

REPUBLIC OF SOUTH AFRICA

MINERALS AND ENERGY LAWS AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No 26778 of 17 September 2004)
(The English text is the official text of the Bill)*

(MINISTER OF MINERALS AND ENERGY)

[B 1—2005]

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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.

BILL

To correct amendments made to the Deeds Registries Act, 1937, by the Mining Titles Registration Amendment Act, 2003, and the Mineral and Petroleum Resources Development Act, 2002, by substituting the Schedule to the Mining Titles Registration Amendment Act, 2003, and by repealing certain expressions in Schedule I to the Mineral and Petroleum Resources Development Act, 2002; and to provide for matters connected therewith.

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

Substitution of Schedule to Act 24 of 2003

1. The following Schedule is hereby substituted for the Schedule to the Mining Titles Registration Amendment Act, 2003:

“SCHEDULE

LAWS AMENDED
(Section 53)

No. and year of Act	Short title	Extent of repeal or amendment	5
Act No. 47 of 1937	Deeds Registries Act, 1937	<p>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).</p> <p>2. The substitution for section 21 of the following section: “Transfer or cession from joint estate 21. In any deed of transfer or deed of cession lodged in a deeds registry and relating to [land or rights to minerals which are assets] 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— (a) where the executor is dealing only with the share of the deceased spouse; or (b) where the [land or rights to minerals have] asset has been sold to pay the debts of the joint estate; or (c) where there has been a massing of the joint estate and the surviving spouse has adiated; or (d) where such transfer or cession is in favour of the surviving spouse; or (e) where the power of attorney to pass such transfer or cession[,] has been signed by the surviving spouse in the capacity of executor.”.</p> <p>3. The amendment of section 28 by the substitution for subsection (1) of the following subsection: “(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> <p>4. The amendment of section 32 by— (a) the deletion in subsections (1), 2(a) and (4) of the expression “or right to minerals”, wherever it appears;</p>	<p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> <p>55</p> <p>60</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>(b) the substitution for subsection (5) of the following subsection: “(5) Immediately after any right of servitude over any land [or right to minerals therein] 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 [or where the right to minerals in only a portion of the land has been expropriated, two copies of the relevant expropriation plan of such portion,] and a certificate describing the land and stating the name, number and administrative 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 <u>or her</u> registers, and if at any time the original of the title deed [or of the title under which the right to minerals in question is held] is lodged in his <u>or her</u> registry for any purpose or application is made for the issue of a certified copy of such title deed [or title, he], 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: “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 <u>or her</u> 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>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>5. The amendment of section 63 by the substitution for subsection (2) of the following subsection: 5</p> <p style="padding-left: 40px;">“(2) The provisions of subsection (1) shall not apply with reference to any condition in a mortgage bond or lease or in a deed referred to in section 3(1)(c)[, (l), (m),] or (p)[or (q)].” 10</p> <p>6. The amendment of section 64(1) by the deletion of the expression “(other than a right to minerals)” 15</p> <p>7. The substitution for section 67 of the following section: 15</p> <p style="padding-left: 40px;">“Reservation of personal servitudes</p> <p style="padding-left: 40px;">67. A personal servitude may be reserved by condition in a deed of transfer of land [or in a deed of cession of rights to minerals,] if the reservation is in favour of the transferor [or cedent], or in favour of the transferor [or cedent] and his or her 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 or given from the joint estate of spouses who were married in community of property.” 20</p> <p>8. The amendment of section 77— 25</p> <p style="padding-left: 40px;">(a) by the deletion in subsection (1) of the expression “or of any rights to minerals in land”; and 30</p> <p style="padding-left: 40px;">(b) by the deletion in subsection (2) of the expression “or right”. 35</p> <p>9. The amendment of section 90 by the substitution in subsection (1) for the words preceding the proviso of the following words: 40</p> <p style="padding-left: 40px;">“If it is expressly provided in— 45</p> <p style="padding-left: 80px;">(a) a registered lease of land [or rights to minerals]; or</p> <p style="padding-left: 80px;">(b) a registered deed creating or evidencing a servitude[; or]; 50</p> <p style="padding-left: 80px;">[(c) a registered prospecting contract,] 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[, or servitude [or contract]].” 55</p> <p style="padding-left: 40px;">60</p>

No. and year of Act	Short title	Extent of repeal or amendment	
		10. Amendment of section 102 by— (a) the deletion in the definition of “immovable property” of paragraph (a); (b) the deletion of the definition of “prospecting contract”; and (c) the deletion in the definition of “share” of the expression “and rights to minerals”.	5 10
Act No. 95 of 1986	Sectional Titles Act, 1986	The amendment of section 17(5) by the deletion of the expression “, excluding mineral rights,”.	

Amendment of Schedule I to Act 28 of 2002

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2. Schedule I to the Mineral and Petroleum Resources Development Act, 2002, is hereby amended by the deletion of the expression “Act No. 47 of 1937” in the first column and the deletion of the related information opposite that expression in the second and third column.

Short title and commencement

20

3. This Act is called the Minerals and Energy Laws Amendment Act, 2005, and is deemed to have come into operation on 30 April 2004.

MEMORANDUM ON THE OBJECTS OF THE MINERALS AND ENERGY LAWS AMENDMENT BILL, 2005

1. OBJECTS OF BILL

It is important to correct both the Mining Titles Registration Amendment Act, 2003 (Act No. 24 of 2003), and the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), in order to ensure that both Acts reflect the correct intention of the legislature.

The Bill seeks to amend both the Schedule to the Mining Titles Registration Amendment Act, 2003, and Schedule I to the Mineral and Petroleum Resources Development Act, 2002, in order to restore, with retrospective effect—

- (a) the erroneously repealed section 3(1)(o) of the Deeds Registries Act, 1937 (Act No. 47 of 1937) (the power of the Registrar of Deeds to register servitudes); and
- (b) a proviso to section 90 of the Deeds Registries Act, 1937, that was erroneously removed by the Mining Titles Registration Amendment Act, 2003.

2. FINANCIAL IMPLICATIONS FOR STATE

There are no financial implications.

3. CONSULTATION PROCESS

There are ongoing interactions between the Department of Minerals and Energy, the Department of Land Affairs and the Law Society of South Africa.

4. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Minerals and Energy are of the opinion that this Bill must 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.

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