

REPUBLIC OF SOUTH AFRICA

ELECTRONIC DEEDS REGISTRATION AND RECORDAL SYSTEMS AMENDMENT BILL

*(As introduced in National Assembly (proposed section 75); explanatory summary of Bill
and prior notice of its introduction published in Government Gazette No. 55110 of 31 July
2026)*
(The English text is the official text of the Bill)

(MINISTER OF LAND REFORM AND RURAL DEVELOPMENT)

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

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

To amend the Electronic Deeds Registration and Recordal Systems Act, 2019, so as to provide for a client copy of a registered or executed deed or document to remain a valid copy for certain purposes; to provide that a transaction pertaining to a property registered electronically results in subsequent transactions to such property being registered electronically; to provide for additional transitional arrangements for electronic registration subject to the development of the electronic deeds registration and recordal system; to provide for the consequential amendment of certain legislation to the extent set out in the Schedule; and to provide for matters connected therewith.

Amendment of section 3 of Act 19 of 2019, as substituted by section 13, read with item 4 of Schedule to Act 20 of 2024

“Validity of deeds and documents

(2) A client copy of a registered or executed deed or document processed manually is valid for purposes of subsequent preparation, lodgement, registration, execution and filing of such deed or document as contemplated in section 6(4), only until such time as a further subsequent transaction in respect of such property is registered electronically.”.

Amendment of section 6 of Act 19 of 2019, as substituted by section 13, read with item 6 of Schedule to Act 20 of 2024

2. Section 6 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4)(a) Notwithstanding subsections (2) and (3), the Chief Registrar of Deeds may issue a directive for the continuation of the preparation, lodgement, registration, recording, 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.”

(b) If a transaction pertaining to a property is registered electronically, subsequent transactions pertaining to such property must also be registered electronically.

(c) If the functional requirements for the electronic registration of subsequent transactions pertaining to a property, as contemplated in paragraph (b), are not developed and operational, the Chief Registrar of Deeds may issue a directive, as contemplated in section 2(2), to provide for the manner of registration of such subsequent transactions.”.

Amendment of laws

3. The laws mentioned in the Schedule are amended to the extent indicated in the fourth column of the Schedule.

Short title and commencement

4. This Act is called the Electronic Deeds Registration and Recordal Systems Amendment Act, 2026, and comes into operation on the date of publication in the *Gazette*.

SCHEDULE

(Section 3)

AMENDMENT OF LAWS

Item No.	No. and year of Act	Short title	Extent of amendment	
1.	Act No. 47 of 1937	Deeds Registries Act	1. The amendment of section 1— (a) by the deletion in subsection (1) of paragraph (d); and (b) by the deletion of subsection (1A). 2. The amendment of section 3— (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph: “(b) examine all deeds or other documents submitted to him or her for execution [or], registration, or recordal and after examination reject any such deed or other document the execution [or], registration or recordal of which is not permitted by this Act or by any other law, or to the execution [or], registration, or recordal of which any other valid objection exists: Provided that such deed or document need not be examined in its entirety before being rejected;”; (b) by the substitution in subsection (1) for the words following paragraph (z) of the following words: “and generally the registrar shall discharge all such duties as by law may or are to be discharged by a registrar of deeds or as are necessary to give effect to the provisions of this Act [: Provided that nothing in this Act contained shall be construed as imposing upon the registrar at Johannesburg the duty of registering any deed or other document which he would not have registered if this Act had not been passed.]”; and (c) by the addition after subsection (4) of the following subsection: “(5) A registrar must, in respect of a deed or document submitted electronically as provided for in the Electronic Deeds Registration and Recordal Systems Act, perform his or her duties in subsection (1), subject to the provisions of this Act, the Electronic Deeds Registration and Recordal Systems Act, and the regulations and directives issued thereunder.”. 3. The insertion after section 3 of the following section: “Deeds submitted under Electronic Deeds Registration and Recordal Systems Act 3A. The provisions of this Act apply, with the necessary changes, in respect of deeds and documents submitted electronically in terms of the provisions of the Electronic Deeds Registration and Recordal Systems Act, which changes include— (a) that in the case of a certificate of title provided for in this Act, application must be made for the registration thereof and not for the issuing thereof; and (b) any provision in this Act or Regulations that require the lodgement of a title deed, any registered bond and any registered deed of lease or other registered deed whereby any real right therein is held, shall not apply if such registered deed or bond is stored on the electronic deeds registration and recordal system.”.	5 10 15 20 25 30 35 40 45 50 55 60 65 70

Item No.	No. and year of Act	Short title	Extent of amendment
			4. The insertion after section 38 of the following section: “Certificate of registered title taking place of lost, destroyed or incomplete deed stored on electronic deeds registration and recordal system 38A. (1) If a title deed of any land stored on the electronic deeds registration and recordal system has been lost, destroyed or incomplete, the registrar shall, on written application by the owner of the land, accompanied by a diagram of the land, if no diagram thereof is filed in the registry or in the office of the surveyor-general concerned, execute a certificate of registered title in respect of such land in accordance with the diagram of the land. (2) Before executing the certificate referred to in subsection (1), the registrar shall, at his or her expense, publish in the prescribed form a notice of intention to register the certificate in two consecutive ordinary issues of the <i>Gazette</i> and in two consecutive issues of a newspaper circulating in such division, district or county in which the land is situated. (3) A draft of the proposed certificate and a copy of the diagram, if any, accompanying the application, shall be open for inspection in the registry free of charge by any interested person, for a period of two weeks after the date of the first publication of the notice in the <i>Gazette</i>, during which period any interested person may object to the registration of the certificate. (4) Any person who has lodged with the registrar an objection to the registration of the certificate may, in default of any arrangement between him or her and the applicant, apply to the court within one month after the last day upon which an objection may be lodged, for an order prohibiting the registrar from registering the certificate, and the court may make such order on the application as it may deem fit. (5) A certificate of registered title registered under this section shall be as nearly as practicable in the prescribed form and shall take the place of the lost, destroyed or incomplete title deed and shall embody or refer to every condition, servitude, bond, lease or other encumbrance which according to the records of the registry was embodied or referred to in the lost, destroyed or incomplete title deed or in any endorsement thereon.”. 5. The deletion of section 46A. 6. The deletion of section 48. 7. The deletion of section 49. 8. The amendment of section 62— (a) by the substitution for subsection (1) of the following subsection: “(1) Save as provided in subsections (1A), (3) and (4), every notarial bond shall be registered in the deeds registry for the area in which the debtor resides and carries on business, or if he resides and carries on business in areas served by different deeds registries, in the deeds registry for the area in which he resides and in every deeds registry serving any area in which he carries on business: Provided that notarial bonds passed in Natal in pursuance of the Notarial Bonds (Natal) Act, 1932 (Act 18 of 1932), irrespective of whether the debtor resides or carries on business in Natal, shall be sufficiently registered for the purposes of this Act if registered in the deeds registry at Pietermaritzburg.”; and

Item No.	No. and year of Act	Short title	Extent of amendment	
			(b) by the insertion after subsection (1) of the following subsection: “(1A) If a debtor under a notarial bond resides and carries on business in areas served by different deeds registries, such notarial bond shall, if submitted electronically in terms of the provisions of the Electronic Deeds Registration and Recordal Systems Act, be effective for the whole of the Republic if registered in the deeds registry that serves the area where the debtor resides.”. 9. The amendment of section 77 by the substitution for subsection (1)<i>bis</i> of the following subsection: “(1)<i>bis</i> Whenever a cession of a lease is to be registered in respect of any portion of the land leased, a notarial copy of the lease shall be attached to such cession and after registration such cession with the notarially certified copy of the lease annexed thereto shall be deemed to be the title to the portion of the lease so ceded, and for any subsequent registration in respect thereof it shall be part of the title[.]; Provided that if a cession is submitted electronically in terms of the provisions of the Electronic Deeds Registration and Recordal Systems Act, a notarial certified copy of the lease must not be attached to the cession, if such notarial lease is stored on the electronic deeds registration and recordal system.”. 10. The amendment of section 101— (a) by the substitution for the heading of the following heading: “101. Special provisions relating to [Vryburg deeds registry] certificates of ownership issued by Administrator of British Bechuanaland prior to its annexation to Colony of Cape of Good Hope”; (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: “(1) The practice prevailing prior to the commencement of the Deeds Registries Act, 1918, in the deeds registry at Vryburg of transferring or mortgaging land held under a certificate of ownership issued by the Administrator of the territory known as British Bechuanaland prior to its annexation to the Colony of the Cape of Good Hope, and which was declared by that Act to be legal and of effect, shall continue to be legal and of effect in any deeds registry having the necessary jurisdiction[.]; Provided that—”; and (c) by the substitution for subsection (2) of the following subsection: “(2) The provisional registration in the deeds registry at Vryburg of any cession or assignment of rights to unascertained or unsurveyed land, prescribed by Government Notice (British Bechuanaland) of the thirteenth day of November, 1886, shall continue to be of force, in any deeds registry having the necessary jurisdiction, in respect of land to which a right of ownership was acquired prior to the annexation of British Bechuanaland to the Colony of the Cape of Good Hope, until such time as a grant of such land has been registered.”.	5 10 15 20 25 30 35 40 45 50 55 60 65
2.	Act No. 95 of 1986	Sectional Titles Act	1. The amendment of section 1 by the insertion after the definition of “draft sectional plan” of the following definition: “ ‘Electronic Deeds Registration and Recordal Systems Act’ means the Electronic Deeds Registration and Recordal Systems Act, 2019 (Act No. 19 of 2019);”.	70

Item No.	No. and year of Act	Short title	Extent of amendment
			2. The amendment of section 3— (a) by the substitution for the heading of the following heading: <u>“Application of Deeds Registries Act, Electronic Deeds Registration and Recordal Systems Act, reproduction of documents, and units deemed to be land”;</u> 5 (b) by the substitution for subsection (1) of the following subsection: <u>“(1) Save as is otherwise provided in this Act; the Electronic Deeds Registration and Recordal Systems Act or any other law or the context otherwise indicates, the provisions of the Deeds Registries Act shall, in so far as such provisions can be so applied, apply mutatis mutandis in relation to all documents registered or filed or intended to be registered or filed in a deeds registry in terms of this Act.”; and</u> 10 15 20 (c) by the addition after subsection (4) of the following subsection: <u>“(5) The provisions of this Act apply, with the necessary changes, in respect of deeds, documents and sectional plans submitted electronically in terms of the provisions of the Electronic Deeds Registration and Recordal Systems Act, which changes include—</u> 25 (a) <u>that in the case of a certificate of title and certificate of real rights provided for in this Act, application must be made for the registration thereof and not for the issuing thereof;</u> 30 (b) <u>any provision in this Act or Regulations that require the lodgement of a title deed, any registered bond and any registered deed of lease or other registered deed whereby any real right therein is held, does not apply if such registered deed or bond is stored on the electronic deeds registration and recordal system; and</u> 35 40 (c) <u>sectional plans that must, notwithstanding any provision herein, but subject to any provision of a directive issued under section 2 of the Electronic Deeds Registration and Recordal Systems Act, be lodged in single.”.</u> 45

MEMORANDUM ON THE OBJECTS OF THE ELECTRONIC DEEDS REGISTRATION AND RECORDAL SYSTEMS AMENDMENT BILL, 2026

1. BACKGROUND

- 1.1 The Department of Land Reform and Rural Development (the “Department”) drafted the Electronic Deeds Registration and Recordal Systems Amendment Bill, 2026 (the “Bill”), which proposes certain amendments to the Electronic Deeds Registration and Recordal Systems Act, 2019 (Act No. 19 of 2019) (“EDRRS Act”), to improve the application and implementation of the Act. The EDRRS Act generally provides for the development of an electronic deeds registration and recordal system.
- 1.2 Procedures relating to the registration of land and rights in land are currently performed *manually* in terms of the provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937) (the “Deeds Registries Act”), and the Sectional Titles Act, 1986 (Act No. 95 of 1986) (the “Sectional Titles Act”). Electronic deeds registration and recordal will be facilitated by the EDRRS Act. It is, therefore, necessary to amend the Deeds Registries Act and Sectional Titles Act to provide for processes relating to the preparation, lodgement, registration, and execution of deeds and documents to be conducted either manually or electronically, as provided for in section 6(4) (transitional provisions) of the EDRRS Act.

2. OBJECTS OF BILL

The Bill seeks to amend the EDRRS Act in order to—

- (a) provide for a client’s copy of a registered or executed deed and document to remain a valid copy for purposes of preparation, lodgement, registration, execution and filing of deeds and documents manually, as contemplated in section 6(4) of the Act, until such time as a transaction in respect of such property is registered electronically, or until such time as the registration, execution and filing procedures in terms of the Deeds Registries Act and the Sectional Titles Act are discontinued, as contemplated by section 6(1) of the EDRRS Act;
- (b) provide that if a transaction pertaining to a property was registered electronically, all subsequent transactions pertaining to such property must also be registered electronically;
- (c) provide for the Chief Registrar of Deeds to issue a Directive as contemplated in section 2, to stipulate the manner of registration of subsequent transactions if the functional requirements for the electronic registration of subsequent transactions pertaining to such property, is not developed and operational; and
- (d) provide for the amendment of the Deeds Registries Act and the Sectional Titles Act to the extent set out in the Schedule, with a view to align relevant provisions with that of the EDRRS Act, and to address registration procedures relating to the re-alignment of deeds registries.

3. CLAUSE-BY-CLAUSE ANALYSIS

3.1 Clause 1

- 3.1.1 Clause 1 seeks to amend section 3 of the EDRRS Act, which deals with the “*Validity of deeds and documents*”. Section 3 provides that all deeds and documents generated, registered and executed electronically, and all other *already* registered, recorded or executed deeds or documents scanned or otherwise incorporated into the electronic deeds registration and recordal system (“e-DRRS”), shall be deemed to be the *only original and valid record* of such deed or document. The current wording of section 3 has the effect that *all* registered deeds scanned or otherwise incorporated into the e-DRRS, regardless of same being prepared and registered manually and of which the owner is in possession of, are regarded invalid due to the e-DRRS copy being

regarded as the only valid record of such copy. Such a situation will compromise the effective continuation of the preparation, lodgement, registration, recordal, execution and filing of deeds and documents manually, as prescribed by the Deeds Registries Act and the Sectional Titles Act during the transition period as contemplated by section 6(4) of the EDRRS Act.

- 3.1.2 This clause further provides for the insertion of section 3(2), to provide for the client's copy of a registered or executed deed or document to remain a valid copy for purposes of preparation, lodgement, registration, execution and filing of deeds and documents *manually* as contemplated in section 6(4), which will clarify the position and will ensure the effective continuation of the manual system in instances where such system may be used.

3.2 Clause 2

- 3.2.1. Clause 2 seeks to amend section 6 of the EDRRS Act, which deals with '*Transitional provisions*'. Section 6(4) provides during the transitional period for a dual system, in so far as it concerns the preparation, lodgement, registration, execution and filing of deeds and documents manually or electronically, for a period as may be determined by the Chief Registrar of Deeds. The client may choose to either use the manual procedure or the electronic procedure. However, it will be practically impossible to use the manual procedure once a transaction relating to a property was done electronically.
- 3.2.2. To provide clarity and to regulate the matter, it is necessary to insert paragraph (b) to section 6(4) to provide that once a transaction in respect of a property has been registered electronically, subsequent transactions pertaining to such property must also be registered electronically.
- 3.2.3. It is also necessary to insert paragraph (c) to provide that, if the functional requirements for the electronic registration of subsequent transactions pertaining to a property, as contemplated in paragraph (b), for the electronic deeds registration and recordal system is not developed and operational, the Chief Registrar of Deeds may issue a directive as contemplated in section 2(2) of the Act to provide for the manner of registration of such subsequent transactions.

3.3 Clause 3

- 3.3.1. Clause 3 provides for the amendment of laws, to the extent set out in the Schedule to the Bill. The EDRRS Act provides for electronic preparation, e-lodgement, e-registration, e-recordal, e-execution and e-storing of deeds and documents. However, procedures relating to such are performed manually in terms of the provisions of the Deeds Registries Act and Sectional Titles Act. The electronic preparation, e-lodgement, e-registration, e-recordal and e-execution of deeds and documents will be facilitated by the EDRRS Act and it is, therefore, necessary to amend the Deeds Registries Act and Sectional Titles Act to align relevant provisions thereof with that of the EDRRS Act.
- 3.3.2. The Minister embarked on a programme to re-align the jurisdiction areas of deeds registries throughout the country in accordance with the provincial boundaries and, in some instances, within the municipal boundaries as envisaged in section 103 of the Constitution of the Republic of South Africa, 1996 (the "Constitution"). The aim is to have a deeds registry per province and to provide for e-lodgement, e-registration and e-recordal in the province in which the property is situated.

- 3.3.3. The position in Gauteng differs from other provinces regarding the two deeds registries that are situated in the same province, namely the deeds registry seated in Pretoria (North Gauteng deeds registry) and the deeds registry seated in Johannesburg (South Gauteng deeds registry). The deeds registry in Pretoria was historically the only registry for the former Transvaal province, which encompassed the area presently known as the Province of Gauteng. Various townships sprung up in the area known as the Rand and in 1969 the Rand township registration (deeds registry in Johannesburg) was established to register all township properties.
- 3.3.4. However, all farm properties remained registered in the Pretoria deeds registry, as well as township properties falling outside the so-called Rand area. The status quo in respect of the area of jurisdiction of the Pretoria deeds registry for the registration of the opening of townships, as contemplated in section 46A of the Deeds Registries Act, and the registration of farm and agricultural land and holdings, therefore remain until the Deeds Registries Act is amended to allow for e-registration and e-recordal to take place in accordance with the definition of the area of the Pretoria deeds registry and the Johannesburg deeds registry, respectively.
- 3.3.5. The amendments to the Deeds Registries Act are contained under clauses 1(a), 1(b), 2(b), 5, 6 and 7 of the Schedule to the Bill.
- 3.3.6. The position of the deeds registries of North West (seated in Vryburg) and Northern Cape (seated in Kimberley) is that transactions pertaining to property in North West were registered in the deeds registry Northern Cape, and *vice versa*. The Forum of Concerned Residents of Naledi and Dr Ruth S. Mompati District served an application on the Chief Registrar's office to prevent the re-alignment between the North West and North Cape deeds registries until such date as the electronic deeds registration system is ready to be implemented. Section 2 of the Act came into effect on 2 October 2019, and the remaining sections on 1 April 2025. The e-DRRS was therefore implemented and the re-alignment between the two registries was finalised. The amendments to the Deeds Registries Act are contained under clauses 10(a), 10(b) and 10(c) of the Schedule to the Bill.

3.4 Clause 4

Clause 4 provides for the short title and commencement of the Act.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. DEPARTMENTS/BODIES CONSULTED

Deeds Registries Regulations Board, Registrars of Deeds, and senior managers in the Department of Land Reform and Rural Development were consulted and support the amendments to the Act.

6. COMMUNICATION IMPLICATIONS

To be undertaken by the Department.

7. PARLIAMENTARY PROCEDURE

- 7.1 The Constitution prescribes the procedure for the classification of Bills, therefore, a Bill must be correctly classified so that it does not become inconsistent with the Constitution. The Constitution distinguishes between four categories of Bills, as follows:
- (a) Bills amending the Constitution (section 74);
 - (b) Ordinary Bills not affecting the provinces (section 75);
 - (c) Ordinary Bills affecting the provinces (section 76); and
 - (d) Money Bills (section 77).
- 7.2 Sections 74 to 77 of the Constitution require Parliament, firstly, to classify a Bill submitted to it, to determine which procedure should be followed in enacting the Bill. Section 76(1) of the Constitution provides that “[w]hen the National Assembly passes a Bill referred to in subsection (3), (4) or (5), the Bill must be referred to the National Council of Provinces and dealt with [by the procedure] set out in that provision”. Section 76(3) of the Constitution, in turn, provides that “a Bill must be dealt with in accordance with the procedure established by either subsection (1) or subsection (2) if it falls within a functional area listed in Schedule 4”.
- 7.3 In summary, a Bill will be considered as a section 76 Bill—
- if it provides for legislation mentioned in paragraphs (a) to (f) of section 76(3) of the Constitution;
 - if it provides for legislation envisaged in section 44(2), 220(3) or Chapter 13 of the Constitution; or
 - if its provisions in a substantial measure fall within a functional area of concurrent national and provincial legislative competence listed in Schedule 4 to the Constitution.
- 7.4 In *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* 2010 (8) BCLR 741 (CC), the Constitutional Court determined the proper test for the tagging of the Communal Land Rights Bill (previously B67-2003, and now Act No. 11 of 2004) (“CLARA”), after the High Court held that, in classifying the CLARA for “tagging”, Parliament had applied the incorrect test, namely, the “pith and substance” test, instead of the “substantial measure” test suggested by the Constitutional Court in the matter of *Ex parte the President: In re Constitutionality of the Liquor Bill* 2000 (1) BCLR 1 (CC) (the “Liquor Bill case”). The High Court, however, refused to declare the CLARA invalid for failure to enact it following the correct procedure.
- 7.5 The Constitutional Court concluded that there is a difference between determining whether the National Assembly or the National Council of Provinces (“NCOP”) has the competence to legislate in a particular field and determining how a Bill ought properly to be tagged and ultimately enacted. These are two different processes for which two different tests are to be applied. Ngcobo CJ reaffirmed the decision of the Constitutional Court in the Liquor Bill case, at paragraphs 63 to 64 that the statement: “. . . any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4. . .”, formulates the test for determining the procedure to be followed in enacting a Bill. Ngcobo CJ further, at paragraph 58, states the following:

“What matters for tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill ‘in substantial measure fall within a functional area listed in Schedule 4’. This statement refers to the test to be adopted when tagging Bills. This test for classification or tagging is different from that used by this Court to characterise a Bill in order to determine legislative competence. This “involves the determination of the subject-matter or the substance of the legislation, its essence, or true purpose and effect, that is, what the [legislation] is about” (Our emphasis.)

- 7.6 The Constitutional Court thus held that **the test for tagging must be informed by its purpose**. Tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter. Nor is the process concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how a Bill must be considered by the provinces and in the NCOP. **The question of how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces.** The more it affects the interests, concerns, and capacities of the provinces, the more say the provinces should have on its content. Ngcobo CJ, at paragraphs 69 and 70, concisely dealt with the tagging question as follows:

“The tagging of Bills before Parliament must be informed by the need to ensure that provinces fully and effectively exercise their appropriate role in the process of considering national legislation that substantially affects them. Paying less attention to the provisions of a Bill once its substance, or purpose and effect, has been identified undermines the role that provinces should play in the enactment of national legislation affecting them. . . .

To apply the ‘pith and substance’ test to the tagging question, therefore undermines the constitutional role of the provinces in legislation in which they should have a meaningful say, and disregards the breadth of the legislative provisions that section 76(3) requires to be enacted in accordance with the section 76 procedure.” (Our emphasis.)

- 7.7 As indicated above, the Bill deals with the electronic deeds registration and recordal systems. In this regard, the Bill provides for the development, establishment, and maintenance of the electronic deeds registration and recordal systems, and requires the Chief Registrar of Deeds to develop, establish, and maintain the electronic deeds registration and recordal systems for the preparation, lodgement, registration, recordal, execution, and storage of deeds and documents.
- 7.8 The matters covered in the Bill are not listed in either Schedule 4 or 5 to the Constitution. Therefore, after carefully considering the Bill and measuring it against the matters listed in Schedule 4 or 5 to the Constitution, the State Law Advisers are of the view that this Bill must be tagged as a section 75 Bill.

8. REFERRAL OF BILL TO NATIONAL HOUSE OF TRADITIONAL AND KHOI-SAN LEADERS

- 8.1 The Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), provides for the referral of Bills to the National House of Traditional and Khoi-San Leaders (“National House”), and states as follows:

“Referral of Bills to National House

39. (1) (a) Any Parliamentary Bill—

- (i) *which directly affects traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities; or*
- (ii) *pertaining to any matter referred to in section 154(2) of the Constitution,*

must, in the case of a Bill contemplated in subparagraph (i) and may, in the case of a Bill contemplated in subparagraph (ii), before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House for its comments.” (Our emphasis.)

- 8.2 Section 39(1) require Bills pertaining to customary law or customs of traditional communities to be referred to the National House of Traditional

and Khoi-San Leaders. Section 154(2) of the Constitution provides that **draft national or provincial legislation that affects the status, institutions, powers or functions of local government** must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation. Furthermore, the National House of Traditional and Khoi-San Leaders will have 60 days to provide the Secretary to Parliament with its comments on Bills referred to it.

- 8.3 This Bill is considered to be national legislation and does not specifically provide any provisions that impact or affect traditional or Khoi-San communities or matters pertaining to customary law or customs of traditional or Khoi-San communities. In light of this, the State Law Advisers are of the view that the Bill does not have to be referred to the National House of Traditional and Khoi-San Leaders.

