

Short notes on:

THE ELECTRONIC DEED REGISTRATION SYSTEMS ACT: AIMS AND OBJECTIVES AND DOES IT BRING CHANGE?

Introduction

On Thursday, 3 October 2019, the Electronic Deed Registration Systems Bill was signed into law after having been tabled in Parliament in 2017 and subsequently sent to the President for assent in March 2019. This article aims to explore the aims and objectives of the Electronic Deed Registration Systems Act (the “Act”) and to unpack whether it brings about any change.

Purpose and scope

The Electronic Deed Registration System (e-DRS) / e-Commerce system is intended to provide for electronic deed registration and finds application to registration, execution and filing of deeds and documents as prescribed by the Deeds Registries Act No. 47 of 1937 (the “Deeds Registries Act”) as well as the Sectional Titles Act No. 95 of 1986 (the “Sectional Titles Act”). The e-Commerce system aims to streamline the process of preparation and lodgment of deeds as well as the processing of deeds and documents by the Registrar of Deeds, by moving away from the traditional method of having to manually attend to the Deeds Office. With the ever-growing need for computerisation and digitalisation, the e-DRS looks to employ internet-based systems and to eventually discontinue registration procedures which are currently regulated by the Deeds Registries Act and the Sectional Titles Act.

Aims and objectives

The e-Commerce system aims to decentralize the services of the Deeds Offices’ with the aim to provide country-wide access to Deeds Registration services. Even though there has not been any clarity as to the practical provisions and implications of these aims as of yet, as a practitioner, we can only be hopeful that these advancements will lessen the burden of having to employ the likes of correspondent attorneys when bearing offices in one province and wanting to lodge and register in another.

The e-Commerce system further aims to improve efficiency in turn-around times for providing registered deeds and documents to clients and aims to have the capacity for the registration of large volumes of deeds, effectively.

Validity of deeds and documents

The e-Commerce system seeks to move to the use of electronic signatures for purposes of deeds and registrations. It is with no doubt that the Electronic Communications and Transactions Act No. 25 of 2002 ("ECTA") finds application therein as ECTA, in its preamble seeks to provide for the facilitation of electronic communications and transactions and to encourage the use of e-government services.

According to Chapter 3 of the Act, any deed or document incorporated into the e-DRS system will be deemed to be the only original and valid record – which ought to be read in conjunction with S14 of ECTA.

According to ECTA and with regard to original documentation, S 14 provides as follows:

1. *Where a law requires information to be presented or retained in its original form, that requirement is met by a data message if -*
 - (a) *the integrity of the information from the time when it was first generated in its final form as a data message or otherwise has passed assessment in terms of subsection (2); and*
 - (b) *that information is capable of being displayed or produced to the person to whom it is to be presented.*
2. *For the purposes of subsection 1(a), the integrity must be assessed-*
 - (a) *by considering whether the information has remained complete and unaltered, except for the addition of any endorsement and any change which arises in the normal course of communication, storage and display;*
 - (b) *in the light of the purpose for which the information was generated; and*
 - (c) *having regard to all other relevant circumstances.*

Furthermore, all original documents at the Deeds Registries that are already in existence are deemed to be the originals and valid deeds or documents until incorporated into the e-DRS system.

Is the e-DRS system open to the public?

This is a question that may be ringing in the minds of many, however, the Act provides no clarity in this aspect as yet. S4 of the Act provides that any user of the e-DRS system must be authorized and registered in a manner and subject to conditions, as may be prescribed.

Where to from here?

Despite the Bill having been signed into as law, it is without a doubt that the e-DRS has a long way before coming into effect. At current, the Act makes provision that the e-DRS be developed, established and maintained and that the Minister may prescribe functional requirements, technical specifications, interface specifications and standards governing information security of e-DRS.

In the meantime, and in accordance with the transitional provisions, all operations will continue as per usual and the Registrar of Deeds must continue with the registration, execution, and filing of deeds and documents as per the Deeds Registries Act and Sectional Titles Act, until discontinued.

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