

Short notes on:

THE ELECTRONIC DEEDS REGISTRATION SYSTEM EXPLAINED

Introduction

During the first quarter of 2018, Parliament's National Assembly passed the Electronic Deeds Registration Systems Bill (hereinafter referred to as the "Bill"), which was originally published by the Minister of Rural Development and Land Reform on 7 December 2017

The Bill was tabled as far back as 2017 and proposes some significant changes for the registration and transfer of Immoveable Property which brings South Africa into line with international standards.

The scope of the Bill and the System:

As set out in section 2(1) of the Bill, the new System would be applicable to any deeds and/or documents which can be registered under the Bill or any other statute.

This is significant in that all documents mentioned in statutes such as the Deeds Registries Act of 1937 (hereinafter referred to as the Deeds Registries Act) and the Sectional Titles Act 95 of 1986 (hereinafter referred to as the Sectional Titles Act), will be applicable under the Bill.

Furthermore, the Bill makes it clear in section 6 that it is intended to ultimately replace the current manual deeds registration procedures under the Deeds Registries and Sectional Titles Acts.

The validity of deeds and documents

Arguably the most important proposed change introduced by the Bill is the fact that section 3 proposes that any deed or document entering the Electronic Deeds Registration System will thereafter be deemed to be the only original and valid record. The effect of this will arguably go a long way in alleviating the current problems of lost physical deeds and replacement of deeds, together with the associated risks. An area of concern is that in its present form, section 3 of the Bill implies that the first document imported into the System will be recognised as the only valid and original record, regardless of whether there are other interests or encumbrances over a property.

Maintenance, access and amendment and the Electronic Communications and Transactions Act 25 of 2002 (ECTA)

Section 2 of the Bill provides that the Chief Registrar of Deeds (hereinafter referred to as the “Chief Registrar”) will be responsible for the functional requirements, technical specifications, security measures, maintenance, processing of deeds and subsequent retention and production of deeds and other documents. The Bill is, however, silent as to the powers of the Chief Registrar to change the components or requirements of the Electronic Deeds Registration System from time to time as the need may arise. However, section 5(1) of the Bill does permit the Minister of Rural Development and Land Reform (hereinafter referred to as the “Minister”) vary the regulations of the Bill after Consultation with Regulations Board created by the current Deeds Registries Act. These aspects include:

- (a) the procedures for the electronic lodgement of deeds or documents;
- (b) the procedures for electronic record storing by deeds registries;
- (c) the manner of identification of the person who prepares executes, lodges, registers or stores deed or document required or permitted to be prepared, executed, lodged, registered or stored in any deeds registry;
- (d) the manner in which electronic payment of fees may be introduced;
- (e) the procedure and manner for accessing the Electronic Deeds Registration System for information purposes only;
- (f) the authorisation of any user of the Electronic Deeds Registration System, as contemplated in section 4; and
- (g) any matter that may be necessary to give effect to the objectives of this Act.

This is an important provision as it arguably ensures that there will be no major variation or overlap between the Bills regulations and those in the Deeds Registries Act. The final significant aspect of the Bill is that reference is made to ECTA.

One of the most crucial concerns will be as to how ECTA and the Bill will regulate electronic signatures, due to the major threats posed by modern cybersecurity criminals. Chapter 3 of ECTA regulates electronic signatures at present and recognises that electronic signatures or documents

hold equivalent status to the current counterparts. Unfortunately, while both ECTA and the Bill refer to electronic and advanced electronic signatures, more guidance is needed as to the form of signature to be used, which will undoubtedly have major implications for fraud and encryption. This type of signature will also have implications for authorised users of the System, which is defined only as a user of the System in the present Bill. Tiered access for different users, such as Deeds office officials, Conveyancers and ordinary members of the public would arguably go a long way into assisting the effectiveness of the Bill.

Conclusion

In conclusion, the Bill will go a long way towards creating a more efficient and effective Deeds Registration System able to cope with the vast volumes of registrations.

However, more clarity is required on various aspects of the Bill such as who will be authorised to use the System and how, the security of the System and the threat of cybercrime, and finally, more clarity on the original records.

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