

# CHIEF REGISTRAR'S CIRCULAR NO. 1 OF 2008

## CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

### 1. DATE OF COMING INTO OPERATION

The Children's Act, 2005 (Act No. 38 of 2005), hereinafter referred to as "the Act", shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*. However, for purposes of this Circular sections 17 and 18 must be regarded as having come into operation on 1 July 2007 (see sections 17 and 18 of the Act).

### 2. PURPOSE OF THE ACT

The purpose of the Act, amongst other things, is to define parental responsibilities and rights, and to provide for matters incidental thereto.

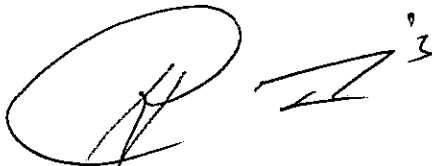
### 3. APPLICATION OF THIS CIRCULAR

The Act has repealed the Guardianship Act, 1993 (Act No. 192 of 1993). Chief Registrar's Circular No. 2 of 1994 is therefore hereby withdrawn.

### 4. IMPACT OF CERTAIN PROVISIONS OF THE ACT ON DEEDS REGISTRIES AND REGISTRATION PROCEDURES

- 4.1. In terms of **section 17** of the Act a child becomes a major upon reaching the age of 18 years.
- 4.2. A parent or other person who acts as guardian of a child must, in terms of **section 18(3)(b)** of the Act, and subject to section 18(4) and 18(5) of the Act, assist or represent a child in administrative, contractual and other legal matters.
- 4.3. A parent or other person who acts as guardian of a child must, in terms of section **18(3)(c)** of the Act, and subject to section 18(4) and 18(5) of the Act, give or refuse any consent required by law in respect of a child including, amongst other things:
  - consent to a child's marriage (section 18(3)(c)(i); and
  - consent to the alienation or encumbrance of any immovable property of a child (section 18(3)(c)(v)).

- 4.4. Whenever more than one person has guardianship of a child, **each one of them is competent**, subject to section 18(5) of the Act or any other law or any order of a competent court to the contrary, **to exercise independently** and without the consent of the other, any right or responsibility arising from such guardianship (**section 18(4)** of the Act).
- 4.5. Unless a competent court orders otherwise, the **consent of all the persons that have guardianship** of a child is necessary in respect of matters set out in section 18(3)(c) of the Act (**section 18(5)** of the Act).
- 4.6. The effect of section 18(4) of the Act is that a minor (person under the age of 18 years) may, subject to the provisions of section 18(5) of the Act or any other law or any order of a competent court to the contrary, enter into an **antenuptial contract with the consent of any one person that has guardianship** over such minor.
- 4.7. The effect of section 18(5) of the Act is that a minor (person under the age of 18 years) may, unless a competent court orders otherwise, **alienate or encumber his/her immovable property with the consent of all the persons that have guardianship** of such child.
- 4.8. The provisions of sections 17 and 18 came into operation on 1 July 2007 and transactions entered into prior to this date will still be governed by the law as it existed before such date.



**CHIEF REGISTRAR OF DEEDS**  
**DATE: 28 JANUARY 2008**

REFERENCE:       A 6/2/P  
RINGBINDER       68

CHIEF REGISTRAR OF DEEDS  
REGISTRARS OF DEEDS  
THE CHIEF: JUSTICE TRAINING  
DIRECTOR: LAW SOCIETY OF SOUTH AFRICA       : PRETORIA  
MANAGER: BUTTERWORTHS PUBLICATIONS       : DURBAN  
CHAIRPERSON: PROPERTY LAW COMMITTEE       : PRETORIA