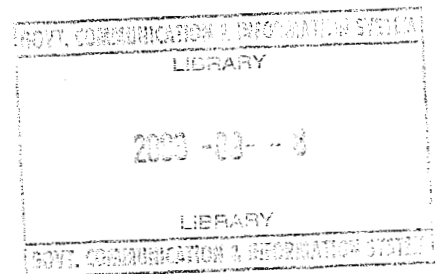


REPUBLIC OF SOUTH AFRICA

MINING TITLES REGISTRATION AMENDMENT BILL

(As amended by the Portfolio Committee on Minerals and Energy (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF MINERALS AND ENERGY)



[B 24D—2003]

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

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

To amend the Mining Titles Registration Act, 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 Mineral and Petroleum Resources Development Act, 2002; and to repeal obsolete provisions; to amend Deeds Registries Act, 1937, so as to remove certain functions relating to the registration of rights to minerals from the ambit of the Act; 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 14 of 1991 and substituted by section 1 of Act 60 of 1980

1. Section 1 of the Mining Titles Registration Act, 1967 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by 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”;
 - (b) by the deletion of the definitions of “bewaarplaats”, “certificate of bezitrecht”, “certificate of reservation of a trading site”, “holder”, “mining title”, “nomination agreement”, “permit to retain and treat residues”, “prospecting contract”, “stand title”, “surface right permit”, “tributing agreement” and “water right”;
 - (c) by the insertion after the definition of “court” of the following definitions:

“ ‘Department’ means the Department of Minerals and Energy;
 ‘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 the Surveyor-General, and includes a diagram or copy prepared in the office of the Surveyor-General which has been so approved, confirmed or certified;
 ‘Director-General’ means the Director-General of the Department;
 ‘exploration right’ means a right granted in terms of section 80 of the Mineral and Petroleum Resources Development Act, 2002;

'government' includes the national government, and any provincial and local government.”;

- (d) by the substitution for the definition of “Master” of the following definition:
 “ ‘Master’ [, **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;”;
- (e) by the insertion after the definition of “Master” of the following definitions:
 “ ‘Mineral and Petroleum Resources Development Act, 2002 means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);
 ‘mineral title’ means any deed or document registered in the Mineral and Petroleum Titles Registration Office evidencing the right to prospect, mine, possess, trade or deal granted or acquired under the Mineral and Petroleum Resources Development Act, 2002, or any other law;
 ‘mining permit’ means a permit granted in terms of section 27 of the Mineral and Petroleum Resources Development Act, 2002;
 ‘mining right’ means a right granted in terms of section 23 of the Mineral and Petroleum Resources Development Act, 2002;
 ‘Minister’ means the Minister of Minerals and Energy;”;
- (f) by 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 right granted or which remains in force in terms of the Mineral and Petroleum Resources Development Act, 2002;”;
- (g) by the insertion before the definition of “prescribed” of the following definitions:
 “ ‘petroleum title’ means any deed or document registered in the Mineral and Petroleum Titles Registration Office evidencing the right granted to explore or produce petroleum granted in terms of the Mineral and Petroleum Resources Development Act, 2002;
 ‘plan’ means a prescribed sketch plan or locality plan defining the area for a right granted or issued for exploration, prospecting, reconnaissance, retention or a mining permit;”;
- (h) by the insertion after the definition of “prescribed” of the following definitions:
 “ ‘production right’ means a right granted in terms of section 84 of the Mineral and Petroleum Resources Development Act, 2002;
 ‘prospecting right’ means a right granted in terms of section 17 of the Mineral and Petroleum Resources Development Act, 2002;
 ‘reconnaissance permission’ means permission granted in terms of section 14 of the Mineral and Petroleum Resources Development Act, 2002;
 ‘reconnaissance permit’ means a permit issued in terms of section 75 of the Mineral and Petroleum Resources Development Act, 2002;”;
- (i) by the insertion before the definition of “right” of the following definition:
 “ ‘retention permit’ means a permit issued in terms of section 32 of the Mineral and Petroleum Resources Development Act, 2002;”;
- (j) by the substitution for the definition of “right” of the following definition:
 “ ‘right’ means any right held by or under any deed and registered or capable of being registered in terms of the Mineral and Petroleum Resources Development Act, 2002;”;
- (k) by 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 of the Mineral and Petroleum Resources Development Act, 2002;”.

Substitution of section 2 of Act 16 of 1967

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

“Mineral and Petroleum Titles Registration Office

2. (1) 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. 5
- (2) All mineral titles and petroleum titles, deeds and documents lodged for registration in the Mining Titles Office after the commencement of the Mineral and Petroleum Resources Development Act, 2002, shall be dealt with in terms of this Act. 10
- (3) Any reference in this Act or any law to the Mining Titles Office must be regarded as a reference to the Mineral and Petroleum Titles Registration Office. 15
- (4) The registration of a right in terms of this Act in the Mineral and Petroleum Titles Registration Office shall constitute a limited real right binding on third parties. 20
- (5) Any registration or recording in the Mineral and Petroleum Titles Registration Office must comply with section 11 of the Mineral and Petroleum Resources Development Act, 2002.”.

Amendment of section 3 of Act 16 of 1967, as substituted by section 3 of Act 14 of 1991

3. Section 3 of the principal Act is hereby amended—
- (a) by the deletion in subsection (1) of paragraph (a);
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 25
- “(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 30
- (c) by the deletion of subsection (2).

Substitution of section 4 of Act 16 of 1967

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

“Seal of office

4. The Director-General shall have a seal of office which shall be affixed to all deeds or documents 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.”. 40

Amendment of section 5 of Act 16 of 1967, as substituted by section 2 of Act 60 of 1980

5. Section 5 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraphs (a), (b), (c), (d) and (e) respectively, of the following paragraphs: 45
- “(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 Office**] 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 in terms of this [**section**] Act or any other law; 50

- (b) examine all deeds, diagrams, plans or other documents submitted to him or her for execution, registration, recording, noting or filing [of record in his office, and after examination reject any such deed, plan or other document in 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] 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, and generally all documents evidencing title which by law[, established custom or usage] are proper for registration in the [Mining Titles] Mineral and Petroleum Titles Registration Office;
- (d) register [nomination agreements] prospecting, exploration, production, mining and related rights and any cession, renewal, modification, amendment, abandonment or cancellation or lapsing of [a] such registered [nomination agreement] rights;
- (e) register [mining] leases and sub-leases of any right 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, lapsing or cancellation of any such lease or sub-lease;
- (b) by the deletion in subsection (1) of paragraph (f);
- (c) by 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] endorse any amendment, modification, abandonment or extinction of any registered servitude;”;
- (d) by the substitution in subsection (1) of paragraphs (m) and (n) of the following paragraphs, respectively:
- “(m) register all notarial contracts relating to any rights granted in terms of the Mineral and Petroleum Resources Development Act, 2002;
- (n) register any notarial variation, renewal or cancellation of such contracts;”;
- (e) by 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 [Director-General] 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];”;
- (f) by 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;”;
- (g) by 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 of] registration or recordings effected in relation to any rights in [that district] the region concerned;”;
- (h) by the substitution in subsection (1) for paragraph (t) of the following paragraph: 5
- “(t) record the conversion, renewal, modification, abandonment, lapsing or cancellation of any **[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;**” 10
- (i) by the substitution in subsection (1) for paragraphs (u) and (v) of the following paragraphs: 15
- “(u) remove from his or her records, with the approval of the Master and after the lapsing 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; 20
- (v) record and file all mining permits, retention permits, technical co-operation permits, reconnaissance permits and permissions, financial provisions, approved environmental management plans, approved environmental management programmes and closure certificates issued in terms of the Mineral and Petroleum Resources Development Act, 2002;” and 25
- (j) by the deletion of subsection (2). 25

Amendment of section 6 of Act 16 of 1967, as amended by section 5 of Act 170 of 1993

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

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 30
- “(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;**” 35
- (b) by the insertion in subsection (1) after paragraph (a) of the following paragraph: 40
- “(aA) to reject any deed, diagram, plan or other document examined by him or her;”;
- (c) by the substitution in subsection (1) for paragraphs (b), (c), (d) and (e), 40 respectively, of the following paragraphs: 45
- “(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]** 50 alienating any right; 55
- (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;** 55
- (d) to 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; 60
- (e) to deny access to records in instances that pose a threat to the integrity or security of such records;”;

- (d) by the addition at the end of subsection (1) of the following paragraph:
 “(f) to make an endorsement on his or her own accord on any deed,
 diagram, plan or document where necessary in terms of this Act.”;
 and
- (e) by the substitution for subsection (2) of the following subsection: 5
 “(2) 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
 Titles Registration Office, the error shall be rectified in all those deeds,
 diagrams, plans or other documents.”. 10

Amendment of section 7 of Act 16 of 1967

7. Section 7 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2), respectively, of the following subsections:
 “(1) A registered deed conveying title to any right may not be 15
 cancelled by the Director-General except as provided for by law.
 (2) The Director-General shall, upon the cancellation of a registered
 deed or document conveying title to any right 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 20
 the cancellation, and make other entries in the appropriate registers.”;
 and
- (b) by the deletion of subsection (3).

Amendment of section 8 of Act 16 of 1967

8. Section 8 of the principal Act is hereby amended by the substitution for subsections 25 (1) and (2), respectively, of the following subsections:

- “(1) Subject to section 6(1)(e) the Director-General may on such conditions as
 may be prescribed and upon payment of the prescribed fees, and subject to the
 Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), permit any
 member of the public to— 30
 (a) inspect the public records in the Mineral and Petroleum Titles Registration
 Office;
 (b) make copies of or extracts from those records; or
 (c) obtain any other information concerning deeds or other documents registered
 or filed in that office. 35
 (2) No fee shall be payable under subsection (1) in respect of any search or
 inspection made by the sheriff 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. 40

Amendment of section 10 of Act 16 of 1967, as amended by section 6(a) and (b) of Act 170 of 1993

10. Section 10 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The [board established under section 9] Minister may from 45
 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, 50
 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)](b) the time, manner and form in which **[and the qualifications of the person by whom]** any deed, diagram, plan or other document required or permitted to be lodged, registered or filed in the **[Mining Titles]** Mineral and Petroleum Titles Registration Office shall be prepared, delivered, lodged, executed, registered[,], or filed **[or delivered and the time within which any deed shall be executed];** 5
- [(d)](c) **[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; 10
- [(e)](d) 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; 15
- [(f)](e) the transmission by the Director-General to any **[mining commissioner]** Regional Manager, registrar of deeds, Surveyor-General 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 office]** Mineral and Petroleum Titles Registration Office, and the manner **[and]**, form **[of]** and times for transmitting such returns; 20 25
- [(g)](f) 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];** 30 35
- [(h)](g) 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; 40
- [(i)](h) the conditions under which a copy of a power of attorney and diagrams, plans and other documents may be accepted by the Director-General in lieu of the original;
- [(j)] **the forms of deeds which shall be used in circumstances not provided for in this Act or in the Mining Rights Act, 1967, or any other law;** 45
- [(k)](i) 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)](j) any matter which under this Act or any other law is required or permitted to be prescribed.”; 50
- (b) by the insertion after subsection (1) of the following subsection:
 “(1A) No regulation relating to State revenue or expenditure may be made by the Minister except with the concurrence of the Minister of Finance.”; and
- (c) by the deletion of subsection (3). 55

Substitution of section 11 of Act 16 of 1967

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

“Registers

11. 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.”. 60

Substitution of section 12 of Act 16 of 1967

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

“Continuation of existing registers during the transitional period

12. The Director-General shall continue during the transitional period referred to in Schedule II to the Mineral and Petroleum Resources Development Act, 2002, to keep the corresponding register in use in the Mineral and Petroleum Titles Registration Office immediately prior to the commencement of this Act and to continue to make the necessary entries therein.”.

Insertion of section 12A in Act 16 of 1967

13. The following section is hereby inserted in the principal Act after section 12:

“Lodgement

12A. (1) The holder of the right granted in terms of the Mineral and Petroleum Resources Development Act, 2002, shall lodge his or her right for registration in the prescribed manner and on payment of the prescribed fees.

(2) The holder shall lodge together with deeds or other documents for registration, a plan or a diagram depicting the area of the right.

(3) Any registration of a variation, amendment, modification, deduction, abandonment or cancellation shall be accompanied by a plan or a diagram depicting the area affected.

(4) All diagrams lodged in the Mineral and Petroleum Titles Registration Office shall be approved, confirmed or certified by the office of the Surveyor-General.”.

Substitution of section 13 of Act 16 of 1967

14. The following section is hereby substituted for section 13 of the principal Act:

“When registration takes place

13. (1) Deeds executed or attested by the Director-General shall be deemed to be registered upon the affixing of his or her signature on the relevant document.

(2) Deeds or documents lodged for registration shall be deemed to be registered when the Mineral and Petroleum Titles Registration Office endorsement in respect of the registration thereof is signed.

(3) Subject to this Act, no deed or document which is one of a batch of interdependent deeds or documents intended for registration together shall be deemed to be registered until all the deeds or documents in the batch or the registration endorsement in respect thereof, as the case may be, have been signed by the Director-General.

(4) 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, diagram, plan or other document lodged at the time at which the signature should have been affixed in the ordinary course, the Director-General may affix his or her signature on the deed or document when the omission is discovered, and the deed or document shall be deemed to have been registered at the time when the signature should have been affixed.

(5) Subject to subsection (4), all endorsements or entries made on deeds, documents or registers in connection with the registration of any deed or document shall be deemed to have been effected simultaneously with the affixing of the signature of the Director-General thereto, although in fact they may have been made subsequently.”.

Substitution of section 14 of Act 16 of 1967

15. The following section is hereby substituted for section 14 of the principal Act:

“Deeds to follow sequence of their relative causes

14. (1) (a) Transfers or cessions of rights shall follow the sequence of the successive transactions in the vesting of such rights, unless this Act or any other law or an order of court provides otherwise. 5

(b) 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 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. 10

(2) Transfer duty which would have been payable had the rights concerned been transferred or ceded to each person successively becoming entitled thereto must be paid in a transfer or cession in terms of subsection (1).” 15

Substitution of section 15 of Act 16 of 1967, as amended by section 7 of Act 170 of 1993

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

“Preparation of deeds

15.(1) Subject to this Act and any other law, no deed of transfer or mortgage bond shall be registered unless it has been prepared and executed by a conveyancer. 20

(2) Subject to subsection (1), no contract other than a cession of a mortgage bond shall be registered unless it has been attested by a notary public. 25

(3) 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.”

Substitution of section 15A of Act 16 of 1967, as inserted by section 5 of Act 14 of 1991 30

17. The following section is hereby substituted for section 15A of the principal Act:

“Proof of facts in connection with transactions in Mineral and Petroleum Titles Registration Office

15A. (1) A conveyancer who prepares a deed or other document for the purposes of registration, recording 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] the 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]. 35 40

(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. 45

(3) 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 shall not derogate 50

from the obligation of the Director-General to give effect to any order of court or any other notification recorded in the Mining Titles Office in terms of this Act or any other law, and which affects the registration or filing of such deed or other document] proven.

(4) 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 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.”.

Substitution of section 16 of Act 16 of 1967, as substituted by section 6 of Act 14 of 1991 and section 18 of Act 132 of 1993

18. The following section is hereby substituted for section 16 of the principal Act:

“Registration of rights in name of holder

16. (1) Every deed executed or attested by the Director-General, or attested by a notary public and required to be registered in the Mineral and Petroleum Titles Registration Office, and made by or on behalf of or in favour of any person, shall state the full name and identity number or registration number of the holder.

(2) The Director-General shall register the right in the name of the holder of such right only.

(3) Sections 9 and 11 of the Mineral and Petroleum Resources Development Act, 2002, applies to the transfer of the right referred to in subsection (2) to a joint estate or to an heir by virtue of testate or intestate succession.”.

Insertion of section 16A in Act 16 of 1967

19. The following section is hereby inserted in the principal Act after section 16:

“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.”.

Substitution of section 17 of Act 16 of 1967

20. The following section is hereby substituted for section 17 of the principal Act:

“Preparation and execution of deeds of transfer, cessions and mortgage bonds

17. Deeds of transfer mortgage bonds and cession of mortgage bonds shall be prepared in the form prescribed by law and shall 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 the right described therein, and shall be attested by the Director-General.”.

Repeal of section 18 of Act 16 of 1967

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

Substitution of section 19 of Act 16 of 1967

22. The following section is hereby substituted for section 19 of the principal Act:

“Transfer or cession of two or more rights by one deed

19. (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, 5 unless such transfer or cession is authorized by a directive of the Minister, 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 10 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] Two or more portions of [such] a right may by 15 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 20 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.

[(4) Notwithstanding the provisions of subsection (1), two or more persons who have lawfully pegged claims for and on behalf of any other 25 person or of a partnership or a company may transfer the claims to that person, partnership or company by the same deed, provided the relevant claim licences held by each of such persons are described in separate paragraphs to the satisfaction of the Director-General.]”.

Amendment of section 20 of Act 16 of 1967

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

“(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 35 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

24. 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

25. The following section is hereby substituted for section 24 of the principal Act— 40

“Certificate of registered title of one or more rights held under one title deed and of undivided shares

24. (1) Any person who holds [two] one or more [rights or] undivided shares [therein] in a right under one title deed may, subject to the provisions of [section 26] this Act, [obtain] apply for a certificate of 45 registered title in respect of one or more [of] such [rights or of the] undivided [share] 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 time to time by the payment of an amount prescribed by the Mining Rights Act, 1967, or the regulations made thereunder, at 50 least one of the rights or the share therein so held remains so held].

(2) Subject to subsection (1), an application for 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) A transfer, cession or mortgage of a share of an undivided right shall not be registered in the Mineral and Petroleum Titles Registration Office unless a certificate of registered title is produced to the Director-General. 5

(4) A certificate of registered title shall not 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 is held by more than one holder is lost or destroyed, any such holder may in accordance with any prescribed requirements, obtain a certificate of registered title of his or her share without applying for the title deed which has been lost or destroyed. 10

(6) In issuing a 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 in question: Provided that in the case of a bond it shall be endorsed on the certificate that it is mortgaged. 15

(7) If the said share of the right is mortgaged, that mortgage bond shall be produced to the Director-General at the expense of the applicant. 20

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

Amendment of section 31 of Act 16 of 1967

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

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

"(2) 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."; and

(b) by the deletion of subsection (3). 30

Substitution of section 34 of Act 16 of 1967

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

"Exclusion of general clause in mortgage bonds

34. [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 35
contains **[the] a 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 40

28. Section 35 of the principal Act is hereby amended—

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

"(1) 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 held 45
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 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 person, in which case the mortgage bond 50
shall contain a reference to such consent."; and

(b) by the addition of the following subsections:

"(4) 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. 55

(5) The holder of the right and the holder of the servitude may, either of them as principal debtor, in the same bond, mortgage the right or the servitude, and either of them may in the same bond mortgage the servitude or right as surety.”.

Amendment of section 37 of Act 16 of 1967

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29. Section 37 of the principal Act is hereby amended—

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

“(1) No transfer, cancellation 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 in terms of this Act, any other law or by an order of court.”.

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Amendment of section 38 of Act 16 of 1967, as substituted by section 20 of Act 132 of 1993

30. Section 38 of the principal Act is hereby amended—

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

“(1) 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 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]** of the holder of the bond and of 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]** is produced to the Director-General in duplicate.”;

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

“(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.”;

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

“(d) endorse on the deed of transfer or cession the mortgage with the date and number of the bond and the amount due in terms thereof;”;

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and

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

“(3) 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 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.”.

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Amendment of section 39 of Act 16 of 1967

31. Section 39 of the principal Act is hereby amended—

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

“(1) (a) If it appears from the liquidation account of any estate which has been sequestered 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 [who shall thereupon write off the amount thereof] of such payment. 5

(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.”; 10

(b) by 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— 15

(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, 20

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. 25

(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.”; and 30

(c) by the substitution for subsections (4) and (5), respectively, of the following subsections:

“(4) 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: 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. 35 40

(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].” 45 50

Amendment of section 40 of Act 16 of 1967

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

“Endorsement on bond after sale in execution 55

40. Whenever any mortgaged rights have been sold in execution of a judgment 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 notify [to] the Director-General of how much of the capital sum due in terms of the bond has been paid, and 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.” 5

Amendment of section 41 of Act 16 of 1967

33. Section 41 of the principal Act is hereby amended—

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

“(1) **[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, and 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) by 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 or plan, [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) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(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]**, accompanied by a diagram or plan depicting the area of the right.”;

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

(e) by the deletion of subsection (5).

Amendment of section 42 of Act 16 of 1967

34. 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

35. The following section is hereby substituted for section 43 of the principal Act:

“Registration of lapse of personal servitude

43. (1) If for any reason **[a personal]** any servitude or contract has lapsed, the Director-General shall note such lapsing on the title deed of the right and of the servitude and contract, on written application by the holder of the right encumbered thereby, accompanied by proof of **[the lapse of the servitude]** such lapsing, 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]** the deeds of servitude and contract accompanied by the appropriate diagram or plan. 5 10

(2) 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, **[but]** subject to the provisions of this Act, and no such deed relating to any such servitude which 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.”. 15 20

Amendment of section 44 of Act 16 of 1967

36. Section 44 of the principal Act is hereby amended—

(a) by 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.**”]; and 25

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

Repeal of section 45 of Act 16 of 1967

37. Section 45 of the principal Act is hereby repealed. 30

Amendment of section 46 of Act 16 of 1967

38. Section 46 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) 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.”; 35 40

(b) by the deletion in subsection (1) of paragraph (b); and

(c) by the addition 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. 45

(4) Whenever any lease or sub-lease is lodged for registration or has been amended, modified, abandoned or cancelled, either wholly or in part, such plans, diagrams, deeds and other documents as may be 50

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

39. Section 47 of the principal Act is hereby amended—

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

“(1) When a registered lease ~~[of] 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]~~ lessor or the lessee or the lessee or sub-lessee, accompanied by proof of the termination of the lease or sub-lease, and~~], in the case of the termination of the lease,~~ by the title deed of the right leased and~~], if available,~~ 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.”; and

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(b) by the addition of the following subsection:

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

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Repeal of sections 48 to 56 of Act 16 of 1967

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

Substitution of section 57 of Act 16 of 1967

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41. The following section is hereby substituted for section 57 of the principal Act:

“Transfer and cession not to be passed as security

57. 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.”.

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Amendment of section 58 of Act 16 of 1967

42. Section 58 of the principal Act is hereby amended—

(a) by 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 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

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

Amendment of section 59 of Act 16 of 1967

43. Section 59 of the principal Act is hereby amended—

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

“(1) If the name of any person ~~[or partnership]~~ whose name appears in any registered deed or other document has changed ~~[his or its name]~~, the Director-General shall, upon written application and written proof of the change by that person ~~[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]~~, endorse on the said deed or document such change if he or she

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- 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] and 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.”; and
- (b) by 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

44. Section 61 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(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 Office], or to perform any act in the Mineral and Petroleum Titles Registration Office, shall be attested either by two 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.”; and
- (b) by 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

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

Amendment of section 63 of Act 16 of 1967

46. Section 63 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) 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 or her intention to make such application: Provided that, 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.”; and
- (b) by 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

47. Section 64 of the principal Act is hereby amended— 5
- (a) by the substitution for subsection (2) of the following subsection:
- “(2) If a deed or other document which has become void as [aforesaid,] contemplated in subsection (1) [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] is 10 subsequently found, such deed or other document shall be delivered or transmitted immediately to the Director-General.”; and
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) When any deed or other document which has become void as [aforesaid] contemplated in subsection (1) is delivered or transmitted to 15 the Director-General, he or she shall impound [such deed or document and file it] it for filing in his or her office after having made an endorsement thereon that it has become void.”.

Substitution of section 65 of Act 16 of 1967

48. The following section is hereby substituted for section 65 of the principal Act: 20

“Exemption from liability for acts or omissions in the Mineral and Petroleum Titles Registration Office

65. 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 25 liable for [damage sustained] damages suffered by any person in consequence of such act or omission: Provided that 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 30 Government shall be liable for the [damage] damages, and in that event any amount paid by the Government shall be recoverable from the Director-General or such officer.”.

Substitution of section 66 of Act 16 of 1967

49. The following section is hereby substituted for section 66 of the principal Act: 35

“Formal defects

66. 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 40 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 45

50. Section 67 of the principal Act is hereby repealed.

Insertion of section 67A in Act 16 of 1967

51. The following section is hereby inserted in the principal Act after section 67:

“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 to the Mineral and Petroleum Resources Development Act, 2002, shall be lodged by the holder for simultaneous registration and de-registration at the Mineral and Petroleum Titles Registration Office, or the Deeds Office, as the case may be, within 90 days of the conversion thereof.” 5

Amendment of expression in Act 16 of 1967

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52. The principal Act is hereby amended by the substitution for the expression “Supreme Court”, wherever it appears, of the expression “High Court”.

Amendment of Act 47 of 1937

53. Subject to Schedule II to the Mineral and Petroleum Resources Development Act, 2002, the Deeds Registries Act, 1937 (Act No. 47 of 1937), is hereby amended to the extent set out in the Schedule. 15

Short title and commencement

54. This Act is called the Mining Titles Registration Amendment Act, 2003, and comes into operation on the date of commencement of the Mineral and Petroleum Resources Development Act, 2002. 20

SCHEDULE

LAWS AMENDED

(Section 53)

No. and year of Act	Short title	Extent of repeal or amendment
Act No. 47 of 1937	Deeds Registries Act, 1937(Act No. 47 of 1937)	<ol style="list-style-type: none"> 1. The repeal of sections 3(1)(l), 3(1)(m), 3(1)(n), 3(1)(q), 17(5)(b), 26(1)(bis), 44(3), 64(2)bis, 64(2)ter, 70 to 74ter, 84, 85, and 90(2)(b); 2. The substitution for section 21 of the following section: <p>“21. Transfer or cession from joint estate.—<u>In any deed of transfer or deed of cession lodged in a deeds registry and relating to an asset in a joint estate, the surviving spouse shall be joined in his or her personal capacity with the executor of the estate of the deceased spouse except—</u></p> <ol style="list-style-type: none"> <u>(a) where the executor is dealing only with the share of the deceased spouse;</u> <u>or</u> <u>(b) where the asset has been sold to pay the debts of the joint estate; or</u> <u>(c) where there has been a massing of the joint estate and the surviving spouse has adiated; or</u> <u>(d) where such transfer or cession is in favour of the surviving spouse; or</u> <u>(e) where the power of attorney to pass such transfer or cession, has been signed by the surviving spouse in the capacity of executor.”;</u> 3. The amendment of section 28 by the substitution for subsection (1) of the following subsection: <p>“(1) If the share or shares owned by any of the parties to a partition appear from the title deeds of the land partitioned to be subject to a lease, personal servitude or other real right [(excluding any rights to minerals)] the written consent of the holder thereof to the partition and allocation of the lease, servitude or other such real right, together with the deed, if any, by which the lease, servitude or real right is held, shall be produced to the registrar.</p> 4. The amendment of section 32 by— <ol style="list-style-type: none"> (a) the deletion in subsections (1), 2(a) and (4) of “or right to minerals” wherever it appears in the said subsections; (b) the substitution for subsection (5) of the following subsection:

No. and year of Act	Short title	Extent of repeal or amendment
		<p>“(5) Immediately after any right of servitude over any land has been expropriated, the expropriating authority shall lodge with the registrar a certified copy of the notice of expropriation, two copies of the relevant expropriation plan of the servitude in question and a certificate describing the land and stating the name, number and administration district thereof, as well as the full names and surname of the registered owner and the number (consisting of the serial and year number) of the title deed, and the registrar shall cause a note of the expropriation to be made in his or her registers, and if at any time the original of the title deed is lodged in his or her registry for any purpose or application is made for the issue of a certified copy of such title deed, the registrar shall cause an appropriate note to be endorsed thereon as well as on the office copy thereof and a copy of the expropriation plan to be annexed thereto as well as to the office copy thereof;</p> <p>(c) the substitution for subsection (5A) of the following subsection:</p> <p>“Whenever any right of servitude [or right to minerals] over land has been expropriated and formal cession of such right of servitude [or right to minerals] to the cessionary has not been effected, the registrar shall, on written application by the cessionary and the owner of the land [or right to minerals], cancel any note of the expropriation in his or her registers or endorsement on the title deed of the land [or the title under which the right to minerals is held,] and thereupon the expropriated right of servitude [or right to minerals] shall vest in such owner.</p> <p>5. The amendment of section 63 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) the provisions of subsection (1) shall <u>not apply with reference to any condition in a mortgage bond or lease or in a deed referred to in section 3(1)(c) or (p);</u></p> <p>6. The amendment of section 64(1) by the deletion of the words [other than a right to minerals];</p> <p>7. The amendment of section 67 by the deletion of the words [or in a deed of cession of rights to minerals], the words, [or cedent], and the words, [or cession] wherever these appear in the said section;</p> <p>8. The amendment of section 77—</p> <p>(a) by the deletion in subsection (1) of the words “or of any rights to minerals in land”; and</p> <p>(b) by the deletion in subsection (2) of the words “or right”;</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>9. The amendment of section 90 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) If it is expressly provided in—</p> <p>(a) a registered lease of land [or rights to minerals]; or</p> <p>(b) a registered deed creating or evidencing a servitude[; or</p> <p>(c) a registered prospecting contract],</p> <p>that it shall lapse upon failure to make regularly any periodical payments mentioned therein, the registrar shall upon written application accompanied by an affidavit by the lessor or grantor of the registered right (as the case may be) that the said periodical payments have not been duly made, cancel the registration of the lease [,] <u>or</u> servitude [or contract].”;</p> <p>10. Amendment of section 102 by—</p> <p>(a) the deletion in the definition of “immovable property” of paragraph (a);</p> <p>(b) the deletion of the definition of “prospecting contract”;</p> <p>(c) the deletion in the definition of ‘share’ of “and rights to minerals”.</p>
Act No. 95 of 1986	Sectional Titles Act, 1986	The amendment of section 17(5) by the deletion of the words “[, excluding mineral rights ,].”.

MEMORANDUM ON THE OBJECTS OF THE MINING TITLES REGISTRATION AMENDMENT BILL

1. OBJECTS OF BILL

The main object of the Bill is to amend the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), so as to bring it into line with the changes occasioned by the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002). The Bill seeks to—

- (a) substitute, add or delete certain definitions;
- (b) re-regulate the registration of mineral and petroleum titles and other rights connected therewith and certain other deeds and documents; and
- (c) repeal obsolete provisions.

2. FINANCIAL IMPLICATIONS FOR STATE

There are no financial implications for the State as a result of the Bill.

3. CONSULTATION PROCESS

In the drafting of the Bill key stakeholders, including the Chamber of Mines, De Beers, the National Union of Mineworkers, the Deeds office and the Surveyor-General's office, were consulted. Some individuals also commented on the Bill in writing after publication thereof.

4. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Minerals and Energy are of the opinion that this Bill should be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.