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South African Mining Development Association

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## SUBMISSION

**TO:** NATIONAL COUNCIL OF PROVINCES

**FROM:** THE SOUTH AFRICAN MINING DEVELOPMENT ASSOCIATION

**DATE:** MARCH 2017

**SUBJECT:** SUBMISSIONS BY THE SOUTH AFRICAN MINING DEVELOPMENT ASSOCIATION (“**SAMDA**”) TO THE NATIONAL COUNCIL OF PROVINCES IN RELATION TO THE DRAFT MINERAL AND PETROLEUM RESOURCES AMENDMENT BILL 2013 (“**BILL**”)

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1. The following issues are submitted by SAMDA in respect of the draft Mineral and Petroleum Resources Amendment Bill 2013 which was published for public comment by 6 September 2013 in respect of proposed amendments to the Mineral and Petroleum Resources Development Act, No.28 of 2002, as amended (“**MPRDA**”).
2. SAMDA notes the following issues as the primary issues it wishes to address:
  - 2.1. Definition of Associated Mineral Section 1(b)
    - 2.1.1. SAMDA supports the inclusion of the provisions relating to associated minerals as defined.
    - 2.1.2. However, SAMDA is of the view that the definition may be a bit narrow in that the definition should also include secondary minerals, being those that occur around or contiguous to the primary mineral deposit and are naturally mined together with the primary mineral, such as, Platinum and Palladium, Silver, Rhodium and Gold.
  - 2.2. Insertion of subparagraph j on Section 2 of the Bill

**Honorary President:** B Radebe **Chairperson:** P.Temane  
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- (j) promote and ensure unencumbered net value ownership of the HDSA in mining companies of not less than 26%;

2.3. Repealing of the first come first served process in Section 9

2.3.1. SAMDA is of the view that the existing first come first served process in terms of section 9 should not be repealed. The proposed amendment which allows the Minister to invite applicants promotes subjectivity and arbitrariness.

2.3.2. SAMDA is of the further view that the mineral auction system –

2.3.2.1. may in actual fact exacerbate the administrative challenges that the Department of Mineral Resources (“DMR”) has worked tirelessly to overcome;

2.3.2.2. is likely to affect the security of tenure and thus create uncertainty;

2.3.2.3. is potentially susceptible to subjectivity, arbitrariness and even illegality to an appreciably greater extent than the present first come first served process; and

2.3.2.4. will not benefit junior miners as this is tantamount to an auction system to the highest bidder, to the extent that they may not be in a position to out-bid the established BEE mining companies and furthermore might never ever be able to apply by virtue of being overpowered by the BEE mining companies.

2.3.3. The above issues have the potential to render the amended section counterproductive in respect of other proposals of the Bill. For instance, the auction system could, among others, result in the concentration of mineral rights, or in fact prevent the substantial and meaningful expansion of opportunities for historically disadvantaged persons.

2.3.4. SAMDA further submits that the section lacks any clarity on issues such as the procedures and principles that will guide the DMR in such an auction process as well as whether or not the amendment is intended to affect the entire application process, including sections 16, 22 and 27 of the MPRDA.

- 2.3.5. All applications for licences and related matters (i.e. exploration rights, mining rights, technical co-operation permit, production rights and mining permits) must be administered by an independent body (eg Licensing Board). The Bill must give provision for the body which must be nominated by Parliament's Portfolio Committee of Mineral Resources in order to eliminate any future conflict of interest which may arise on those who are vested with powers to make such decisions. This independent body may be called the Mineral and Mining Licensing Council.
- 2.3.6. This independent body (e.g. Licensing Board) must handle all matters pertaining to all applications which are currently the responsibilities of the Minister, Regional Manager, Regional Mining Development and Environmental Committee.
- 2.3.7. Section 9 must make provision that is mandatory for all successful applications for mining to have Community Trusts.

9(1) Deletion of Regional Manager on 9(1) with insertion of Minerals and Mining Licensing Council;

9(2) Deletion of Minister on 9(2) with insertion of Minerals and Mining Licensing Council;

- 2.4. 10(C)(2) Deletion of the wording "the Regional Manager must refer the objection to the Regional Mining Development and Environmental Committee to consider the objections and to advise the Minister thereon" with the insertion of "the person so objecting must refer the objections to the independent body (e.g. Licensing Board) for adjudication".

10(4) The Mineral and Mining Licensing Council is entitled to nominate a representative in Regional Mining Development and Environmental Committee.

The addition of a new Section 10(C)(4) The Mineral and Mining Licensing Council is entitled to nominate a representative in Regional Mining Development and Environmental Committee.

### 3. Proposed Amendment to Section 11

3.1.1. SAMDA supports the proposed amendments to Section 11;

3.1.2. In this regard, SAMDA is not entirely against the granting of the right by the Minister to impose conditions to the grant of section 11 consent. However, that right to impose conditions must not be unfettered.

3.1.3. In SAMDA's view, section 11 should really be amended to provide, among others, for –

3.1.3.1. clear timelines within which the Minister's consent must be granted; and

3.1.3.2. principles and objectives that must guide and fetter the Minister in respect of the manner of conditions that the Minister can impose.

3.1.4. Further, the concepts of 'part of' a right and an 'interest in' a right need further clarity to avoid confusion. How a 'part of a right' will be transferred needs clarity.

### 3.2. Definition of concentration of Rights

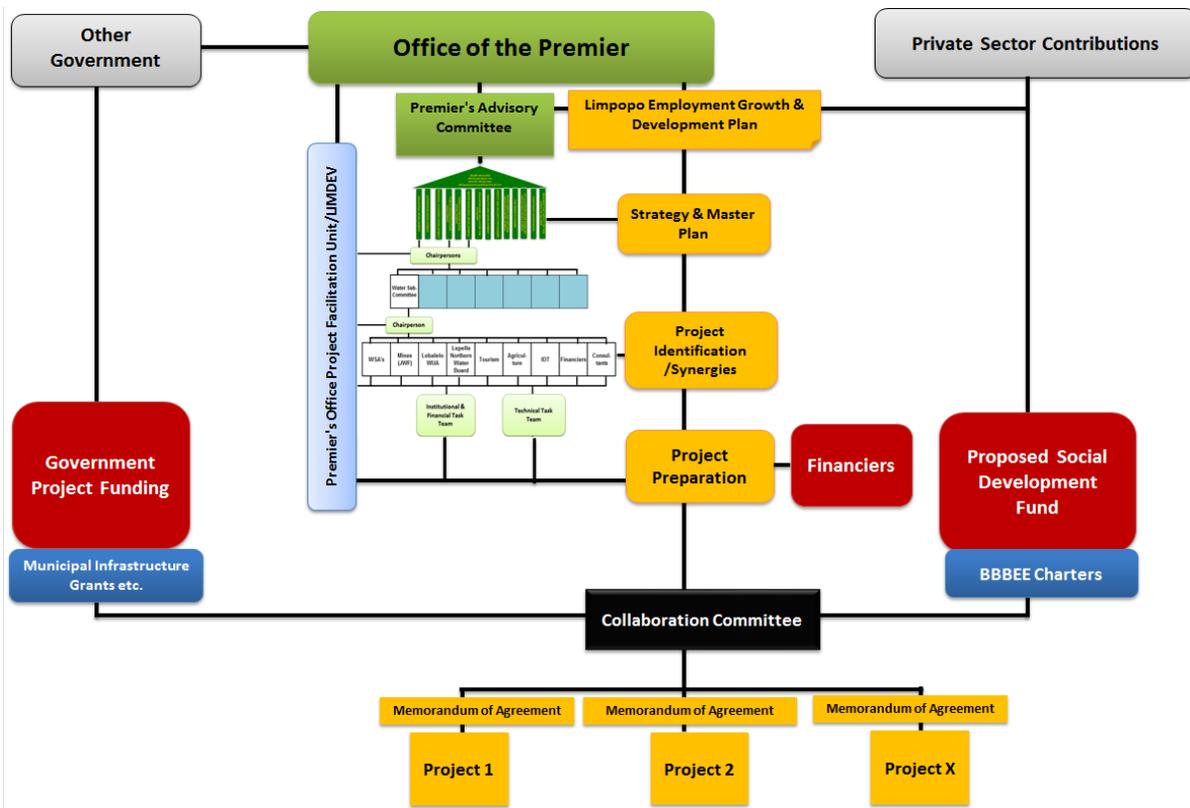
3.2.1. SAMDA is of the view that the definition of concentration of rights should be further revised to provide clarity. In its current form, the definition is a disincentive for any mining companies continuing to invest in further or any new prospecting activities should such activities simply result in a declined right to mine based on the issue around concentration.

3.2.2. Whilst the general principle has some merit to it in addressing the monopoly, a lot of thought must go into its application. For instance, at which level (prospecting vs mining) of the application process the issue of concentration should be evaluated.

### 3.3. 5 year SLP Review

Whilst SAMDA is not against the review of the SLP, as economic circumstances do change (either for the better or for the worse), clarity is needed in respect of what such review process would entail, whether it would suspend operations, how long the review period should last and what factors must guide any decision to revise a SLP.

SAMDA’s concern is that in the absence of a SLP guidelines template, there is the risk of duplication of SLP programmes implemented by the mining companies. The absence of an integrated resources development plan or programme of the following stakeholders; the municipality, the regional, provincial and national government; as well as rural communities and mining companies makes cohesive planning and implementation of service delivery difficult and non-aligned. Below is an example of an Integrated Resources Development organogram that has been implemented by mining stakeholders in the Limpopo Province.



#### 3.4. Renewal of rights applications

The imposing of the Council for Geo-Science certificate as a requirement in the renewal process will be impractical. Junior miners, who already operate, in most instances, at high cost due to regulatory compliance, will simply find it uneconomic to operate, where 'red-tape' is increased. Every administrative step shall lead to further administrative delays and ultimately increase costs, the resultant socio-economic impact is probably not worth the exercise.

#### 3.5. Annual Report submissions in respect of Mineral Reserves and Resources

3.5.1. Confidentiality must be ensured in respect of such submissions. In this regard, SAMDA proposes that standard templates must be generated in respect of such reports and in such standard templates, provision is made for submitting certain information under cover of a confidentiality claim, similar to the process used in other confidential regulatory submissions.

3.5.2. This will also prevent the unintended consequence of industry participants unwittingly sharing sensitive competitive information, which may result in regulatory contraventions (for instance, of competition laws).

#### 3.6. Section 23 and Community needs

3.6.1. SAMDA recommends that the provisions relating to the needs of the community need not form a stand-alone feature, but should rather be aligned with the obligations in terms of the social and labour plan. In this regard, the provisions of the Mining Charter, the SLP and the new section 23 proposals should be aligned instead of treating them in isolation. This will also avoid unwarranted duplication in obligations on the industry. Furthermore it will eliminate inconsistencies by mining companies when implementing the provisions of the mining charter requirements.

3.6.2. The section should also refer to 'companies in the same group' rather than 'associated' companies.

### 3.7. Environmental Requirements

- 3.7.1. SAMDA proposes that the position of the Amendment Act of 2008 in respect of the 18 month buffer period should be retained.
- 3.7.2. Further, notwithstanding the sensible intention to streamline processes by providing for the DMR to assess environmental compliance. Such provisions must be countered against the capacity of the DMR to conduct such environmental compliance audits over and above their MPRDA responsibilities and the potential for duplication where matters have to eventually be referred to the Department of Economic Development, Water and Environment and Tourism, as well as the cost implications thereof on junior mining companies.

### 3.8. Residues and Reclamation Permits

- 3.8.1. The Bill's proposed amendments have the potential to result in holders of current residue stockpiles needing to reapply for permits to treat such dumps.
- 3.8.2. SAMDA proposes that for a transition period the status quo is retained and that no further permits be required and no third party be allowed to apply for historic stockpiles.
- 3.8.3. Eventually, policy must be developed to compel companies to utilise the stockpiles or to sell same or risk losing them to an auction process (and the funds returning to the holder that sold the stockpile).

### 3.9. Liability of the Miner beyond the Closure Certificates

- 3.9.1. In SAMDA's view, the provisions allowing the Minister to retain portions of financial provisions for 20 years beyond the issuance of a closure certificate are prohibitive for junior miners to comply with because of the shortage of funds and cash constrains.

SAMDA proposes that the ministry with the support of financial services companies and mining stakeholders with the relevant skills, develops a mining preservation fund and a mining annuity scheme that investors contribute to in proportion to the size and income of the mining company as well as the contribution during the life of mine.

This will allow the Minister to have funding beyond the 20 years as stipulated.

### 3.10. Beneficiation

- 3.10.1. SAMDA proposes that the provisions relating to beneficiation, dealt with in section 26 must further be revised to provide for the referral of beneficiation matters to the Ministerial Advisory Council established in section 58 of the MPRDA.
- 3.10.2. Further, the Board must establish a beneficiation committee in terms of section 64, which must comprise representatives of industry stakeholders with the relevant expertise on beneficiation matters, who must advise the Minister on all relevant issues, including, among others, the issues related to the –
  - 3.10.2.1. determination of the relevant baselines of the higher value product
  - 3.10.2.2. determination of the percentage for local beneficiation;
  - 3.10.2.3. developmental pricing conditions;
  - 3.10.2.4. percentage of raw materials and product that producers must offer to local beneficiators, and terms of such offers;
  - 3.10.2.5. the determination of designated minerals;
  - 3.10.2.6. development of export parity prices; and
  - 3.10.2.7. obligations of producers that are also local beneficiators.
- 3.10.3. SAMDA is of the view that all the above issues can more efficiently be determined and ironed out by a committee of persons with the relevant expertise in such matters, rather than leaving the burden solely on the Minister.

3.11. Strategic Minerals – Section 49

SAMDA welcomes the issue of strategic minerals as it, among others, provides legislative force to policy issues. However, caution must be taken not to create new uncertainties and ambiguities between the MPRDA, the DTI Code of Good Practices and the Mining Charter when legislating on provisions surrounding such minerals.

SAMDA proposes that the following 11 strategic minerals pronounced by the DMR be increased to 15, e.g.:

3.12.

Rank	Commodity	Needs of the Country and the Value Chain
1	Coal	Energy supply risk
2	Gold	Job creation potential-jewellery beneficiation
3	Iron Ore	Infrastructure and job creation prerogative
4	Manganese	Infrastructure and job creation prerogative
5	Diamonds	job creation potential
6	PGM	SA's international dominance; job creation– energy supply
7	Chrome	SA's international dominance
8	Vanadium	SA's international dominance
9	Titanium	High technology industries
10	Nickel	Niche steel products
11	Uranium	Clean Energy
<b>SAMDA proposed the following minerals to be Additional Strategic Minerals</b>		
12	Phosphate	food security and fertilizer supply
13	Limestone	Required for cement manufacture and construction projects
14	Oil	Energy Supply Risk
15	Gas	Energy Supply Risk

Housing and living conditions – section 100

SAMDA supports the requirements of the housing and living conditions standards. The obligation on the Minister to impose provisions in respect of housing and living conditions when granting

prospecting and mining rights is a necessary challenge to implement in respect of junior miners despite the cost implications.

SAMDA therefore, proposes that the contributions of the royalty payments by junior mining companies be used to fund and subsidise the requirements of the housing and living conditions standards in creating human settlements for mine workers. This will assist junior mining companies to comply with requirements section 100.

### 3.13. Compensation payable under certain circumstances

(54)(5) If the Regional Manager, having considered the issues raised by the holder under subsection (1) and any representations by the owner or occupier of land and any written recommendation by the Regional Mining Development and Environmental Committee, concludes that any further negotiation may detrimentally affect the objects of this Act referred in section 2(c), (d), (f), (g) and the addition of “(j)” after (g) the Regional manager may recommend to the Minister that such land be expropriated in terms of section 55.

### **The Establishment of the Mineral and Mining Development Council -Section 56A(1)**

Delete Section 56A(1) and insert the following “The Portfolio Committee on Mineral Resources must through parliament establish an independent body (e.g. Licensing Board) responsible for administering and processing applications for minerals and mining development resources. The said independent body (e.g. Licensing Board) should be represented in all Regions through Regional Offices, appointed by the Independent body (e.g. Licensing Board).

Section 56A(2)(a) - Delete “Director-General” and insert the following “independent body” on Section 56A(2)(a).

Over and above the three members of the relevant state Department, there should be an inclusion of 1 member appointed by the National House of Traditional Leaders.

## **Functions of Ministerial Advisory Council – Section 56(B) of the Amendment Bill**

The following clauses below that were in Section 58(1) of the MPRDA have been excluded from the Mineral and Petroleum Resources Development Amendment Bill in Section 56(B):

Section 58(1)(a)(iii) the transformation and downscaling of the mineral and mining industry; and

Section 58(1)(a)(iv) dispute resolutions; and

Section 58(b) must, in consultation with the Mining Qualifications Authority, ensure the promotion of human resource development in the minerals and mining industry.

SAMDA objects to the exclusion of the above clauses in Section 56(B) of the MPRD Amendment Bill and the clauses should be re-inserted in Section 56(B) of the Amendment Bill.

The exclusion of the above clauses compromises and diminishes the workers' rights towards effectively addressing employment equity, skills enhancement and skills training, dispute resolutions and sustainability of the workforce in the mining industry.

Section 56E(1)(c ) A member of Council must vacate his or her office if he or she tenders his or her resignation in writing to Portfolio Committee or

Section 56E(1)(d) is removed from office by Parliament under sub section 2

Section 56E(2) Portfolio Committee may remove any member of the council from office

Section 56F(2) Portfolio Committee may reappoint any member of the Council at the expiry of his or her term for period not exceeding three years.

Section 56F(3) If a member of the Portfolio Committee vacates office or dies, Portfolio Committee may fill the vacancy by appointing a person in accordance with section 56A(2) for the unexpired period of the term of office of his or her predecessor

## Vacation of office by member of the Mineral and Mining Development Council

Deletion of section 56E(1)(c) A member of the council must vacate his or her office if he or she tenders his or her resignation in writing to the Mineral and Mining Development Council through the relevant parliament portfolio committee and such resignation is accepted; or

Insertion of "The Mineral and Mining Development Council through the relevant parliament portfolio committee may remove member of Council from office and all other resignations and terminations of member should follow the same process." on section 56D(2).

## **COMMENTS REGARDING THE DRAFT BILL'S IMPACT ON OIL AND GAS EXPLORATION IN SOUTH AFRICA**

SAMDA's concern is that there is no separate legislation governing oil and gas in the present Bill Oil and Gas falls under the MPRDA legislative requirements. There has to be an oil and gas legislation developed to specifically regulate the Oil and Gas industry as a separate sector especially with the recent discovery of Shale Gas in South Africa and the current off-shore oil exploration taking place.

86A (7) The Portfolio Committee must, acting on behalf of the State, appoint two representatives to the joint operating committee of the exploration or production operation to represent the interest of the State.

SAMDA supports the following:

1. State carried interest in exploration and production right with a cost recovery mechanism.
2. The right of pre-emption in the event that a holder disposes of its interest as stated in Section 86A(1); (2); (3); (4); (a); (b); (c); (d); (5); (6); (7); (8); (a); (b); (9); (a); (b); (c); (d); (10); (11); (12); (13).