

REPUBLIC OF SOUTH AFRICA

DEEDS REGISTRIES AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No. 23775 of 30 August 2002) (The English text is the official text of the Bill)

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 65—2002]

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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 make further provision regarding the registration of immovable property in the name of persons married under the Recognition of Customary Marriages Act, 1998; and to endow a trust with legal personality; and to provide for matters connected therewith.

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

Amendment of section 17 of Act 47 of 1937, as substituted by section 29 of Act 88 of 1984 and amended by section 1 of Act 75 of 1987, section 9 of Act 14 of 1993, by section 1 of Act 132 of 1993, section 2 of Act 11 of 1996 and section 12 of Act 120 of 1998 5

1. Section 17 of the Deeds Registries Act, 1937, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Where immovable property, a real right in immovable property, a bond or a notarial bond— 10

- (a) is registered in the name of a person who has married since the registration took place; **[or]** 10
- (b) is registered in the name of a person who on the date of the registration was married out of community of property or whose marriage was on that date governed by the law of another country, and whose marriage was subsequently dissolved by death or divorce; **[or]** 15
- (c) forms an asset in a joint estate and was registered prior to 1 November 1984 in the name of the husband only; or
- (d) is registered in the name of a person who on the date of the registration was a party to a marriage governed by the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), 20

the registrar shall on the written application by the person concerned and on the submission of the deed in question and of proof of the relevant facts, endorse the change in status or make a note to the effect that the said person is a party to a marriage in community of property, as the case may be: Provided that where there are two or more mutually dependent deeds, all such deeds must be submitted for endorsement.”. 25

Amendment of section 102 of Act 47 of 1937, as amended by section 12 of Act 3 of 1972, substituted by section 22 of Act 27 of 1982, section 4 of Act 75 of 1987, amended by section 9 of Act 62 of 1984, substituted by section 7 of Act 3 of 1988, inserted by section 22 of Act 113 of 1991, substituted by section 9 of Act 11 of 1993, amended by section 22 of Act 14 of 1993, substituted by section 68 of Act 67 of 1995, amended by sections 9 and 10 of Act 11 of 1996, substituted by Proclamation R. 9 of 31 January 1997, section 6 of Act 24 of 1998 and section 10 of Act 93 of 1998 5

2. Section 102 of the Deeds Registries Act, 1937, is hereby amended by the insertion after the definition of “owner” of the following definition:

“ ‘person’ includes a trust;”. 10

Short title

3. This Act is called the Deeds Registries Amendment Act, 2002.

MEMORANDUM ON THE OBJECTS OF THE DEEDS REGISTRIES AMENDMENT BILL, 2002

1. PURPOSE

The Deeds Registries Amendment Bill, 2002 (hereinafter referred to as “the Bill”), proposes amendments to the Deeds Registries Act, 1937 (Act No. 47 of 1937) (hereinafter referred to as “the Act”), to incorporate a legal principle introduced by the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), and to endow trusts with legal personality for the purposes of the Deeds Registries Act.

2. OBJECTS OF THE BILL

2.1 Section 17 of the Act regulates the registration of immovable property in the name of married persons and prescribes which information must appear in the deeds of such property where marriages are in or out of community of property. The Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), has introduced a new matrimonial property system which is currently not accommodated in the Deeds Registries Act. The Recognition of Customary Marriages Act, 1998, provides for the recognition of customary marriages and regulates the proprietary consequences of customary marriages entered into before or after the commencement thereof on 15 November 2000. Section 7 determines, amongst other things, that a customary marriage entered into after the date of commencement, in which a spouse is not a partner in any other existing customary marriage, is a marriage in community of property and of profit and loss unless such consequences are specifically excluded in an antenuptial contract regulating the matrimonial property system of their marriage. Spouses in a customary marriage entered into before the commencement may apply to court to change the matrimonial property system which applies to their marriage or marriages. In order to accommodate this system, it is necessary that section 17 of the Deeds Registries Act be amended accordingly.

2.2 The common law does not recognise trusts as juristic persons and does not permit registration of rights in land in the name of any body other than a natural or a juristic person. The immigrants from Britain formed trusts on their arrival in South Africa and a practice of registering rights in land in favour of trustees evolved. It is, therefore, a reality of the South African legal system that for a considerable period of time rights in land have been registered in the name of the trustees of trusts without mentioning the name of the beneficiary of the trust in the deeds concerned. This has taken place on the basis of the practice mentioned above. The said practice is not in line with section 11(1)(b) of the Trust Property Control Act, 1988 (Act No. 57 of 1988), which provides that trust property must be registered in such a manner that it is clear from the registration that it is trust property.

2.3 Section 12 of the Trust Property Control Act, 1988, states that trust property does not, on insolvency, form part of the trustee’s insolvent estate.

2.4 It is necessary to amend the Deeds Registries Act so as to confer juristic personality, for the purposes of the Act, on trusts and thereby enable compliance with the Trust Property Control Act. This is sought to be achieved by amending section 102 of the Act by inserting a definition of “person” which includes a trust.

3. CONSULTATION

The Law Society of South Africa was consulted.

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Land Affairs are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedures set out in section 74 or section 76 of the Constitution apply.