



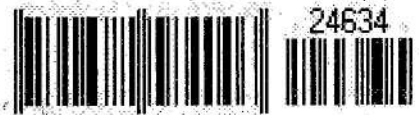
# Government Gazette Staatskoerant

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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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**Minerals and Energy, Department of***General Notice*

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## GENERAL NOTICE

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### NOTICE 959 OF 2003

#### MINING TITLES REGISTRATION AMENDMENT BILL 2003

The draft Mining Titles Registration Amendment Bill 2003 is hereby published for comment. Comments should be submitted in writing to:

**Postal Address:**

Shinaaz Isaacs  
Committee Secretary  
Parliament of South Africa  
PO Box 15  
Cape Town  
8000

**Physical Address:**

Room 1403  
Parliament Towers  
Plein Street  
Cape Town

Tel no: (021) 403-3763

Fax no: (021) 403-2808

E-mail: [shiisaacs@parliament.gov.za](mailto:shiisaacs@parliament.gov.za)

Copies of the draft Bill can be obtained from:

- Government Printers: Pretoria and Cape Town

Written comments must be received no later than 10 April 2003.

REPUBLIC OF SOUTH AFRICA

MINING TITLES REGISTRATION AMENDMENT BILL

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*(As introduced in the National Assembly as a section 75-Bill; explanatory summary  
of Bill published in Government Gazette No.24477 of 2003) (The English text is the  
official text of the Bill)*  
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(MINISTER OF MINERALS AND ENERGY)

[B - 2003]

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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.

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## B I L L

**To amend the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), so as to substitute, add or delete certain definitions; to re-regulate the registration of mineral and petroleum titles and other rights connected therewith and certain other deeds and documents; to effect certain amendments necessary to ensure consistency with the provisions of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); to repeal obsolete provisions; and to provide for matters connected therewith.**

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

**Amendment of section 1 of Act 16 of 1967 as amended by section 1 of Act No. 14 of 1991 and substituted by section 1 of Act No. 60 of 1980**

1. Section 1 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967) (hereinafter referred to as the principal Act) is hereby amended by—

- (a) the substitution for the expression "Mining Rights Act, 1967" where it appears before the definitions, of the expression "Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)";
- (b) the deletion of the definitions of "bewaarplaats", "certificate of bezitrecht", "certificate of reservation of a trading site", "mining title", "nomination agreement", "permit to retain and treat residues", "prospecting contract", "stand title", "surface right permit", "tributing agreement" and "water right";
- (c) the insertion after the definition of "certificate of reservation of a trading site" of the following definitions:

"certificate of registered title" means a certificate issued in terms of section 24 defining an undivided share or shares in a right

"closure certificate" means a certificate issued in terms of

section 43 of the Mineral and Petroleum Resources

Development Act, 2002 (Act No. 28 of 2002);

'diagram' means a document containing geometrical,

numerical and verbal representations of a piece of land, line,

feature or area forming the basis for registration of a real right

and which has been signed by a person recognised under any

law then in force as a land surveyor, or which has been

approved, confirmed or certified by the office of Surveyor-

General, and includes a diagram or copy prepared in the office

of the Surveyor-General which has been so approved,

confirmed or certified;

'Department' means the Department of Minerals and Energy;

'Director-General' means the Director-General of the

Department of Minerals and Energy;

'exploration right' means a right granted in terms of section 80

(1) of the Mineral and Petroleum Resources Development Act,

2002 (Act No. 28 of 2002);

'financial provision' means the financial provision as defined in

terms of section 1 of the Mineral and Petroleum Resources

Development Act, 2002 (Act No. 28 of 2002);

'government' includes any national, provincial and local government;":

- (d) the substitution for the definition of "holder" of the following definition:

"holder" [in relation to—

(a) any right granted or created in terms of any existing or prior law relating to prospecting and mining for precious metals, base minerals, natural oil or precious stones; or

(b) any right granted or created under any other law which, in terms of the provisions of such other law, is registerable in the Mining Titles Office,

means the person registered in such office as the holder thereof, and if such holder—

- (i) is a minor or is mentally disordered or insolvent or otherwise incompetent in law to administer his estate, or is deceased, includes the person recognized by law to administer his estate;
- (ii) is a company under judicial management or in liquidation, includes the judicial manager or liquidator thereof,

**in so far as the person so recognized or such judicial manager or liquidator is acting within the authority conferred on him by law;]** means the holder as defined in terms of section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).";

- (e) the substitution for the definition of "Master" of the following definition:

**"[in relation to any matter]** means the Master, Deputy Master or Assistant Master of the **[Supreme]** High Court having jurisdiction in respect of that matter;";

- (f) the insertion after the definition of 'Master' of the following definitions:

'mining permit' means a permit granted in terms of section 27(6) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

'mining right' means a right granted in terms of section 23(1) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

'mineral title' means any registered right to prospect or mine granted or acquired under the Mineral and Petroleum Resources Development Act, 2002 (Act No 28 of 2002)

'Minister' means the Minister of Minerals and Energy;

- (g) the substitution for the definition of 'mortgage bond' or 'bond' of the following definition:

**'mortgage bond' or 'bond' means a mortgage bond attested by the Director-General specially hypothecating any [mining title, tributing agreement, stand title, surface right permit, water right, certificate of reservation of a trading site, personal servitude or bewaarplaats or any registered lease or sub-lease] rights granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);**

- (h) the insertion after the definition of 'notary public' of the following definitions"

**'petroleum title' means any registered right granted to explore or produce petroleum granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);**

**'plan' means a sketch plan or locality plan as prescribed defining the area for exploration, prospecting, reconnaissance, retention or mining permit;**

**'production right' means a right granted in terms of section 84(1) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);**

'prospecting right' means a right granted in terms of section 17(1) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

'reconnaissance permission' means a permit issued in terms of section 14(1) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

'reconnaissance permit' means permission granted in terms of section 75(1) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

'retention permit' means a permit issued in terms of section 32(1) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);";

- (i) the substitution for the definition of "right" of the following definition:

**"right' means any right [which is] held by or under any deed [of grant, licence, certificate or other document of title issued or created in terms of the Mining Rights Act, 1967, or under any law relating to prospecting and mining for precious metals, base minerals, natural oil or precious stones, and which is registered or capable of being registered in the Mining Titles Office or is held by or under any deed of transfer, deed of cession, certificate of title or other deed which is so registered] and is registered**



or recorded in the Mineral and Petroleum Titles Registration Office”;

- (j) the insertion after the definition of ‘surface right permit’ of the following definition:

‘technical co-operation permit’ means a permit issued in terms of section 77(1) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);”;

- (k) the substitution for the expression “Supreme Court” wherever it appears of the expression “High Court”.

#### **Substitution of section 2 of Act 16 of 1967**

2. The following section is hereby substituted for 2 of the principal Act:

“Establishment of the [Mining Titles] Mineral and Petroleum Titles Registration Office

(1) **[The Mining Titles Office established at Johannesburg by section 3 of the Registration of Deeds and Titles Act, 1909 (Act 25 of 1909), of the Transvaal, shall remain in existence notwithstanding the repeal of that Act by section 67 of this Act, and shall be the Mining Titles Office for the registration of all mining titles stand titles and of all other rights, deeds and documents for the registration of which in**

**such office provision is made in this Act or any other law.] “The**  
**Mineral and Petroleum Titles Registration Office is hereby**  
**established and is the office for the registration of all mineral and**  
**petroleum titles and all other related rights, deeds and documents**  
**for the registration of which provision is made in this Act or any other**  
**law.**

(2) All mineral and petroleum titles, deeds and documents  
must be lodged in a prescribed manner for registration in the  
**[Mining Titles Office prior to] Mineral and Petroleum Titles**  
**Registration Office** after the commencement of **[this Act] the**  
**Mineral and Petroleum Resources Development Act, 2002**  
**(Act No. 28 of 2002)** and shall be dealt with **[as if this Act**  
**had not been passed]** in terms of this Act.

(3) **[No right to mine registered or capable of being**  
**registered in the Mining Titles Office shall be deemed to be a lease of**  
**a right to minerals for the purpose of the Deeds Registration Act,**  
**1937 (Act 17 of 1937)] Any reference to the Mining Titles Office in any**  
**other law must be regarded as a reference to the Mineral and Petroleum**  
**Titles Registration Office established in terms of this Act.**

**Amendment of section 3 of Act 16 of 1967 as substituted by section 3 of Act No. 14 of 1991**

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

- (a) the deletion in subsection (1) of paragraph (a);
- (b) the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) the Director-General **[may appoint or] must** designate one or more officers **[employed at the Mining Titles Office who shall have the power, subject to the provisions of this Act and to the directions of the Director-General, to do any act or thing which may lawfully be done]** in the service of the department to perform the functions delegated or assigned under this Act or any other law **[by the Director-General].”** ; and

- (c) the deletion of subsection (2).

**Amendment of section 4 of Act 16 of 1967**

3. The following section is hereby substituted for section 4 of the principal Act:

“4. The Director-General shall have a seal of office which shall be affixed to all deeds or document executed, attested or registered by

him or her, and to all copies of deeds or documents issued by him or her to serve in lieu of the original deeds or documents.”

**Amendment of section 5 of Act 16 of 1967 as substituted by section 2 of Act No. 60 of 1980**

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

- (a) the substitution in subsection (1) for paragraph (a), (b) and (c) respectively of the following paragraphs:

“(a) take charge of and preserve all records **[which prior to the commencement of this Act were or after such commencement may become records of the Mining Titles]** of the Mineral and Petroleum Titles Registration Office: Provided that the Director-General may**[,with due regard to any regulations made under section 10 (1) (k),]** destroy or otherwise dispose of any record **[which has been cancelled]** that has a title which is no longer valid in terms of this **[section]** Act or any other law;

- (b) examine all deeds, diagrams, plans or other documents submitted to him or her for execution, registration, recording, noting **[of filing of record in his office, and**

after examination reject any such deed, plan or other document the execution, registration, recording, noting or filing of which is not permitted by this Act or by any other law or to the execution, registration, recording, noting or filing of record of which any other valid objection exists: provided that no such deed, plan or document shall be required to be examined in its entirety before being rejected;] or filing in his or her office;

- (c) register all [mining titles and stand titles, bewaarplaatsen, certificates of bezitrecht, certificates of owner's reservation, certificates of reservation of trading sites, certificates of title in respect of mining claims, certificates of water reservation for owners, diagrams, grants of machinery sites, grants of water rights, mynpacht-brieven, permits to retain and treat residues, prospecting licences, plans and surface right permits] rights granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) and generally all documents evidencing title which by law, [established custom or usage] are

proper for registration in the **[Mining Titles Office]**

Mineral and Petroleum Titles Registration Office;”;

(b) the substitution in subsection (1) of paragraph (d);

“register **[nomination agreements]** prospecting, exploration, production, mining and related rights and any cession, renewal, modification, amendment, abandonment or cancellation of **[a]** such registered **[nomination agreement]** rights;

(c) the substitution in subsection (1) for paragraph (e) of the following paragraph:

“register **[mining]** leases and sub-leases granted under any law relating to exploration, production, prospecting and mining **[for precious metals, base minerals or natural oil]** and any transfer, cession, amendment, modification, abandonment or cancellation of any such lease or sub-lease.”

(d) the deletion in subsection (1) of paragraph (f);

(e) the substitution in subsection (1) for paragraph (g) of the following paragraph:

“(g) attest or execute and register deeds of transfer, **[and]** deeds of cession of rights, and certificates of registered title **[execute and register certificates of title to rights;]**”;

(f) the substitution in subsection (1) for paragraphs (h) and (i) of the following paragraphs:

**" [(h) attest and register mortgage bonds and cession of registered mortgage bond;**

**(i) register cessions (including cessions made as security) of registered mortgage bonds, and register cancellations of such cessions if made as security;"] attest and register mortgage bonds and cessions of registered mortgage bonds and cancellations of such cessions made as security;**

(g) the substitution in subsection (1) for paragraphs (k) and (o) of the following paragraphs:

**" [(k) register waivers of preference in respect of registered mortgage bonds with regard to the whole or any part of the right hypothecated thereby, in favour of other bonds, whether registered or about to be registered;**

**(o) register against any registered mortgage bonds any agreement entered into by the mortgagor and the holder of that bond, whereby any terms of that bond have been varied;] register waivers of preference in respect of registered mortgage bonds with regard to the whole or any part of the rights hypothecated thereby, in**



favour of other bonds, whether registered or about to be registered and register against such bond any agreement entered into by the mortgagor and the holder of that bond, whereby any terms of that bond have been varied;

(h) the substitution in subsection (1) for paragraph (l) of the following paragraph:

“(l) register any servitude over any right capable of being encumbered by servitude by virtue of the provisions of any law relating to prospecting and mining, and **[record]** register any amendment, modification, abandonment or extinction of any such registered servitude;”;

(i) the deletion in subsection (1) of paragraphs (m) and (n);

(j) the substitution in subsection (1) for paragraph (p) of the following paragraph:

“(p) register powers of attorney whereby the agents named therein are authorized to act generally for the principals, or to carry out a series of **[acts or]** transactions registerable in the **[Mining Titles]** Mineral and Petroleum Titles Registration Office, and register copies of any such powers registered in a deeds registry, which have been certified by the Registrar

thereof or have been issued for the purpose of being acted upon in the **[Mining Titles] Mineral and Petroleum Titles Registration Office** by a Registrar or Master of the **[Supreme] High Court of South Africa [or a mining commissioner in his capacity as a registration officer];”;**

- (k) the substitution in subsection (1) for paragraph (r) of the following paragraph:

“(r) record all notices, returns, statements or orders of court lodged with him or her in terms of any law;”

- (l) the substitution in subsection (1) for paragraph (s) of the following paragraph:

“(s) give notice to the mining commissioner Regional Manager of any **[mining district] registrations or recordings** effected in relation to any rights in **[that district] the region concerned**;

- (m) the substitution in subsection (1) for paragraph (t) of the following paragraph:

“(t) record the conversion, renewal, modification, abandonment, lapsing or cancellation of any mineral title, permit **[mining title or stand title]** or of any other rights evidenced by any registered title deed **[or by any grant, certificate, permit or licence]** registered, recorded, noted or filed in the **[Mining Titles] Mineral and Petroleum Titles Registration Office**”;

(n) the deletion in subsection (1) for paragraphs (u) and (v);

(o) the insertion after subsection (x) of the following paragraphs:

“ (i) remove from his or her records, with the approval of the Master and after the lapse of ten years from the date of entry in such records, any entry made therein, whether before or after the commencement of this Act, in pursuance of the transmission to him or her of a notice of liquidation or an order of liquidation or sequestration”;

“ (ii) record and file all mining permits, retention permits, technical co-operation permits and reconnaissance permits and permissions”;

“ (iii) record and file financial provisions, environmental management plan, environmental management programmes and closure certificates issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act NO, 28 of 2002);

(n) the deletion of subsection (5) (2).

**Amendment of section 6 of Act 16 of 1967 as amended by section 5 of  
Act No. 170 of 1993**

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

(a) the substitution in subsection (1) for paragraph (a) of the following paragraph:

1. The Director-General shall have the power to -

“(a) **[to]** require the production of any deeds or documents or of proof **[upon affidavit or otherwise]** of any fact necessary to be established in connection with any matter **[or thing]** sought to be performed or effected in the **[Mining Titles] Mineral and Petroleum Titles Registration Office**”

(b) the insertion after subsection (1) for paragraph (a) of the following paragraph:

“(aA) “ reject any deed, diagram, plan or other document examined by him or her provided that no such deed, diagram, plan or other document is required to be examined in its entirety before being rejected” ;

(c) the substitution in subsection (1) for paragraphs (b), (c), and (d) respectively of the following paragraphs:

“(b) **[to]** rectify any error in any deed, diagram, plan or other document recorded, noted, registered or filed in the **[Mining Titles] Mineral and Petroleum Titles Registration Office [any error in the name or the**

**description of any person or right mentioned therein or in the conditions affecting any such right, if every person appearing from the deed or other document to be interested in the rectification has in writing consented thereto or the court has ordered such rectification]:** Provided that no such rectification shall be effected which would have the effect of **[transferring] alienating any such right;"**;

**(c) [under such conditions as may be prescribed, to] issue certified copies of deeds, diagrams, plans or other documents registered, recorded or filed in the [Mining Titles] Mineral and Petroleum Titles Registration Office under such conditions as he or she may prescribe;**

**(d) [if in his opinion any deed or other document submitted to him has become illegible or unserviceable, to require that a certified copy thereof be provided to take its place;]"**; require that a certified copy of any deed, diagram, plan or other document be provided to take the place of one that has become unserviceable or illegible;" and;

**(d)** the insertion after paragraph (d) of the following paragraph;  
"2A deny access to records in instances that pose a threat to the integrity or security of such records"; and

- (e) the deletion in subsection (1) of paragraph (e);
- (f) the substitution for subsection (2) of the following subsection:

“Where any error to be rectified in terms of subsection (1) (b) is common to two or more deeds, diagrams, plans or other documents, including any register in the **[Mining Titles]** Mineral and Petroleum Registration Office, the error shall be rectified in all those deeds, diagrams, plans or other documents.”

#### **Amendment of section 7 of Act 16 of 1967**

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

“Registered deeds not to be cancelled **[except upon an order of court]**

(1) **[Save as is otherwise provided in this Act or in any other law, no registered deed of grant deed of transfer, certificate of title or other deed conferring or conveying title to any right, and no cession of any registered mortgage bond not made as security, shall be cancelled by the Director-General except upon an order of**

court .]; No registered deed or document conveying title to any right shall be cancelled by the Director-General except upon an order of court or as provided for in this Act or any other law.”.

(b) the substitution for paragraph (2) of the following subsection:

**“2 [Upon the cancellation as provided in subsection (1) of any deed conferring or conveying title to any right otherwise than by way of a mortgage bond, the deed (if any) under which such right was held immediately prior to the registration of the deed which is cancelled, shall, subject to the provisions of subsection (3), be revived to the extent to which the cancelled deed related thereto, and the Director-General shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed and make all necessary entries in the appropriate registers.] The Director-General shall upon the cancellation as provided for in subsection (1) make all the necessary endorsements on the deed and related documents under which such right was held immediately prior to the cancellation, and other entries in the appropriate registers.”**

(b) the deletion of subsection (3).



**Amendment of section 8 of Act 16 of 1967**

8. Section 8 of the principal Act is amended by the substitution for subsections (1) and (2) respectively of the following subsections:

“(1) The Director-General shall on such terms and conditions as may be prescribed and upon payment of the prescribed fees and subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) permit any member of the public to—

- (a) **[to]** inspect the public **[registers and other public]** records in the **[Mining Titles]** Mineral and Petroleum Titles Registration Office; **[other than the index to such registers or records, and]**
- (b) **[to]** make copies of those records or extracts from those **[registers]** records; or [and]
- (c) **[to]** obtain **[such]** any other information concerning deeds or other documents registered ,recorded or filed in **[the said]** that Office **[as prior to the commencement of this Act could customarily be made or obtained]**.

(2) No fee shall be payable under subsection (1) in respect of any search or inspection made [—

- (a) **by a conveyancer or notary public in connection with any deed which he has been instructed to prepare, attest or lodge in the Mining Titles Office; or**

- (b) by any land surveyor or mine surveyor in connection with any survey which he has been instructed or is required to perform; or
- (c) by any sheriff or messenger of [a magistrate] the court [or of a Commissioner's Court, or by the deputy of any such sheriff or messenger,] in connection with the performance of his or her functions."

#### **Repeal of section 9 of Act 16 of 1967**

- 9. Section 9 of the principal Act is hereby repealed.

#### **Amendment of section 10 of Act 16 of 1967 as amended by section 6(a) and (b) of Act No. 170 of 1993**

- 10. Section 10 of the principal Act is hereby amended by—
  - (a) the substitution for subsection (1) of the following subsection:

"(1) The **[board]** Director-General **[established under section 9]** may from time to time make, alter or rescind regulations, not inconsistent with this Act, prescribing—
    - (a) the fees of office **[(if any)]** to be charged in respect of any act[, matter or thing required or permitted to be done in or in

**relation to the Mining Titles Office,] provided for in this Act,**

including any report made to the court by the Director-General in connection with any application or action to which he or she is not a party;

- (b) .....
- (c) **the time, manner and form in which [and the qualifications of the person by whom] any deed or other document required or permitted to be lodged, registered, recorded or filed in the [Mining Titles] Mineral and Petroleum Titles Registration Office shall be prepared, lodged, executed, registered, filed or delivered [and the time within which any deed shall be executed];**
- (d) **[the particular] documents which, when produced in the [Mining Titles] Mineral and Petroleum Titles Registration Office, shall be attested or witnessed, and the manner in which any such document shall be so attested or witnessed;**
- (e) **the conditions upon which any [conveyancer, notary public, land surveyor, mine surveyor or other] person may conduct any search in the [Mining Titles] Mineral and Petroleum Titles Registration Office, and the precautions which shall be taken to ensure preservation of the records from damage by improper handling or otherwise;**
- (f) **the transmission by the Director-General to any [mining**

**commissioner] Regional Manager**, Registrar of deeds or other officer of returns of **[deeds of transfer, deeds of grant, certificates of title, mortgage bonds and other] rights registered or recorded in the [Director-General's] Mineral and Petroleum Titles Registration Office, and the manner **[and]** , form **[of]** and times for transmitting such returns;**

(g) the conditions under which copies of deeds, diagrams, plans and other documents registered, recorded or filed in the **[Mining Titles] Mineral and Petroleum Titles Registration** Office may be issued for judicial **[purposes]** or **[for purposes of]** information purposes **[or in substitution for deeds or other documents which have been lost, destroyed, defaced or damaged, and the conditions under which extracts from registers or from any documents registered or filed in the said office may be furnished];**

(h) the manner and form in which consent shall be signified to any cancellation, cession, part payment, reduction of cover, release or amendment of or other registerable transaction affecting any bond or other document registered in the **[Mining Titles] Mineral and Petroleum Titles Registration** Office;

- (i) the conditions under which a copy of a power of attorney, diagrams, plans and other document may be accepted by the Director-General in lieu of the original;
- (j) the forms of deeds or documents which shall be used in circumstances not provided for in this Act or in the **[Mining Rights Act, 1967]** Mineral and Petroleum Resources Development Act, 2002, (Act No. 28 of 2002) or any other law;
- (k) the records which may be destroyed in terms of **[the proviso to]** section 5 (1) (a); or replaced in terms of section (6) (1) (d); and
- (l) any matter which under this Act or any other law is required or permitted to be prescribed."

(b) the insertion after subsection (1) of following subsection:

"No regulation relating to State revenue or expenditure may be made by the Minister except with the concurrence of the Minister of Finance."

(c) the deletion of subsection (3).

#### **Amendment of section 11 of Act 16 of 1967**

**11.** The following section is hereby substituted for section 11 of the principal Act:

**“Opening and keeping of [R] registers**

**11.** [In addition to the registers he may be required by any other law to keep, the Director-General shall, as soon as may be after the date of coming into effect of regulations made in terms of section 10, prepare, open and keep such registers as may be necessary to enable him to carry out the provisions of this Act or any other law.] “The Director-General shall prepare, open and keep such registers as may be necessary to enable him or her to carry out the provisions of this Act.”

**Substitution of section 12 of Act 16 of 1967**

**12.** The following section is hereby substituted for section 12 of the principal Act:

**“[Temporary] [c] Continuation of existing registers during the transitional period**

**12.** Until such time as any register has been prepared and opened under section 11, the Director-General shall continue during the

transitional arrangements referred to in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), to keep the corresponding register in use in the **[Mining Titles]** Mineral and Petroleum Titles Registration Office immediately prior to the commencement of this Act **[and to make therein, in respect of any matter provided for in this Act, the like entries as were customarily made therein prior to such commencement].**"

#### **Amendment of section 13 of Act 16 of 1967**

**13.** Section 13 of the principal Act is hereby amended by-

(a) the substitution for subsections (1), (2) and (3) respectively of the following subsections:

"(1) (a) Deeds executed or attested by the Director-General shall be **[deemed to be]** registered upon the affixing of his or her signature **[thereto, and deeds]** on the relevant document.";

(b) Deeds or documents **[or powers of attorney]** lodged for registration shall be **[deemed to be]** registered when the **[Mining Titles]** Mineral and Petroleum Titles Registration Office endorsement in respect of the registration thereof is signed



(c) **[ : Provided that no such ]** Subject to the provisions of this Act no deed [.] or document [or power of attorney] which is one of a batch of interdependent deeds [.] or documents **[or powers of attorney]** intended for registration together, shall be deemed to be registered until all the deeds [.] or documents **[or powers of attorney]** in the batch or the registration endorsements in respect thereof, as the case may be, have been signed by the Director-General.”;

(2) If, by inadvertence, the signature of the Director-General has not been affixed to a deed executed or attested by him or her, or to the registration endorsement in respect of the registration of a deed [.] or document **[or power of attorney]** lodged **[for registration]**, at the time at which the signature should have been affixed in the ordinary course, the Director-General may affix his or her signature **[thereto]** on the deed or document when the omission is discovered, and the deed [.] or document **[or power of attorney]** shall **[thereupon]** be deemed to have been registered at the time **[aforesaid]** when the signature should have been affixed.

(3) **[Save as provided in]** Subject to subsection (2), all endorsements or entries made on deeds, documents or **[powers of attorney or in]** registers, in connection with the registration of any deed [.] or document **[or power of attorney]**, shall be deemed to have been effected

simultaneously with the affixing of the signature of the Director-General thereto in respect of deeds executed or attested by him or her or with the signing of his or her registration endorsement in respect of deeds [,] or documents [**or powers of attorney**] lodged for registration, although in fact they may have been made subsequently **[thereto].**"

- (b) the deletion of subsection (4)

#### **Amendment of section 14 of Act 16 of 1967**

**14.** Section 14 of the principal Act is hereby amended by-

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

**"(1) [Save as is otherwise provided in this**

**Act or in any other law or as directed by the court—**

**(a)] [t]**Transfers or cessions of rights shall follow the sequence of the successive transactions [**exchange**] in the vesting of such rights **[: Provided that-] unless this Act, any other law or the court provides otherwise.**;

- (b) the deletion of subsection (1) (a) (i) to (vi);

- (c) the substitution for subsection (1) (vii) of the following paragraph:

(vii) **"[i] If** any person has obtained the right to claim transfer or cession of a right from any other person and such first-mentioned right has been vested in any third person in terms

of any judgment or order of court [(including a magistrate's court or a Commissioner's Court)] or in terms of a sale in execution held pursuant to any such judgment or order, transfer or cession may be passed directly to such third person by the person against whom such first-mentioned right was exercisable.”;

(d) the substitution for subsection (2) of the following subsection:

“(2) In any transfer or cession in terms of **[any proviso to]** subsection (1) **[(b)]** there shall be paid the transfer duty and estate duty which would have been payable had the rights concerned been transferred or ceded to each person successively becoming entitled thereto.”

**Amendment of section 15 of Act 16 of 1967 as amended by section 7 of Act No. 170 of 1993**

**15.** Section 15 of the principal Act is hereby amended by-

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

“(1) (a) **[Save as is otherwise provided in]** Subject to the provisions of this Act or in any other law, no deed of transfer or mortgage bond shall be registered unless it has been prepared and executed by a conveyancer.

(b) **[,and] Subject to subsection (1) no contract [or agreement (other than an agreement mentioned in section (5) (1) (o), servitude, lease, sub-lease or deed of cession (] other than a cession of a mortgage bond [)] shall be registered unless it has been attested by a notary public."**

(b) the insertion after subsection (2) of the following subsection:

**"Deeds of cession of rights, other than cessions of mortgage bonds, must be prepared and attested by a notary public before the Director-General registers them."**

#### **Amendment of section 15A of Act 16 of 1967**

**16.** The following section is hereby substituted for Section 15A of the principal Act:

**"Proof of certain facts in connection with [deeds and documents by means of certain certificates] transactions in the Mineral and Petroleum Titles Registration Office**

**15A. (1)** A conveyancer who prepares a deed or other document for **[the]** purposes of registration or filing in the **[Mining**

**Titles] Mineral and Petroleum Titles Registration Office**, and who signs a prescribed certificate on such deed or document, accepts by virtue of such signing the responsibility, **[to the extent prescribed by regulation]** for the purposes of this **[section,] Act**, for the accuracy of **[those]** facts mentioned in such deed or document or which are relevant in connection with the registration or filing thereof **[, and which are prescribed by regulation]**.

(2) The provisions of subsection (1) shall apply **[mutatis mutandis]** to any person other than a conveyancer, who is prescribed by regulation, and who has in accordance with the regulations prepared a deed or other document prescribed by regulation for registration, recording or filing in the **[Mining Titles] Mineral and Petroleum Titles Registration Office**.

(3) (a) The Director-General shall accept, during the course of his or her examination of a deed or other document in accordance with the provisions of this Act, that the facts referred to in subsection (1) in connection with the registration, recording or filing of a deed or other document in respect of which a certificate referred to in subsection (1) or (2) has been signed, have for the purposes of such examination been conclusively **[proved: Provided that the foregoing provisions of this subsection] proven**.

(b) Subsection (3) shall not derogate from the obligation of the Director-General to give effect to any order of court or any other notification recorded in the **[Mining Titles] Mineral and Petroleum Titles Registration** Office in terms of this Act or any other law, and which affects the registration, recording or filing of such deed or other document."

**Amendment of section 16 of Act 16 of 1967 as substituted by section 6 of Act No. 14 of 1991, and section 18 of Act No.132 of 1993**

16. Section 16 of the principal Act is hereby amended by—

**"Registration of rights [in name of married persons] must be in the name of the holder**

- (a) the substitution for the expression "married person" where it appears of the expression "holder";
- (b) the deletion of subsection (1);
- (c) the insertion after subsection (1) of the following paragraph:

**"The Director-General shall only register the rights granted in the name of the holder of such right even when such holder is married."**

- (d) the substitution for subsection (2) of the following subsection:

"(2) Every deed executed or attested by the Director-General, or attested by a notary public and required to be registered in the **[Mining Titles] Mineral and Petroleum Titles Registration Office**, and made by or on behalf of or in favour of any person, shall [—

- (a) state the full name and **[marital status of the person concerned;]** identity number or registration number of the holder.
- [(b) where the marriage concerned is governed by the law in force in the Republic or any part thereof, state whether the marriage was contracted in or out of community of property;**
- (c) where the person concerned is married in community of property, state the full name of his spouse; and**
- (d) where the marriage concerned is governed by the law of any other country, state that the marriage is governed by the law of that country].**

(d) the deletion of subsections (3), (4) and (5).

#### **Insertion of section 16A**

**18.** The following section is hereby inserted after section 16 of the principal Act—

**“Execution of deeds by prospective holders of rights**

**16A. If any deed or document required to be executed by the holder of any right has been executed by a person who has become entitled to receive transfer or cession of such right, such deed or document shall, upon such person receiving transfer or cession of the right, for the purposes of this Act be deemed to have been executed by the holder of such right.”**

**Amendment of section 17 of Act 16 of 1967**

**19. Section 17 of the principal Act is hereby amended by—**

- (a) the substitution for subsection (1) of the principal Act of the following subsection:

**“Form and manner of execution of deed of transfer, [or] cession or mortgage bonds**

**(1) [deed] Deeds of transfer, cession or mortgage bond shall be prepared in the form prescribed by law and shall [save in so far as, in the case of deeds of transfer executed by the Director-General, it is otherwise provided in this Act or any other law or ordered by the court,] be executed in the**



presence of the Director-General by a conveyancer authorized by power of attorney to act on behalf of the holder of such **[the]** right **[described]** therein, and shall be attested by the Director-General."

- (b) the deletion of subsection (2).

#### **Repeal of section 18 of Act 16 of 1967**

20. Section 18 of the principal Act is hereby repealed.

#### **Amendment of section 19 of Act 16 of 1967**

21. Section 19 of the principal Act is hereby amended by—

- (a) the substitution for subsections (1), (2) and (3) of the following subsections:

"(1) Two or more persons each holding different rights may not transfer or cede those rights to one or more persons by the same deed, unless such transfer or cession is authorized by directive of the Minister or the provisions of a law or by an order of court.

(2) Two or more rights may by one deed be transferred or ceded by one **[person or by two]** or more persons holding such rights in undivided shares to one person or **[to two or]**

more persons acquiring such rights in undivided shares, provided each right is described in a separate paragraph or the rights are grouped in paragraphs to the satisfaction of the Director-General.

(3) **[Where provision is made in any law for portions of a right to be transferred or ceded,]** Two or more portions of **[such]** a right may by one deed be transferred or ceded by one **[person or by two]** or more persons holding the whole of such right in undivided shares to one **[person or to two]** or more persons acquiring such portions in undivided shares, if each portion is described in a separate paragraph in which reference is made to the diagram or plan of such portion which shall **[whenever possible]** be annexed to the deed: Provided that the Director-General may permit any number of portions of the same kind of right to be grouped in one or more paragraphs to his or her satisfaction.”.

(b) the deletion of subsection (4).

#### **Amendment of section 20 of Act 16 of 1967**

**22.** Section 20 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

**"[Special provisions relating to t] Transfer or cession of undivided shares**

(1) No transfer or cession of an undivided share in a right which is **[intended or]** calculated to represent **[or purports to represent]** a defined portion of such right shall be capable of being registered."

**Repeal of sections 21,22, 23, 25, 26, 27, 28, 29, and 30 of Act 16 of 1967**

**23.** Sections 21,22, 23, 25,26, 27, 28, 29, and 30 of the principal Act are hereby repealed.

**Amendment of section 24 of Act 16 of 1967**

**24.** The following sections are hereby substituted for section 24 of the principal Act -

" (1) Any person who holds one **[two]** or more **[rights or]** undivided share**[s]** or shares in a right **[therein]** under one title deed may, subject to the provisions of section 26, **[obtain]** apply for a certificate of registered title in respect of one or more **[of]** such **[rights or of the]** undivided share or shares held by him or her therein **[, if, except in the case where the only title held by virtue of such title deed is a licence renewable from**

**Rights Act, 1967, or the regulations made thereunder, at least one of the rights or the share therein so held remains so held].**

(2) Subject to subsection (1) such application to obtain a certificate of registered title shall be made in the prescribed manner, and accompanied by the title deed, if available, under which such right is held.

(3) No transfer, cession or mortgage of a share or shares of an undivided right shall be registered in the Mineral and Petroleum Titles Registration Office unless a certificate of a registered title is produced to the Director-General.

(4) No certificate of registered title shall be required where the whole right is still held and is transferred, ceded or mortgaged by the holders jointly.

(5) If the title deed under which a share or shares is held by more than one holder is lost or destroyed, any such holder may upon prescribed requirements, obtain a registered title of his or her share without applying for the title deed which has been lost or destroyed.

(6) In issuing such certificate of registered title the Director-General shall endorse upon the title deed, register or mortgage bond, as the case may

be, that a certificate of registered title has been issued in respect of the share or shares in question provided that in the case of the bond it shall be endorsed on the certificate that it is mortgaged.

(7) If the said share or shares of the right is mortgaged, that mortgage bond shall be produced to the Director-General at the expense of the applicant.

(8) Any such certificate when issued shall take the place of the title deed under which right was previously held, and the issuing of the certificate shall not affect the rights and obligations of the right in question.

#### **Amendment of section 31 of Act 16 of 1967**

**25.** Section 31 of the principal Act is hereby amended by—

(a) the substitution for subsection (2) of the following subsection:

'A bond may be registered to secure an existing **[debt]** or a future debt or both **[existing and future debts]** and may hypothecate rights of different kinds with the written consent of the Minister.'

(b) the deletion of subsection (3);

**Amendment of section 34 of Act 16 of 1967**

26. The following section is hereby substituted for Section 34 of the principal Act—

**"[Save as is provided in this Act or in any other law, the] The Director-General shall not attest and register any mortgage bond which contains the general clause, [commonly known as the **general clause,**] purporting to bind generally all the immovable or movable property or registered rights of the debtor or both such immovable or movable property and such rights."**

**Amendment of section 35 of Act 16 of 1967**

27. Section 35 of the principal Act is hereby amended by—

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

**"(1) (a) No mortgage bond shall be passed by two or more mortgagors unless it purports to bind registered rights of each mortgagor. [ : **Provided that, notwithstanding the provisions of section 31 (1), rights****

**(b) Rights held subject to a condition that on the happening of a certain event such rights shall revert to a person named in such condition, may be mortgaged by the holder thereof and such other person**

by means of a bond passed by them jointly and severally, or may be mortgaged by the holder of such rights with the written consent of such other person, in which case the mortgage bond shall **[contain a reference]** refer to such consent."

(b) the insertion after subsection (4) of the following paragraphs:

"(a) The holder of a right subject to a personal servitude and the holder of that servitude may together mortgage the right to the full extent of their respective interests therein; and

(b) The holder of the right and the holder of the servitude may, each as principal debtor, in the same bond, mortgage the right or the servitude as the case may be."

#### **Amendment of section 37 of Act 16 of 1967**

**28.** The following section is hereby substituted for section 37 of the principal Act:

"(1) No transfer or cession of any mortgaged right shall be attested, executed or registered by the Director-General until the bond has been cancelled or the right has been released from the operation of the bond with the written

consent **[in writing]** of the holder **[thereof, or unless, in the case of any such mortgage bond which has been lost or destroyed, the Director-General has on application by the registered holder thereof, cancelled the entry in his register in respect of such bond: Provided that]** of the bond but no **[such]** cancellation or release shall be necessary if the transfer or cession is made—

(a) in execution of the judgment of any court **[(including a magistrate's court or a Commissioner's Court)]**; or

(c) in any other circumstances provided for in this Act or in any other law **[specially provided]** or by order of the court.";

**Amendment of section 38 of Act 16 of 1967 as substituted by section 20 of Act No. 132 of 1993**

**29.** Section 38 of the principal Act is hereby amended by—

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

"(1) (a) If the holder **[(in this section referred to as the transferor)]** of rights which are hypothecated under a registered mortgage bond, other than a mortgage bond to



secure the obligations of a surety **[(not being a person referred to in section 37 (1) (b))]**, transfers or cedes to another person **(in this section referred to as the transferee)]** all **[the rights]** such hypothecated **[thereunder]** rights, the Director-General may, notwithstanding the provisions of section 37 (1), register the transfer or cession **[and]**.

(b) The Director-General shall substitute the transferee for the transferor as debtor in respect of the bond, provided **[there is produced to him, in duplicate, the]** written consent **[in the prescribed form]** is produced to him or her, in duplicate by **[of]** the holder of the bond and the transferee to the substitution **[of the transferee for the transferor as the debtor]** in respect of the bond for the amount of the debt disclosed therein or for such lesser amount as may be specified in such consent."

**(b)** the substitution for subsection (2) of the following subsection:

**"(2)** In registering the transfer or cession the Director-General shall—

**(a)** make an entry in the appropriate register setting forth [—

**(i)]** that the debt of the transferor secured by the bond is cancelled; and

**[(ii)]** that the transferee has become the debtor in respect of the bond;

(b) annex one duplicate of the written consent referred to in subsection (1) to the bond and file the other in his or her office and make **[a suitable]** reference on the registry duplicate of the bond to such filing;" and

(c) the substitution for subsection (2) (d) of the following subsection:

"(d) **[make]** endorse on the deed of transfer **[deed or deed]** or of cession **[an endorsement of]** the mortgage **[containing]** with the date and number of the bond and the amount due in terms thereof.";

(d) the substitution for subsection (3) of the following subsection:

"(3) (a) As from the date of registration of the transfer or cession, the transferor shall be absolved from any obligation secured by the bond and the transferee shall be substituted for him or her as the debtor in respect of such bond **[and shall be]**.

(b) The substitute shall be bound by the terms **[thereof]** of the bond in the same manner as if he or she had **[himself]** passed the bond and had renounced therein the benefit of all relevant exceptions."

**Amendment of section 39 of Act 16 of 1967**

**30.** Section 39 of the principal Act is hereby amended by—

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

**"Return by Master in connection with insolvent estates [and further provisions relative to insolvent estates]**

(1) (a) If it appears from the liquidation account of any estate which has been sequestrated or from the vouchers relating thereto that a payment has been made to any creditor on account of a bond registered in the **[Mining Titles] Mineral and Petroleum Titles Registration Office**, the Master shall notify **[the payment to]** the Director-General of such payment. **[who shall thereupon write off the amount thereof]**

(b) The Director-General shall, upon receipt of such notice write off the amount in the appropriate register, on the registry duplicate of the bond and [also], if available, on the original bond.

(c) [and the] The holder of the bond shall deliver the bond to the Master who shall forward it to the Director-General in order that the amount paid may be written off thereon.

(b) the substitution for subsection (2) of the following subsection:

**"(2) (a) Except in cases where an insolvent has been rehabilitated in pursuance of a composition made by him or her with his or her creditors, the Master shall from time to time transmit to the Director-General a return specifying—**

- (i) the name and address of every person who has been rehabilitated after the sequestration of his or her estate; and
- (ii) the rights and registered bonds appearing in the schedules lodged with the Master by or on behalf of such person or in the liquidation account of his or her estate,

and upon receipt of that return, the Director-General shall **[in accordance therewith]**, cancel in the appropriate registers all bonds registered therein against the rights of the said person prior to the sequestration of his or her estate and endorse the registry duplicates, and, if available, **[also]** the bonds **[themselves]** as cancelled.

(b) The holders of such bonds shall, when requested to do so by the Master, deliver the bonds to him or her, and the Master shall forward them to the Director-General for cancellation."

- (c) the substitution for subsections (4) (5) (6) and (7) respectively of the following subsections:

- (4) (a) Rights which have vested in a trustee in accordance with the provisions of the law relating to

insolvency and which have not **[in terms of that law]** been revested in the insolvent may, whether before or after rehabilitation of the insolvent, be transferred or ceded only by the trustee, and shall not after such rehabilitation be transferred, ceded, mortgaged or otherwise dealt with by the insolvent until they have been transferred or ceded to him or her by the trustee.

**(b) [ : Provided that ]** Notwithstanding the provisions of this Act, if after the rehabilitation the trustee has been discharged, or if there is no trustee in existence, the Master shall, if satisfied that the rehabilitated insolvent is entitled to the rights, give him or her transfer or cession thereof in such manner as may be prescribed.

(5) If by virtue of the provisions of the law relating to insolvency an insolvent has been revested with any rights, such rights shall not be transferred, ceded, mortgaged or otherwise dealt with by the insolvent until an endorsement that the rights have been restored to him or her has been made by the Director-General on the title deed evidencing the rights **[ : Provided that no such endorsement shall be made by the Director-General if the rights are registered in the name of a partnership until the rights have been dealt with in terms of section 22 ]**.

(6) Nothing contained in this section **[contained]** shall be construed as modifying any provision of the law relating to insolvency.

**Amendment of section 40 of Act 16 of 1967**

31. The following section is hereby substituted for section 40 of the principal Act:

**"(1) (a)** Whenever any mortgaged rights have been sold in execution of a judgement of a competent court, or under express authority contained in a special law, to satisfy any debt due in respect of a registered bond or otherwise, and the proceeds of the sale have been paid to the legal holder of the bond, the sheriff **[or deputy sheriff]** or messenger concerned or the person acting under the authority of such special law shall-

**(b) [n] Notify [to] the Director-General of how much of the capital sum due in terms of the bond has been paid, and**

**(c) shall transmit the bond to the Director-General who shall [thereupon] write off the amount [so] paid in the appropriate registers and [on the bond and the registry duplicate thereof] deeds."**

**Amendment of section 41 of Act 16 of 1967**

**32.** Section 41 of the principal Act is hereby amended by—

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

**"(1) (a) [Save as otherwise provided in this Act or in any other law, any] A servitude or contract [referred to in section 5 (1) (l) or (n)] shall be created by means of a deed executed before and attested by a notary public.**

**(b) [and any] Any amendment, modification, cession or cancellation of such a servitude or contract shall [likewise] be effected by notarial deed. [ Provided that if any such servitude or contract has lapsed by effluxion of time or for any other reason, the Director-General may, on written application by or on behalf of the holder of the right encumbered thereby, accompanied by proof of such lapsing, the title deed evidencing the right and, if available, the deed of servitude or contract, note on such title deed and on such deed of servitude or contract, if such deed or contract has been produced, that such servitude or contract has lapsed]."**

(b) the substitution for subsection (2) of the following subsection:

"(2) Each notarial deed shall contain a **[sufficient]** description of the rights encumbered by the servitude or contract together with a reference to the diagram, **[if any,]** defining the servitude **[or]**, the rights or any part thereof to which the notarial deed relates **[, unless such servitude or such rights or portion thereof are in the opinion of the Director-General sufficiently described in such deed]**, and shall mention the title deed evidencing the encumbered rights.

(c) the substitution for subsection (3) of the following subsection:

"(3) **[(a)]** For the purposes of the registration of the notarial deed there shall be produced a signed original of the deed to be filed in the **[Mining Titles] Mineral and Petroleum Titles Registration Office [as the registry duplicate]**, together with such further originals **[or grosses]** or copies certified by a notary public as may be prescribed **[and the title deed evidencing the rights affected]."**

(d) the deletion in subsection (3) of paragraph (b);

(e) the substitution for subsection (4) of the following subsection:

"(4) If the servient rights or the rights to which the contract relates are mortgaged or subject to any other encumbrance with which the servitude or contract may conflict, the bond or other registered deed evidencing such



other encumbrance, shall be produced together with the written consent **[in writing]** of the legal holder thereof to the registration of the servitude or contract."

(f) the deletion of subsection (5).

#### **Amendment of section 42 of Act 16 of 1967**

**33.** Section 42 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Notwithstanding the provisions of section (41), a personal servitude may be reserved by condition in a deed of transfer or cession of a right **[, if the reservation is in favour of the transferor or cedent, or in favour of the transferor or cedent and his spouse or the survivor of them if they are married in community of property, or in favour of the surviving spouse if transfer or cession is passed from the joint estate of spouses who were married in community of property].**"

#### **Amendment of section 43 of Act 16 of 1967**

**34.** Section 43 of the principal Act is hereby amended by—

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

**“[Registration of lapse of personal] Lapsing of servitude and contracts**

- (1) If for any reason **[a personal]** any servitude or contract has lapsed, the Director-General shall must note such lapsing on the title deed of the right and of the servitude and contract, on written application by or on behalf of the holder of the right encumbered thereby, accompanied\_
- (a) by proof of **[the lapse of the servitude]** such lapsing,
- (b) the title deed evidencing the right and, **[if available, the title deed, if any, evidencing the servitude, note on the title deed of the right and of the servitude, if the title deed evidencing the servitude has been produced, that the servitude has lapsed]**
- (c) the deed of servitude and contract.”
- (b) the substitution for subsection (2) of the following subsection:
- “(2) (a) Cancellation of the registration of a personal servitude in pursuance of an agreement between the holder of the right

encumbered and the holder of the servitude shall be effected by notarial deed[.] .

(b) **[but]** Subject to the provisions of this Act no such deed relating to any **[such]** servitude **[which]** that is mortgaged, shall be registered unless the mortgagee has **[in writing consented]** given written consent to the cancellation of the bond or the release of the servitude from its operation.”.

(c) the insertion after subsection (2) of the following paragraph:

“The Director-General may on his or her own accord endorse the lapsing of the right subject to the provisions of this Act or any other law.”

#### **Amendment of section 44 of Act 16 of 1967**

**35.** Section 44 of the principal Act is hereby amended by—

(a) the substitution for subsection (2) of the following subsection:

“(2) The deed of transfer or cession shall describe both the transferor or cedent as the holder of the right and holder of the servitude **[respectively, but no mention of the servitude shall be made in the description of the right therein].**”

(b) the deletion of subsections (3) and (4).

**Repeal of section 45 of Act 16 of 1967**

**36.** Section 45 of the principal Act is hereby repealed.

**Amendment of sections 46 of Act 16 of 1967**

**37.** Section 46 of the principal Act is hereby amended by—

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

“(1) **[(a) Save where provision to the contrary is made in any law, any] Any lease or sub-lease of any right and any cession thereof required to be registered in the Mineral and Petroleum Titles Registration Office, [capable of being leased by virtue of the provisions of any law relating to prospecting and mining, and any cession of such a lease or sub-lease intended or required to be registered in the Mining Titles Office,] shall be executed by the lessor and the lessee or by the lessee and the sub-lessee or by the cedent and the cessionary and shall be attested by a notary public.”**

(b) the deletion of subsection (1) (b);

(c) the insertion after subsection (2) of the following subsections:

“(3) Every amendment of the terms and conditions of

any lease or sub lease must be in the form of a notarial deed and must be submitted for registration to the Director-General together with such further originals or copies thereof and such other documents and deeds as may be prescribed."

"(4) Whenever any lease or sub lease has been amended, modified, abandoned or cancelled, either wholly or in part, such plans, diagrams, deeds and other documents as may be prescribed must be submitted to the Director-General who must register or record such amendment, modification, abandonment or cancellation."

#### **Amendment of section 47 of Act 16 of 1967**

**38.** Section 47 of the principal Act is hereby amended by—

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

**"(1) When a registered lease or sub-lease has terminated, the Director-General shall on written application by the holder of the right affected [thereby] or the holder of the lease, accompanied by—**

**(a) proof of the termination of the lease or sub-lease [and, in the case of the termination of the lease, by]**

**(b) the title deed of the right leased and, [if available]**

(c) the deed of lease or, [in the case of the termination of the sub-lease, by the deed of lease and, if available, the deed of] sub-lease, note, [in the case of the termination of the lease, upon the title deed of the right and on the deed of lease, if produced or, in the case of the termination of the sub-lease, upon the deed of lease and upon the deed of sub-lease, if produced,] that the lease or sub-lease has terminated".

(b) the addition after subsection (2) of the following subsections:

"(3) The Director-General may on his or her own accord endorse the lapsing of the right subject to the provisions of this Act or any other law."

(4) Any transaction that is conducted in the Mineral and Petroleum Titles Registration Office must comply with section 11 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)"

#### **Repeal of sections 48 to 56 of Act 16 of 1967**

39. Sections 48 to 56 of the principal Act are hereby repealed.

#### **Amendment of section 57 of Act 16 of 1967**

40. The following section is hereby substituted for Section 57 of the principal Act by-

"No transfer or cession of any right (except a mortgage bond) made as security for a debt or other obligation shall be attested by the Director-General or registered or recorded in the **[Mining Titles Mineral and Petroleum Titles Registration Office]**."

**Amendment of section 58 of Act 16 of 1967**

41. Section 58 of the principal Act is hereby amended by—

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

"(1) No deed of transfer or cession of any right **[or certificate of registered title issued in terms of section 27 shall]** shall be registered unless accompanied by a receipt or certificate of a competent **[public revenue]** officer that the taxes, duties and fees payable to the Government **[or any provincial administration]** on the rights to be transferred, ceded or registered have been paid."; and

(b) the deletion of subsection (2).

**Amendment of sections 59 of Act 16 of 1967**

42. Section 59 of the principal Act is hereby amended by—

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

"(1) (a) If any person **[or partnership]** whose name appears in any registered deed or other document has changed **[his or its]** name, the Director-General shall, endorse on the said deed or document such change, upon written application and written proof by that person of the change **[or partnership and upon production of the consent in writing of every other person interested in such deed or other document or in the rights created, conveyed or evidenced thereby]**, if he or she is satisfied that no change of person in law is implied. **[in such change of name, endorse on the said deed or other document that the name of the person or partnership has been changed to the name stated in the application, and if the]**

(b) Where the old name stated in the application appears in another deed or other document registered in the **[Mining Titles] Mineral and Petroleum Titles Registration** Office, that deed or other document shall be **[likewise]** endorsed, and in either case corresponding entries shall be made in the registers.";

(b) the substitution for subsection (2) of the following subsection:

"(2) Except in the case of a person **[or partnership]** whose name has been changed in accordance



with the provisions of any law, the Director-General shall refuse to make any endorsement in terms of subsection (1) [until the applicant has published a notice in a form approved of by the Director-General once in the *Gazette* and three times in a newspaper approved by him, and if any objection which in his opinion is *bona fide* and sufficiently material, is not later than one week after the last publication in the *Gazette* or newspaper, whichever may be the later publication, lodged with him to the endorsement being made, he may refuse to make the endorsement] except upon [the authority of] an order of court [and the court shall have jurisdiction to make such order in the matter as it may deem just] .”

#### **Amendment of section 61 of Act 16 of 1967**

**43.** Section 61 of the principal Act is hereby amended by—

- (a) the substitution for paragraph (a) and (b) of subsection (1) of the following paragraph:

“(1) (a) Any power of attorney executed within the Republic which purports to give authority to pass, cede, amend or cancel a deed or document [capable of being

registered or to perform any act which may properly be performed in the Mining Titles], or to perform any act in the Mineral and Petroleum Titles Registration Office, shall be attested either by two competent witnesses [above the age of fourteen years who are competent to give evidence] in any court of law in the Republic or by a magistrate, justice of the peace, commissioner of oaths or notary public under his or her designation [as such].;

(b) No person shall be competent to attest any power of attorney under which he or she is appointed as an agent or derives any benefit."

(b) the substitution for subsection (2) of the following subsection:

"(2) The provisions of subsection (1) shall [*mutatis mutandis*] apply to any other original document intended for registration or filing or production in the [Mining Titles] Mineral and Petroleum Titles Registration Office."

**Repeal of section 62 of Act 16 of 1967**

44. Section 62 of the principal Act is hereby repealed.

**Amendment of section 63 of Act 16 of 1967**

45. Section 63 of the principal Act is hereby amended by—

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

“(1) (a) No application made to the court for authority or an order involving the performance of any act in the **[Mining Titles]** Mineral and Petroleum Titles Registration Office shall be heard, unless the applicant has at least fourteen days before the hearing given the Director-General written notice of his intention to make such application [.]”

**[Provided that]**

(b) Subject to the provisions of this Act the

Director-General may accept notice of shorter duration if the exigencies of his or her office permit.”;

- (b) the substitution for subsection (2) of the following subsection:

“(2) The Director-General may submit to the court such report on any **[such]** application as he or she may deem **[desirable to make]** necessary.”

**Amendment of section 64 of Act 16 of 1967**

**46.** Section 64 of the principal Act is hereby amended by—

(a) the substitution for subsection (2) of the following subsection:

**"Substituted copy of lost deed supersedes original [which must be surrendered on recovery]**

(2) If a deed or other document **[which] that** has become void as **[aforesaid, comes into the custody or possession of any person who knows that a copy has been issued in substitution therefor, he shall forthwith deliver or transmit] contemplated in subsection (1), is subsequently found,** such deed or other document **shall be delivered or transmitted** to the Director-General.";

(b) the substitution for subsection (3) of the following:

**"(3) When any deed or other document [which] that has become void [as aforesaid] is delivered or transmitted to the Director-General, he or she shall impound [such deed] it for filing [or document and file it] in his or her office after [having made] having made an endorsement thereon that it has become void."**

**Amendment of section 65 of Act 16 of 1967**

47. The following section is hereby substituted for section 65 of the principal Act:

**"Exemption from liability for acts or omissions in the [Mining Titles]  
Mineral and Petroleum Titles Registration Office**

**(1) No act or omission of the Director-General or of any officer employed in the [Mining Titles]  
Mineral and Petroleum Titles Registration Office shall render the Government or the Director-General or such officer liable for [damage sustained] damages suffered by any person in consequence of such act or omission [:] .**

**[Provided that]**

**(2) Subject to the provisions of this Act if such act or omission is *mala fide* or if the Director-General or such officer has not exercised reasonable care and diligence in carrying out his or her duties in connection with the matter in relation to which such act or omission occurred, the Government shall liable for the damage, and in that event any amount paid by the Government shall be recoverable from the Director-General or such officer."**

**Amendment of section 66 of Act 16 of 1967**

**48.** The following section is hereby substituted for section 66 of the principal Act:

"No act or omission in connection with any registration in the **[Mining Titles] Mineral and Petroleum Titles Registration Office** shall be invalidated by any formal defect, whether such defect occurs in any deed passed or registered or in any document upon the authority of which any such deed has been passed or registered or which is required to be produced in connection with the passing or registration of such deed, unless a substantial injustice has by such act or omission been done which in the opinion of the court cannot be remedied by any order of court."

**Repeal of section 67 of Act 16 of 1967**

**49.** Section 67 of the principal Act is hereby repealed.

**Insertion of section 67A of Act 16 of 1967**

**50.** The following sections are hereby inserted after section 67 of the principal Act:

**"Registration of OP26 rights and converted old order rights**

**67A. All OP26 rights and old order rights converted in terms of the relevant provisions of Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) shall be lodged for registration at the Mineral and Petroleum Titles Registration Office within 90 days of the conversion thereof."**

**67B. All clauses dealing with the registration of mineral rights and related transactions provided for in the Deeds Registries Act, 1947 (Act No. 47 of 1937) are hereby repealed.**

**Short title and commencement**

**51.** This Act **[shall be]** is called the Mining Titles Registration Amendment Act, 2003 and **[shall]** comes into operation on the date of commencement of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).

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