

CHIEF REGISTRAR'S CIRCULAR NO. 11 OF 2004

MINING TITLES REGISTRATION ACT, 1967 (ACT NO. 16 OF 1967), AS AMENDED BY THE MINING TITLES REGISTRATION AMENDMENT ACT, 2003 (ACT NO. 24 OF 2003)

1. DATE OF COMMENCEMENT

The Mining Titles Registration Act, 1967 (Act No. 16 of 1967), herein after referred to as the Act, came into operation on 1 October 1967. The Act has been amended by the Mining Titles Registration Amendment Act, 2003 (Act No. 24 of 2003), which Act came into operation, together with the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), on 1 May 2004 (see Proclamation No. R25 of 2004).

2. PURPOSE OF THE ACT

The purpose of the Act is, inter alia, to re-regulate the registration of mineral and petroleum titles and other rights connected therewith; to effect certain amendments that are necessary to ensure consistency with the Mineral and Petroleum Resources Development Act, 2002; and to amend the Deeds Registries Act, 1937 (Act No. 47 of 1937) so as to remove the functions relating to the registration of rights to minerals from the ambit of the said Act.

3. APPLICATION OF THIS CIRCULAR AND REPEAL OF PREVIOUS CIRCULAR

This Circular sets out the procedure for the de-registration of mineral rights and other rights connected therewith, in deeds registries. This Circular further provides for the discontinuance of any further acts of registration with regard to the above-mentioned rights in deeds registries (The registrars of deeds have already been informed to discontinue the registration of the above-mentioned rights, as from 16 July 2004). Chief Registrar's Circular No. 7 of 2004 is therefore hereby repealed and substituted with this Circular.

4. IMPACT OF CERTAIN PROVISIONS OF ACT NO. 24 OF 2003 AND ACT NO. 28 OF 2002 ON REGISTRATION PROCEDURES IN THE DEEDS REGISTRY

4.1. DISCONTINUATION OF ACTS OF REGISTRATION PERTAINING TO MINERAL RIGHTS AND OTHER RIGHTS CONNECTED THEREWITH IN DEEDS REGISTRIES

4.1.1. Section 53 of Act No. 24 of 2003 provides for the removal, from Act No. 47 of 1937, of all the functions and procedures relating to the registration of mineral rights and other rights connected therewith (herein after referred to as mineral rights) (also see section 110 of Act No. 28 of 2002 that provides for the amendment of Act No. 47 of 1937 to the same extent). The registrars of deeds are therefore no longer empowered to register any transactions relating to mineral rights.

4.1.2. Section 53 of Act No. 24 of 2003 and section 110 of Act No. 28 of 2002 further provide for the amendment of Act No. 47 of 1937, subject to the provisions of Schedule II of Act No. 28 of 2002 (herein after referred to as "Schedule II"). Schedule II provides for the de-registration of mineral rights in deeds registries. The registrars of deeds must therefore only allow for the de-registration of mineral rights, as discussed in paragraphs 4.2, 4.3, and 4.4 hereof.

4.2. De-registration of mineral rights:

4.2.1. Schedule II provides for the conversion, by the Minister of Minerals and Energy, of all old order rights ("rights") including OP26 rights (see definition of rights in Item 1 of Schedule II). Schedule II provides for different time frames during which the rights, as referred to in the said Schedule, need to be converted. Failure to convert the above-mentioned rights within the prescribed time will have the effect that such rights lapse by law and will automatically be de-registered.

- 4.2.2. Upon conversion of a right by the Minister of Minerals and Energy, the holder of such right must lodge the notice of the conversion of the right, together with the title deed of the converted right, for registration in the Mineral and Petroleum Titles Registration Office.
- 4.2.3. In order to provide for the de-registration in a deeds registry of a right to minerals that has been registered in the Mineral and Petroleum Titles Registration Office, the notice of the conversion, together with the title deed of the mineral rights as referred to in paragraph 4.2.2, must be lodged by a conveyancer in the deeds registry concerned. The above-mentioned documentation must be accompanied by an application for the endorsement of the title deed in order to reflect the de-registration of the rights held thereunder. An application in the above-mentioned regard must read along the following lines:

Application for the de-registration of rights converted and registered in terms of the provisions of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)

I, *, hereby apply for the de-registration of **, held under*** over **** The above-mentioned right has on †††..... been converted and registered in terms of the provisions of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), to a ††††.....right, registered under number ‡‡..... in the Mineral and Petroleum Titles Registration Office.

DATE:

HOLDER

- * Insert full name of holder of rights
- ** Insert type of right as referred to in the title deed
- *** Insert description and number of title deed
- **** Insert immovable property description
- ††† Insert date of the registration
- †††† Insert name of right
- ‡‡ Insert registration number of right

- 4.2.4. Upon receipt of an application, as referred to in paragraph 4.2.3, the registrar of deeds must cause the title deed of the relevant mineral rights to be endorsed with regard to the de-registration of the mineral rights in the deeds registry. The title deed must be endorsed along the following lines:

Endorsement in terms of section 3(1)(v) of the Deeds Registries Act, 1937 (Act No. 47 of 1937):

The within-mentioned right has on * been converted and registered in terms of the provisions of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), to a ††right registered under number ‡‡ in the Mineral and Petroleum Titles Registration Office.

DATE:

REGISTRAR OF DEEDS

* Insert date of the conversion

†† Insert name of right

‡‡ Insert registration number of right

- 4.2.5. Where it is evident from the title deed of the mineral rights that the rights held thereunder are mortgaged by a mortgage bond, the office copy of such mortgage bond must be endorsed to reflect the conversion of the mineral rights. The office copy of the mortgage bond must be endorsed along the following lines:

Endorsement in terms of section 3(1)(v) of the Deeds Registries Act, 1937 (Act No. 47 of 1937):

The within-mentioned mortgaged right has on * been converted and registered in terms of the provisions of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), to a ††right registered under number ‡‡ in the Mineral and Petroleum Titles Registration Office.

DATE:

REGISTRAR OF DEEDS

* Insert date of the conversion

†† Insert name of right

‡‡ Insert registration number of right

- 4.2.6. No transactions with regard to a mortgage bond that is registered over mineral rights must be registered in a deeds registry. The reason for the above-mentioned is the removal, from the Deeds Registries Act, 1937, of all references to mineral rights. Furthermore, a registrar of deeds is not in the position to determine whether a mineral right that has been mortgaged by a mortgage bond, has been converted or whether such right has lapsed. Transactions pertaining to such mortgage bonds must, therefore, be registered in the Mineral and Petroleum Titles Registration Office.

4.3. Conditions relating to minerals rights in title deeds of immovable property:

- 4.3.1. Schedule II of Act No. 28 of 2002 provides for different time frames during which the rights, as referred to in the said Schedule, need to be converted. OP26 mining leases must, for example, be converted within a period of 5 years from the date of the operation of the Act (that is 1 May 2004). Old order prospecting rights, on the other hand, need to be converted within a period of 2 years from 1 May 2004, and unused old order rights within 1 year from 1 May 2004. The deeds registration procedure is not familiar with the names allocated to the rights referred to in Schedule II, and a registrar of deeds is therefore not in the position to identify the time period during which a mineral right needs to be converted.
- 4.3.2. Where a title deed to immovable property contains a condition with regard to the reservation of mineral rights, such condition must remain in the title deed to that immovable property. If conditions relating to mineral rights are removed at this stage, the possibility exists that the Department of Minerals and Energy may regard the new owner of the immovable property as the holder of the mineral rights held thereunder.
- 4.3.3. Condition relating to the reservation of mineral rights in title deeds to immovable property must, in view of what has been said in paragraph 4.3.2, remain in such titles deeds until a further directive has been issued in this regard.

4.4 THE PROVISIONS OF REGULATION 41(1) OF ACT NO. 47 OF 1937

- 4.4.1. In future mortgage bonds will not have to be made subject to the reservation of mineral rights. However, where a bond has been made subject to the reservation of mineral rights, the reference to the mineral rights should be treated as *pro non scripto*.

5. Issuing of copies of title deeds to minerals:

- 5.1. A copy in lieu of original deeds to minerals may not be issued in instances where such title deed has been endorsed with regard to the de-registration of the mineral rights in the deeds registry. A copy of the title deed relating to the said mineral rights must then be applied for at the Mineral and Petroleum Titles Registration Office. However, copies of deeds to minerals for information (regulation 66 of Act No. 47 of 1937) and judicial purposes (regulation 67 of Act No. 47 of 1937) may still be issued after the de-registration of the mineral rights in the deeds registry.

6. OFFICE FEES

- 6.1. No office fees shall be payable in respect of the noting of a de-registration of a mineral right, as referred to in paragraph 4.2 hereof.

CHIEF REGISTRAR OF DEEDS

DATE:

REFERENCE: A. 6/2/B, A.1/3/1/167 AND A.1/3/1/192
RINGBINDER 40

CHIEF REGISTRAR OF DEEDS

REGISTRARS OF DEEDS

THE CHIEF: JUSTICE TRAINING

DIRECTOR: LAW SOCIETY OF SOUTH AFRICA : PRETORIA

MANAGER: BUTTERWORTHS PUBLICATIONS : DURBAN

CHAIRPERSON: PROPERTY