

REPUBLIC OF SOUTH AFRICA

ABOLITION OF LEBOWA MINERAL TRUST BILL

(As amended by the Portfolio Committee on Minerals and Energy (National Assembly))

(MINISTER OF MINERALS AND ENERGY)

[B 49B—2000]

REPABLIKI YA AFRIKA BORWA

MOLAO-KAKANYWA WA PHEDIŠO YA THERASETE YA LEBOWA YA DIMINERALE

*(Bjale ka ge o fetotšwe ke Portfolio Committee ya Diminera le Enetši
(Lekgotla la Setšhaba))*

(TONA YA DIMINERALE LE ENETŠI)

[B 49B—2000]

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BILL

To provide for the abolition of Lebowa Mineral Trust; to provide for the transfer of assets, liabilities, rights, obligations and staff of Lebowa Mineral Trust to the State; and to provide for matters incidental thereto.

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

Definitions

1. In this Act, unless the context indicates otherwise—
“**fixed date**” means the date of commencement of this Act as determined under section 8; 5
“**Minister**” means the Minister of Minerals and Energy;
“**prescribe**” means prescribe by regulation;
“**State**” means the national sphere of government;
“**Trust**” means Lebowa Mineral Trust established by section 2 of Lebowa Mineral Trust Act, 1987 (Act No. 9 of 1987). 10

Abolition of Trust

2. The Trust is abolished with effect from the fixed date.

Vesting and transfer of assets, liabilities, rights and obligations of Trust

3. (1) (a) Despite any provision to the contrary in any law, all assets, liabilities, rights and obligations of the Trust will vest in the State. 15
(b) The right to minerals held by the Trust in terms of any law, including any obligations of the Trust relating to such right to minerals, will vest in the State, subject to paragraph (c).
(c) The Minister may, on application by any person who claims any right to minerals referred to in paragraph (b), grant such right to the person concerned if such person produces proof of ownership of such right to minerals as prescribed in terms of section 5. 20
(2) (a) The relevant registrar of deeds must, as provided for in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), make the necessary entries and endorsements in the register in order to give effect to such vesting as contemplated in subsection (1). 25
(b) No transfer duty or stamp duty is payable in respect of such transfer, entry or endorsement.

Transfer and handling of staff

4. (1) (a) Despite any provision to the contrary in any law, the Minister must, in respect of every person in the employ of the Trust on the fixed date, either— 30

- (i) transfer such person to a post in the public service, subject to subsection (2);
- (ii) transfer such person to any other body established by or under any law and approved by the Minister, subject to subsection (4); or
- (iii) deal with such person subject to the Labour Relations Act, 1995 (Act No. 66 of 1995),

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with effect from the fixed date.

(b) The Minister may only transfer a person as contemplated in paragraph (a)(i) and (ii) with that person's consent.

(2) A person transferred to a post in the public service in terms of subsection (1)(a)(i), is appointed on a salary approved for such post and on the conditions applying to the appointment and service of officers in the public service but—

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- (a) vacation leave standing to the credit of any person with the Trust stands to his or her credit in the public service;
- (b) pensionable service performed by any person in the service of the Trust and pensionable service recognised by the Trust is regarded as pensionable service performed by him or her in the public service;
- (c) a person does not as a consequence of such appointment acquire a retirement age, that is less favourable than that which applied to him or her in the service of the Trust.

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(3) Any disciplinary proceedings instituted against such person in respect of alleged misconduct, committed before the date of his or her transfer, must be finalised in accordance with the rules applicable to employees of the Trust.

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(4) (a) A person transferred in terms of subsection (1)(a)(ii) must be appointed on a salary approved by such body and on the conditions applicable to the appointment and service of employees with such body, subject to subsection (3).

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(b) The provisions of subsection (2) apply with the necessary changes to a person transferred in terms of subsection (1)(a)(ii).

Regulations

5. The Minister may—

- (a) after consultation with the relevant Portfolio Committee of Parliament, make regulations regarding the nature of proof required in terms of section 3(1)(c); and
- (b) make regulations regarding any matter which is necessary in order to achieve the objects of this Act.

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Delegation of powers and duties

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6. The Minister may in writing authorise any officer or employee of the Department of Minerals and Energy, to exercise or perform, in general or in a particular case, any power or duty conferred or imposed on the Minister by or under this Act.

Repeal of law

7. (1) Subject to subsection (2), the Lebowa Mineral Trust Act, 1987, is repealed.

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(2) Anything done under the Lebowa Mineral Trust Act, 1987, or any act performed by the Trust before the repeal of that Act which can be done in terms of this Act, remains in force as if the Act has not been repealed.

Short title and commencement

8. (1) This Act is called Abolition of Lebowa Mineral Trust Act, 2000, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

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(2) Different dates may be determined in terms of subsection (1) for the commencement of different provisions of this Act.

MEMORANDUM ON THE OBJECTS OF THE ABOLITION OF LEBOWA MINERAL TRUST BILL, 2000

Introduction:

The main objects of Abolition of Lebowa Mineral Trust Bill are to abolish the Lebowa Mineral Trust "LMT" and to provide for the transfer of assets, liabilities, rights, obligations and staff of the Trust to the State.

1. Background and purpose of Bill:

The LMT, established in 1991 by the promulgation of the Lebowa Mineral Trust Act, 1987 (Act No. 9 of 1987) "LMT Act", is a statutory body established with a view to hold, as a private rights holder, all the mineral rights which, under the previous constitutional dispensation, were transferred to the Government of the former self-governing territory of Lebowa. Consequently mineral-issues in Lebowa were administered by and through the Trust, unlike the rest of the country where State-owned mineral rights were administered by Government directly.

Although the assignment of the LMT Act to the Minister of Minerals and Energy, as approved by Cabinet on 13 September 1995, re-established legal certainty and also the constitutionality of this body, the continued existence of the LMT has created a gross anomaly in respect of South Africa's mineral rights governance and administration.

Against the background of the White Paper on Minerals and Mining Policy and the new constitutional dispensation, it is clear that the LMT's continued existence is incompatible with present circumstances, due to *inter alia* the following reasons:

- (a) Its statutory mandate is geographically limited to a former territory which is no longer recognised by the Constitution.
- (b) It is incompatible with the intention of the Constitution that all minerals related matters are to be dealt with on a national basis.
- (c) It is not supportive of a coherent, nation-wide approach to ensure that the country's mineral wealth is developed to the benefit of the entire population.
- (d) From an investor perspective, it contributes to inconsistency in the State's approach and the governance of the minerals industry.
- (e) It opposes the objective to have all mineral rights vested in the State.

The Bill *inter alia* provides for the repeal of the LMT Act, the transfer of mineral rights and all other assets as well as liabilities and obligations to the State and the procedures to be followed to deal with the existing staff of the LMT, taking into account their current conditions of service and applicable labour legislation.

2. Bodies or organisations consulted:

- (a) The Northern Province Government;
- (b) Chief Registrar of Deeds;
- (c) Departments of Land Affairs, Public Service and Administration and State Expenditure;
- (d) The LMT Board; and
- (e) various tribes in the Northern Province.

The Bill was also published in the *Gazette* for public comment, which comments were duly considered and processed.

3. Parliamentary procedure:

The Department of Minerals and Energy and the State Law Advisers are of the opinion that the Bill should be dealt with by Parliament in accordance with section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it

contains no provision to which the procedures set out in sections 74 or 76 of the Constitution apply.

4. Financial implications for State:

None. The Lebowa Minerals Trust has assets and a credit balance in its bank account. After its obligations have been met its funds are to be paid into the national revenue fund.

5. Official text:

The English text is the official text of the Bill.