

## **MINING TITLES REGISTRATION AMENDMENT BILL 2003**

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

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Copies of the draft Bill can be obtained from:

- Government Printers: (Pretoria)
- Regional Offices of the Department of Minerals and Energy
- Communications Chief Directorate of the Department at the Head Office
- Department's stand Mining Indaba

Written comments must be received no later than 3 March 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.      of      ) (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 16 of 1967), so as to substitute, add and delete certain definitions and expressions; to 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 (Act 28 of 2002), 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**

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 (Act 28 of 2002);
- (b) by 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) by the insertion after the definition of “certificate of reservation of a trading site” of the following definitions:

“closure certificate’ means closure certificate as defined in the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

‘diagram’ means a diagram which has been drafted and signed by a professional land surveyor and has been approved, confirmed or certified by the Surveyor-General’s Office , and includes a diagram or copy prepared in a Surveyor-General’s Office which has been so approved, confirmed or certified;

‘director-general’ means the Director-General of the Department of Minerals and Energy;

‘exploration right’ means a right granted in terms of section 80 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

‘financial provision’ means the financial provision as defined in the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002)

‘government’ includes any national, provincial and local government;”;

- (d) by 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 the Mineral and Petroleum Resources Development Act, 2002 (Act 289 of 2002)”;**

- (e) by 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) by the insertion after the definition of ‘Master’ of the following definition:

**‘mining right’ means a right as defined in section 22 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);**

- (g) by the substitution for the definition of ‘mining title’ of the following definition:

**“‘mining title’ [means-**

(a) any right included in the definition of 'mining title' in section 1 of the Mining Rights Act, 1967;

(b) any discoverer's certificate issued under the Precious and Base Metals Act, 1908 (Act 35 of 1908), of the Transvaal;

(c) any discoverer's certificate or owner's certificate in respect of precious stones in a mine, issued under any law relating to precious stones; and

(d) any lease granted under section 21, 72 or 74 of the Precious Stones Act, 1964 (Act 73 of 1964), or corresponding provisions of a prior law;] includes a mineral and petroleum title.";

- (h) 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 mining title, **[tributing agreement, stand title, surface right permit, water rights, 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 28 of 2002);

- (i) by the insertion after the definition of "mortgage bond' or 'bond' of the following definitions"

'mineral title' means any registered right to prospect or mine granted or acquired under the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

'Minister' means the Minister of Minerals and Energy;

'petroleum title' means any registered right granted to win petroleum granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

'plan' includes a sketch plan or locality plan defining the area for prospecting or mining;

'production right' means a right granted in terms of section 84 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

'prospecting right' means a right granted in terms of section 16 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

'reconnaissance permit' means a permit issued in terms of section 14 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

'reconnaissance permission' means permission granted in terms of section 75 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

'retention permit' means a permit issued in terms of section 32 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

- (j) by 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 in the Mining Titles Office';**

- (j) 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 (Act 28 of 2002);

- (k) by substitution for the expression 'Supreme Court' wherever it appears of the expression 'High Court'

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

2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections—

“(1) The **[Mining Titles]** Mineral and Petroleum Titles Registration Office **[established at Johannesburg by section 3 of the Registration of Deeds and Titles Act, 1909 (Act 25 of 1909), of the Transvaal,]** is hereby established and shall **[remain in existence notwithstanding the repeal of that Act by section 67 of this Act, and shall]** be the **[Mining Title Office]** office for the registration of all **[mining]** mineral and petroleum titles **[stand titles]** and **[of]** all other related rights, deeds and documents for the registration of which **[in such office]** provision is made in this Act or any other law.

(2) All mineral titles and petroleum titles, deeds and documents lodged 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 28 of 2002) **[shall] must** be dealt with **[as if this Act had not been passed]** in terms of this Act.”; and

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

### **Amendment of section 3 of Act 16 of 1967**



3. Section 3 of the principal Act is hereby amended—
  - (a) by the deletion of paragraph (a) of subsection (1);
  - (b) by the substitution for paragraph (b) of subsection (1) 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) by the deletion of subsection (2).

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

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

“The Director-General shall have a seal of office which **[shall] must** 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**

5. Section 5 of the principal Act is hereby amended--
  - (a) by the substitution for paragraph (a), (b) and (c) of subsection (1) 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] 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] the title to which is**

no longer valid in terms of this [section] act or any other law;

- (b) examine all deeds, 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 the execution, registration, recording, noting or filing of which is not permitted by this Act or by any other or filing in his or her office;**
- (c) register all **[mining titles and stand tittles, 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, mynpachtbrieven, 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 28 of 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.**”;**
- (b) by the deletion of paragraphs (d), (e) and (f) of subsection (1);
- (c) by the substitution for paragraph (g) of subsection (1) of the following paragraph:
 

“(g) attest or execute and register deeds of transfer and deeds of cession of rights. **[, and execute and register certificates of title to rights;]**”;
- (d) by the substitution for paragraph (l) of subsection (1) 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;
- (e) by the substitution for paragraph (p) of subsection (1) 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]**.
- (f) by the substitution for paragraph (r) of subsection (1) 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 insertion after subsection (r) of the following paragraph:
 

'remove from his 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'
- (h) by the substitution for paragraph (s) of subsection (1) of the following paragraph:
  - (s) give notice to the **[mining commissioner]** Regional Director of any **[mining district of]**

registrations effected in relation to any rights in **[that district]** the region concerned;

- (i) by the insertion after subsection (x) of the following subsections:

'record and file all mining permits, retention permits and reconnaissance permits and permissions'

'record and file financial provisions and closure certificates issued in terms of the Mineral and Petroleum Resources Development Act, (Act 28 of 2002)'

### **Amendment of section 6 of Act 16 of 1967**

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

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

“(a) to require the production of any deeds or documents or of proof **[upon affidavits 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) by the insertion after paragraph (a) of subsection (1) of the following paragraph:

“(a) “to reject any deed, plan or other document examined by him or her” ;

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

“(b) to rectify any error in any deed or other document recorded, noted, registered or filed in the **[Mining Titles 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]** Mineral and Petroleum Titles Registration Office: Provided that no such rectification shall be effected which would have the effect of transferring any such right;

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

**“[under such conditions as may be prescribed,]** to issue certified copies of deeds 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; and”;

- (e) by the substitution for paragraphs (d) of subsection (1) of the following paragraphs:

**“[if in his opinion any deed or other document submitted to him has become illegible or unserviceable,]** to require that a certified copy **[thereof]** of any deed or other document be provided to take **[its]** the place of one that has become unserviceable or illegible.”

- (f) by the deletion of paragraph (e) of subsection (1).
- (g) by 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 or other documents, including any register in the **[Mining Titles]** Mineral and Petroleum Titles Registration Office, the error **[shall]** must be rectified in all those deeds or other documents.”

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

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

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

“(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]** conveying title to any right **[, and no cession of any registered mortgage bond not made as security, shall]** must be cancelled by the Director-General except upon an order of court **[,]** or as provided for in this Act or any other law.

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

The Director-General must [Upon] upon the cancellation as provided in subsection (1) [of any deed conferring or conveying title to any right otherwise that 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 endorsement on the deed and related documents under which such right was held immediately prior to the cancellation, and other entries in the appropriate registers.’

(c) by 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) of the following subsections:

“(1) The Director-General **[shall]** may 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, 2002 (Act 20 of 2002) permit any member of the public 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 to] make copies of those records or extracts from those registers, [and to] obtain such other information concerning deeds or other documents registered or filed in the said 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**

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

(a) by 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-**

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

- (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) by the substitution for subsection (1) (c) of the following subsection:
  - (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 or filed in the **[Mining Titles] Mineral and Petroleum Titles Registration** Office **[shall] must** be prepared, delivered, lodged, executed, registered, or filed **[and the time within which any deed shall be executed];**
- (d) by the substitution for subsection (1) (d) of the following subsection:
  - (d) **[the particular]** documents which, when produced in the **[Mining Titles] Mineral and Petroleum Titles Registration** Office, **[shall] must** be attested or witnessed, and the manner in which any such document **[shall] must** be so attested or witnessed;
- (e) by the substitution for subsection (1) (e) of the following subsection:
  - (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] must** be taken to ensure preservation of the records from damage by improper handling or otherwise;



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

(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]** rights registered in the **[Director-General's]** Mineral and Petroleum Titles Registration office, and the manner **[and]** , form **[of]** and times for transmitting such returns;

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

(g) the conditions under which copies of deeds, 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) by the substitution for subsection (1) (h) of the following subsection:

(h) the manner and form in which consent **[shall]** must 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) by the substitution for subsection (1) (i) of the following subsection:

‘(i) the conditions under which a copy of a power of attorney may be accepted by the Director-General in lieu of the original;’

(j) by the deletion of paragraph (j).

- (k) by the substitution for subsection (1) (k) of the following subsection:

‘(k) the records which may be destroyed in terms of **[the proviso to]** section 5 (1) (a); and

- (l) by the substitution for subsection (1) (l) of the following subsection:

‘(l) any matter which under this Act or any other law is required or permitted to be prescribed.’

- (m) by the deletion of subsection (3).

- (n) by the insertion after subsection (1) (3) of the 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.’

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

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

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

#### **Amendment of section 12 of Act 16 of 1967**

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

**12. Until such time as any register has been prepared and opened under section 11, the Director-General shall continue during the transitional period referred to in the Mineral and Petroleum**

Resources Development Act, 2002 (Act 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-

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

(1) “Deeds executed or attested by the Director-General **[shall]** must be deemed to be registered upon the affixing of his or her signature **[thereto, and deeds,]** on the relevant document. 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. **[Provided that no such deed,]** Subject to the provisions of this Act, no deed or document **[or powers of attorney]** which is one of a batch of interdependent deeds **[,]** or document **[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.’

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

(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]** must **[thereupon]** be deemed to have been registered at the time aforesaid.”

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

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

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

14. Section 14 of the principal Act is hereby amended:

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

- (b) by the deletion of subsection (1) (a) (iv) to (vi);
- (c) by the substitution in subsection (1) for paragraph (vii) of the following paragraph
  - (vii) “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 direct to such third person by the person against whom such first-mentioned right was exercisable.”;

- (d) by 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**

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

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

15 (1) **[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] must be registered unless it has been prepared and executed by a conveyancer [,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] must be registered unless [it has been attested by] a notary public has attested to it.

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

‘(2) 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. Section 16 of the principal Act is hereby amended:

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

(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] of** 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]**.

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

(2) The provisions of subsection (1) **[shall apply *mutatis mutandis*]** applies 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.

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

(3) The Director-General **[shall] must** 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.**

(d) by the substitution for subsection (4) of the following subsection:

(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 **[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**

17. Section 16 of the principal Act is hereby amended-

- (a) by the substitution for the expression “married person” where it appears of the expression “holder”
- (b) by the deletion of subsection (1)
- (c) by 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) by 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—

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

“A [deeds] deed of transfer, cession or mortgage bond must [shall] be prepared in the form prescribed by law and [shall] must [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] must be attested by the Director-General.”

- (b) by the deletion of subsection (2) of the principal Act.

### **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—

- (a) by 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 right]** rights 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) by the deletion of subsection (4)

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

22. Section 20 of the principal Act is hereby amended—

(a) 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 right shall be capable of being registered.”

#### **Repeal of sections 21 to 30 of Act 16 of 1967**

23 Sections 21 to 30 of the principal Act are hereby repealed.

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

24 Section 31 of the principal Act is hereby amended

(a) by the deletion of subsections (1) and (3).

(b) by 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.’

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

25 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 Director-General **[shall]** must 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**

26 Section 35 of the principal Act is hereby amended—

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

(1) No mortgage bond **[shall]** must 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]** 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 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 shall contain a reference to such consent.

(b) by the substitution for subsection (4) of the following:

(4) No bond **[shall]** must be passed in favour of two or more persons in which it is stipulated that the share of one bond holder shall rank in priority to the share of another, nor **[shall]** any transaction be registered which would have the effect of giving preference to one share in a bond over another share.

(c) by the insertion after subsection (4) of the following subsections:

(i) 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.

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

### **Amendment of section 36 of Act 16 of 1967**

**27** Section 36 of the principal Act is hereby amended by the substitution for the word 'shall' wherever it appear of the word 'must'.

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

**28** Section 37 of the principal Act is hereby amended—

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

(1) No transfer or cession of any mortgaged right **[shall] must** 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 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

(b) by the substitution for subsection (1) (c) of the following subsection:

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

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

(2) **[A]** consent to the release from the operation of a bond of all the rights mortgaged thereunder **[shall]** must, except where the debt secured by such bond is further secured by a collateral bond, be deemed to be a consent to the cancellation of that bond.

### **Amendment of section 38 of Act 16 of 1967**

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

(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]. The Director-General must 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, 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) by the substitution for subsection (2) of the following subsection:

(2) In registering the transfer or cession the Director-General **[shall]** must-

(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) by 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) 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]**. The substitute must 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.’

(e) by the substitution in subsection (4) for the word ‘shall’ wherever it appear of the word ‘must’.

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

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

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

(1) 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]** must notify **[the payment to]** the Director-General of such payment. **[who shall thereupon write off the amount thereof]** The Director-General must, on 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 **[, and 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) by the substitution for subsection (2) (a) of the following subsection:

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

(c) by the substitution for subsection (2) (a) (ii) and (b) of the following subsections:

- (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] must [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] must**, when requested to do so by the Master, deliver the bonds to him or her, and the Master **[shall] must** forward them to the Director-General for cancellation.'

- (d) by the substitution for subsection (3) (4) (5) (6) and (7) of the following subsections:

(3) If any of the rights mentioned in the return referred to in subsection (2) have not yet been transferred or ceded by the trustee, the Director-General **[shall] must** note in the appropriate register that such rights have **[in terms of the law relating to insolvency]** vested in the trustee.

(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] must** not after such rehabilitation be transferred, ceded, mortgaged or otherwise dealt with by the insolvent until they have been transferred or ceded to him 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] must**, 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] must** 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 in this section contained **[shall]** must be construed as modifying any provision of the law relating to insolvency.

(7) The provisions of this section **[shall]** must apply *mutatis mutandis* in respect of-

(a) estates liquidated and distributed under section 34 of the Administration of Estates Act, 1965 (Act 66 of 1965);

(b) companies which are unable to pay their debts and are liquidated or wound up by or under the supervision of the court under the law relating to companies; and

section

(c) assets of an applicant under the Agricultural Credit Act, 1966 (Act 28 of 1966), which are administered by a liquidator or trustee who has received from the Master a certificate mentioned in section 29 of the said Act.

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

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

“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]** must notify **[to]** the Director-General of how much of the capital sum due in terms of the bond has been paid, and **[shall]** must transmit the bond to the Director-General who **[shall]** must **[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**

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]**

must 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] referred to in subsection (1) must 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]** must 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) by the substitution for subsection (3) of the following subsection:

‘(3) **[(a)]** For the purposes of the registration of the notarial deed there **[shall]** must 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) by the deletion in subsection (3) of paragraph (b).

(e) by 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]** must be produced together with the written consent **[in writing]** of the legal holder thereof to the registration of the servitude or contract.

(f) by the deletion in subsection (5).



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

**34** Section 42 of the principal Act is hereby amended—

(a) 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:

“(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- 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 deed of servitude and contract.

(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]** must be effected by notarial deed, **[but]**, subject to the provisions of this Act no such deed relating to any such servitude which is mortgaged, **[shall]** must 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.”

### **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**] must 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) by the deletion of subsection (3) and (4)

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

37 Section 45 of the principal Act is hereby repealed.

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

38 Section 46 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of 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 must [**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) by the deletion of paragraph (b) of subsection (1)
- (c) by the insertion after subsection (2) of the following subsection

“(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.”

- (d) by the insertion of subsection (4):

(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**

39 Section 47 of the principal Act is hereby amended—

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

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

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

“(2) If the full term, including periods of renewal, of a registered lease or sub-lease has expired, no further transactions affecting that lease or sub-lease **[shall] must** be registered.

- (c) by the insertion after subsection (2) of the following subsection:

“(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.”

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

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

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

41 The following section is hereby substituted for Section 57 of the principal Act”

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

### **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}** must 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) by the deletion of subsection (2).

### **Amendment of sections 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 any person [**or partnership**] whose name appears in any registered deed or other document has changed [**his or its**] name, the Director-General [**shall**], must 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 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**] where the old name stated in the application appears in another deed or other document registered in the [**Mining Titles Office**] Mineral and Petroleum Titles Registration Office, that deed or other document [**shall**] must be [**likewise**] endorsed, and in either case corresponding entries [**shall**] must be made in the registers.”;

- (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 paragraph (a) 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 Office]**, or to perform any act in the Mineral and Petroleum Titles Registration Office, [shall] must 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 designation **[as such.]**”

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

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

#### **Deletion of section 62 of Act 16 of 1967**

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

#### **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 Office shall]** Mineral and Petroleum Titles Registration Office must 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]** 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—

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

“(1) If a copy of a registered deed or other document has been issued in the manner prescribed by regulation, in substitution for a deed or other document which has been lost or is believed to have been destroyed, the original deed or other document, if still in existence, **[shall]** must thereupon become void.”;

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

“(2) If a deed or other document which 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]** is subsequently found, such deed or other document to the Director-General.

- (c) by the substitution for subsection (3) of the following

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

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

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

“No act or omission of the Director-General or of any officer employed in the **[Mining Titles Office shall]** 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 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 be 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**

- 49 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 Office shall]** Mineral and Petroleum Titles Registration Office may 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**

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

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

- 51 The following section is hereby inserted after section 67 of the principal Act:

**“Registration of OP26 right and converted old order rights**



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67A All OP26 right an 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) must be lodged for registration at the Mineral and Petroleum Titles Registration Office within 30 days of the conversion thereof.”

### **Short title and commencement**

52 This Act shall be called the Mining Titles Registration Amendment Act, 2003 and shall come into operation on the date of commencement of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002).