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GENERAL NOTICE

Notice 1168 of 2000

DEPARTMENT OF MINERALS AND ENERGY

ABOLITION OF THE LEBOWA MINERALS TRUST DRAFT BILL, 2000

The Abolition of the Lebowa Minerals Trust Draft Bill, 2000, is hereby published for public comment. Comments should be submitted in writing to:

The Director-General
Attention: Mr H P Taljard or Adv MM Mononela
Department of Minerals and Energy
Private Bag X59
PRETORIA 0001

Written comments may also be faxed to (012) 322-0810 or sent by e-mail to tikhea@mepta.pwv.gov.za.

Written comments must be received by not later than 30 April 2000.

ABOLITION OF THE LEBOWA MINERALS TRUST DRAFT BILL

To provide for the abolition of the Lebowa Minerals Trust; for the transfer of powers, assets, finances, liabilities, rights, duties, obligations and staff of the said Trust to the Minister of Minerals and Energy, and to the State; and for matters incidental thereto.

1. Definitions

In this Act, unless the context indicates otherwise -

'fixed date' means the date of commencement of this Act as determined under section 11.

'Minister' means the Minister of Minerals and Energy;

'Trust' means the Lebowa Minerals Trust established by section 2 of the Lebowa Minerals Trust Act, 1987 (Act 9 of 1987);

'Registrar' means the registrar of deeds in terms of Act 47 of 1937.

2. Abolition of Trust

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

3. Vesting and transfer of assets, liabilities, rights, duties and obligations of Trust

(1) Notwithstanding anything to the contrary in any law contained, all the assets (including but not limited to mineral rights and land or any other real right or immovable property), finances (including but not limited to royalties), liabilities, rights, duties, obligations and powers of the Trust, as well as the right to minerals held by the Trust on behalf of and in trust for the Tribes, if any, referred to in Schedule 1 and in respect of the properties referred to in the said Schedule, shall on the fixed date vest as follows:

a. State

Assets (including but not limited to mineral rights and land or any other real right or immovable property), liabilities and rights.

b. Minister

Finances (including but not limited to royalties), duties, obligations and powers, as well as the right to minerals referred to in Schedule 1: Provided

that such right to minerals shall vest in the Minister in trust for the Tribes referred to in the said Schedule.

(2) The Minister may from time to time add to Schedule 1, by notice in the Gazette, any right to minerals held on the fixed date by the Trust on behalf of and in trust for a Tribe and which was not originally included in the said Schedule.

(3) The Minister shall, with due consideration to sections 4(2)(c) and 5(1) transfer the finances referred to in subsection (1) to the State and shall take all the necessary steps and perform all the duties required to give effect to such transfer,

(4) (a) The registrar of deeds in question shall upon issuing of an appropriate certificate by the Minister, make the necessary entries and endorsements in respect of his or her registers and other documents, as well as in respect of any relevant documents produced to him or her, in order to give effect to such vesting.

b. No transfer duty, stamp duty shall be payable in respect of such transfer, entry or endorsement.

4. Transfer, retrenchment and remuneration of staff

(1) Every person referred to in sections 4(e) and 5(1)(b)(iv) of the Lebowa Minerals Trust Act, 1987 (Act 9 of 1987), in the service of the Trust on the fixed date and who on that date would have been in the service of the Trust but for the adoption of this Act, shall with effect from the fixed date be placed in the service of the Minister until such person is transferred and employed or retrenched in terms of subsection (4).

(2) (a) The provisions of any contract of service and the conditions of service applying to any person referred to in subsection (1) on the fixed date and which would have applied to him or her on the fixed date but for the adoption of this Act, shall without change, subject to the provisions of paragraph (b) and of subsection (3), continue to apply to him or her until he or she is transferred and employed or retrenched in terms of subsection (4).

b. The conditions of service referred to in paragraph (a) may, after the fixed date be amended by the Minister after consultation with such person: Provided that any such amendment shall not in the opinion of such person, result in less favourable conditions of service for the person concerned than those that applied to him or her on the fixed date.

c. A person referred to in subsection (1) shall be remunerated by the Minister in accordance with his/her conditions of service referred to in paragraph (a) out of finances referred to in section 3(1) for as long as such person is in the service of the Minister in terms of subsection (1).

(3) Notwithstanding anything to the contrary in any law contained, but subject to the provisions of this Act, the provisions of the Labour Relations Act, 1995 (Act 66 of 1995), shall continue to apply to a person referred to in subsection (1) save in so far as the negotiation and determination of his or her remuneration in respect of his or her employment are concerned: Provided that in the case of any person who, in terms of subsection (4) is transferred to and employed in a post in the Public Service, the said Act shall, as from the date of such transfer and employment, only apply to the extent to which it applies to persons in the service of the State in respect of their services as such.

(4) (a) A person referred to in subsection (1) shall, after having been given at least 30 days' notice by the Minister, with effect from a date determined by the Minister -

- i. subject to the provisions of subsection (5) be transferred to and employed in a post in the Public Service;
- ii. subject to the provisions of paragraph (b) and subsection (6) be transferred to and employed by any other body established by or under any law and approved by the Minister; or
- iii. subject to the provisions of the Labour Relations Act, 1995, and any contract of service and the conditions of service applying to such person in terms of subsection (2) be retrenched.

- b. The notice contemplated in paragraph (a) to transfer or retrench a person in terms of subparagraphs (i), (ii) or (iii) of that paragraph shall be given by the Minister within 90 days as from the fixed date.
- c. A person referred to in paragraph (a)(i) and (ii) may be transferred and employed only with his or her consent.

(5) If any person is transferred and appointed in a post in the Public Service in terms of subsection (4)(a)(i), he or she shall be appointed and employed on a salary approved for such post and on the conditions applying to the appointment and service of officers and employees in the Public Service: Provided that-

- a. vacation leave standing to the credit of any person with the Trust shall stand to his or her credit in the Public Service;
- b. pensionable service performed by any person in the service of the Trust and pensionable service recognised by the Trust shall be deemed to be pensionable service performed by him or her in the Public Service;
- c. a person shall not as a consequence of such transfer and appointment acquire a retirement age which is less favourable than that which applied to him or her in the service of the Trust;
- d. any person shall, within six months, or such longer period as the Minister of Finance may determine, after his transfer to and appointment in a post in the Public Service, be given a non-recurrent choice either to remain a member of the pension fund of which he or she was a member while in the service of the Trust or, subject to the conditions determined by the Minister of Finance, to become a member of the pension fund applicable to officers or employees in the Public Service;
- e. any disciplinary steps instituted or being considered against such person in respect of alleged misconduct committed before the date of his or her transfer and appointment shall be dealt with in terms of the conditions applying to the appointment and service of officers and employees in the Public Service, as if the person concerned was an officer or employee in the Public Service at the time when the misconduct was committed.

(6) If any person is transferred and appointed to any body established by or under law and approved by the Minister in terms of subsection (4) (a) (ii), he or she shall be appointed and employed on a salary approved by such body and on the conditions applying to the appointment and service of employees with such body: Provided that-

- a. vacation leave standing to the credit of any such person with the Trust shall stand to his or her credit with such body;
- b. pensionable service performed by any person in the service of the Trust and pensionable service recognised by the Trust shall be deemed to be pensionable service performed by him or her in the service of the body concerned;
- c. a person shall not as a consequence of such transfer and appointment acquire a retirement age which is less favourable than that which applied to him or her in the service of the Trust;
- d. any person shall, within six months after his or her transfer to and appointment by the body concerned, be given a non-recurrent choice either to remain a member of the pension fund of which he or she was a member while in the service of the Trust or to become a member of the pension fund applicable to employees of the body concerned, subject to the laws and rules applicable to that pension fund;
- e. any disciplinary steps instituted or being considered against such person in respect of alleged misconduct or improper conduct committed before the date of his or her transfer and appointment shall be dealt with in terms of the provisions of the laws that apply to employees of the body concerned as if such person was an employee of that body at the time when the misconduct or improper conduct was committed.

5. Accounting responsibility

(1) The Minister shall honour obligations out of finances referred to in section 3(1) and shall keep and maintain such financial records and systems and bank accounts in the name of the Trust for that purpose and which may be necessary or required to give effect to the provisions of section 4(2)(c) and for the period referred to therein.

(2) The financial records contemplated in subsection (1) shall be audited by the Auditor-General.

6. Administration of laws

(1) The administration or exercise of any power or right conferred or duty imposed which is assigned by any law to the Trust shall on the fixed date pass to the Minister.

(2) Any person referred to in section 4(1) who exercised a power in any post or office, shall continue, unless clearly inappropriate, to perform the functions attached to that post or office as if this Act had not been adopted, unless the Minister determines otherwise.

7. Interpretation of certain expressions

Unless it is clearly inappropriate in any particular case, any reference in any law or document to-

- a. the Trust shall on the fixed date be construed as a reference to the Minister;
- b. a person in the service of the Trust shall on the fixed date be construed as a reference to a person in the service of the Minister.

8. Delegation of powers

(1) The Minister may in writing authorize

- a. any officer or employee in the Department of Minerals and Energy; or
- b. any person in his or her service,

to exercise or perform in general or in a particular case or in cases of a particular nature, any power, duty or function conferred or imposed on him or her by or under this Act.

9. Repeal and amendment of laws

(1) Subject to the provisions of subsection (2), the laws mentioned in Schedule 2 are hereby repealed or amended to the extent indicated in the third column of the said Schedule.

(2) Anything done under any law repealed by subsection (1), or any act performed by the Trust before the repeal of that law or the abolition of the Trust by section 2, shall remain in force as if the law had not been repealed or the Trust had not been abolished.

11. Short title

This Act shall be called the Abolition of the Lebowa Minerals Trust Act, 2000, and shall come into operation on a date to be fixed by the State President in the Gazette.

Schedule 1 Mineral Rights Held In Trust

Tribe **Farm Name** **Farm No**

Schedule 2

No and year of law	Title	Extent of repeal or amendment
Act 9 of 1987	Lebowa Minerals Trust Act, 1987	The whole