made applicable to alternate members in clause 5(f) of the Bill.
- 3.5.7 Section 9(6) of the Act deals with provisions relating to the quorum of a meeting as well as the voting rights of members. The amendment of section 9(6)(a) and the insertion of section 9(6)(c), as provided for in clauses 5(i) and 5(j) of the Bill, respectively, are consequential to the amendment of section 9(2) and also provides for the members with knowledge on financial matters to not have a vote in respect of legal matters, and for the members appointed in terms of sections 9(2)(c) and 9(2)(f) to not have a vote in respect of financial matters.
- 3.5.8 Section 9 of the Act empowers the board to make regulations in respect of the subjects mentioned in section 10 of the Act. However, the correct position is that the Minister makes the regulations upon recommendation by the said board. The amendment of sections 9(8) to 9(10), as proposed in clause 5(k) of the Bill, aims to rectify the position and is in line with the provisions of section 54 of the Sectional Titles Act.

3.6 Clause 6

- 3.6.1 Section 10 contains a list of subjects in respect of which regulations may be made. Section 10(1) erroneously refers to the making of the regulations by the board, instead of the Minister. The amendment of section 10(1), as proposed in clause 6(a) of the Bill, clarifies the matter and is in line with the provisions of section 55 of the Sectional Titles Act.
- 3.6.2 The insertion of section 10(1)(q)bis, in clause 6(b) of the Bill, is consequential to the insertion of section 3(1)(c)bis and provides for the making of regulations pertaining to the format of forms, applications, consents, certificates, registers and other documentation to be used in

connection with the recordal of land tenure rights lawfully issued by Government or any other competent authority.

- 3.6.3 The Act does not make provision for the Minister to make regulations pertaining to the collection of personal information relating to the race, gender, citizenship and nationality of land owners in South Africa. This information is required for statistical and land audit purposes only. The addition of section 10(1)(t), as provided for in clause 6(d) of the Bill, provides in this regard and also for the capturing of this information in a register for official use by a department of state or administration in the national or provincial sphere of Government.

3.7 Clause 7

Clause 7 of the Bill amends section 18 of the Act, which provides for the manner in which State land must be dealt with. Section 18(3) provides for the lodgement, in duplicate, of diagrams of unalienated State land. However, the practice in deeds registries is to call for one diagram only. The proposed amendment to section 18(3), as contained in clause 7 of the Bill, addresses the issue, to provide for one diagram only.

3.8 Clause 8

Clause 8 of the Bill amends section 34 of the Act, which deals with certificates of registered title of undivided shares. Section 34(1) of the Act provides for the issuing of a certificate of registered title to a person who is the joint owner of a piece of land. Section 34(1) further provides that a person may not transfer, hypothecate or lease a fraction only of his or her undivided share in land unless a certificate of registered title is obtained for his or her share in such land. Section 34(1), however, does not provide for a certificate of registered title to be obtained in instances where a person wishes to register a real right (usufruct etc.) over his or her undivided share in such land. The proposed amendment to section 34, as contained in clause 8 of the Bill, accordingly addresses this *lacuna* by including real rights.

3.9 Clause 9

Clause 9 of the Bill amends section 62 of the Act, which provides for the registration of notarial bonds. Section 62(1) provides for the registration of a notarial bond in more than one deeds registry in instances where a debtor resides and carries on business in areas served by different deeds registries. Such a notarial bond must be registered in the deeds registry for the area in which the debtor resides as well as in every deeds registry serving any area in which such debtor carries on business. Section 62(5) provides for the registration of such notarial bond, in the first deeds registry within a period of three months after the date of its execution or within such extended period as the court may on application allow, and in the second deeds registry within an additional period of one month, and in each successive deeds registry within a further period of one month. The ambiguity of section 62(5) leads to notarial bonds being registered after the expiry date of the prescribed time period, due to the provisions of the said section being differently interpreted. The proposed amendment of section 62(5), as contained in clause 9 of the Bill, provides clarity in the manner in which the dates must be calculated.

3.0 Clause 10

Clause 10 of the Bill amends section 99 of the Act, which section provides for exemption from liability for acts or omissions in deeds registries. Section 99 of the Act provides that no act or omission of any registrar or of any officer employed in a deeds registry shall render the Government or such registrar or officer liable for damage sustained by any person in consequence of such act or omission. Section 99 further provides that if such act or omission is *mala*

fide or if such registrar or officer has not exercised reasonable care and diligence in carrying out his or her duties in connection with such act or omission, the Government shall be liable for the damage aforesaid. Section 99 also provides that the registrar or officer guilty of such act or omission shall be liable to make good any loss or damage to the Government, if such act or omission was *mala fide*. The proposed amendment of section 99, as contained in clause 10 of the Bill, seeks to provide for a penalty of a fine or imprisonment, or both, in respect of *mala fide* acts or omissions by a registrar or official in relation to their duties, and for other persons that are part of a collusion to such *mala fide* acts or omissions by such registrar or official.

3.11 Clause 11

Clause 11 of the Bill makes provision for the addition of section 99A in the Act that provides for a penalty of a fine or imprisonment, or both, in respect of the preparation, execution and attestation of deeds and documents by persons not authorised thereto by the Act.

3.12 Clause 12

3.12.1 Clause 12(a) makes provision for the insertion of a definition of ‘attorney’, as defined in terms of section 1 of the Legal Practice Act, 2014 (Act No. 28 of 2014) (“Legal Practice Act”). The inserted definition also provides for attorneys in the employ of the Department of Agricultural, Land Reform and Rural Development to perform the duties of an attorney, as defined in the Legal Practice Act, in respect of transactions relating to State Land.

3.12.2 Clauses 12(b) and (f) provide for the amendment of the definitions of ‘conveyancer’ and ‘notary public’ and are in line with the definition of ‘attorney’ in so far it provides for a ‘conveyancer’ and ‘notary public’ in the employ of the Department of Agriculture, Land Reform and Rural Development to perform the duties of a ‘conveyancer’ and ‘notary public’, as defined in the Legal Practice Act, in respect of transactions relating to State Land.

3.12.3 Clause 12(c) provides for the insertion of the definition of the ‘Electronic Deeds Registration Systems Act. The Electronic Deeds Registration Systems Act, makes provision for electronic registration, the processes of which is performed in terms of the provisions of this Act.

3.12.4 The insertion of the definition of ‘land tenure right’ and ‘recorded’, as provided for in clause 12(d) and (g) of the Bill, is consequential to the insertion of section 3(1)(c)*bis* of the Act that provides for the recordal of land tenure rights that have been recognised or in future will be recognised by law.

3.12.5 The definition of ‘Minister’ needs to be amended to substitute ‘Rural Development and Land Reform’ with ‘Agriculture, Land Reform and Rural Development’. Clause 12(e) provides in this regard.

3.13 Clause 13

Clause 13 provides for the amendment of the Electronic Deeds Registration Systems Act, to the extent set out in the Schedule to the Bill. The Electronic Deeds Registration Systems Act provides for the electronic preparation, lodgement, registration, execution and storing of deeds and documents. However, the Electronic Deeds Registration Systems Act needs to be amended to also provide for the electronic recordal of deeds and documents as contemplated by the insertion of section 3(1)(c)*bis* to the Act that provides for the recordal of land tenure rights that have been recognised or in future will be recognised by law.

3.14 Clause 14

Clause 14 of the Bill contains the short title and commencement of the Bill. Clause 14(2) provides for the coming into operation of clauses that deal with the recordal, *in compliance with the requirements of any law of land tenure rights lawfully issued by Government*, at a later stage. This is necessary in order to provide for the promulgation of legislation that deals with the creation and recordal of such rights.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. DEPARTMENTS/BODIES CONSULTED

The followings bodies were consulted:

- The Deeds Registries Regulations Board;
- The Law Society of South Africa; and
- The Legal Practice Council of South Africa.

6. COMMUNICATION IMPLICATIONS

To be undertaken by the Department.

7. PARLIAMENTARY PROCEDURE

- 7.1 The Constitution prescribes procedure for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.
- 7.2 We have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.
- 7.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule i.e. *Tongoane and Others v Minister for Agriculture and Land Affairs and Others Case CCT 100/09 [2010] ZACC 10*. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.
- 7.4 Therefore issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.
- 7.5 The proposed amendments reflected have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.
- 7.6 In our view the subject matter of the proposed amendments does not fall within any of the functional areas listed in Schedule 4 to the Constitution and it does not affect provinces whereby the procedure set out in section 76 of the Constitution would be applicable.

- 7.7 We are therefore of the opinion that since this Bill does not deal with any of the matters listed in Schedule 4 to the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.
- 7.8 The State Law Advisers are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Printed by Creda Communications

ISBN 978-1-4850-0825-5